

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WASHTENAW

MIDLAND FUNDING, LLC,
Assignee of FIA CARD SERVICES N.A.,

Plaintiff/Counter-Defendant,

v

Case No.: 14-438-CZ

MICHAEL BASSETT,

Defendant/Counter-Plaintiff./

BENCH TRIAL

BEFORE THE HONORABLE DAVID S. SWARTZ

Ann Arbor, Michigan - Thursday, April 20, 2017

APPEARANCES:

For the Plaintiff: MS. MONICA HUNT (P68838)
Attorney at Law
30057 Orchard Lake Road, Ste. 200
Farmington Hills, MI 48334-2265
(248) 851-6000

For the Defendant: MR. BRIAN PARKER (P48617)
Attorney at Law
2000 Town Center, #1900
Southfield, MI 48075
(248) 342-9583

Recorded by: MS. TERRI GERSTLER, CEO 8838
Certified Electronic Operator
(734) 222-3001

Transcribed by: MS. LISA H. KUEBLER, CER 5986
Certified Electronic Reporter
(734) 222-3392

TABLE OF CONTENTS

PAGE

WITNESSES - PLAINTIFF

EMILY WALKER

Direct Examination by Ms. Hunt	9
Voir Dire Examination by Mr. Parker	18
Direct Examination continued	24
Voir Dire Examination by Mr. Parker	31
Direct Examination continued	44
Voir Dire Examination by Mr. Parker	49
Direct Examination continued	59
Direct Examination continued	69
Voir Dire Examination by Mr. Parker	75
Direct Examination continued	81
Voir Dire Examination by Mr. Parker	94
Direct Examination continued	101
Voir Dire Examination by Mr. Parker	108
Voir Dire Examination continued	112
Direct Examination continued	114
Direct Examination resumes	122
Cross-examination by Mr. Parker	137
Cross-examination continued	171
Redirect Examination by Ms. Hunt	198
Recross-examination by Mr. Parker	202

WITNESSES - DEFENDANT

NONE

EXHIBITS

IDENTIFIED

ADMITTED

PX#1	AFFIDAVIT	17	26
PX#2	AFFIDAVIT OF SALE	30	69
PX#3	DOCUMENT	--	81
PX#4	BILL OF SALE	85	101
PX#5	FIELD DATA SHEET	105	114
PX#6	LETTERS	--	121
PX#7	DOCUMENTS	--	124
PX#8	LETTER	136	--
DX#1	CONTRACT	--	--
DX#2	AFFIDAVIT	--	--
DX#3	PRESS RELEASES	--	--

TABLE OF CONTENTS CONTINUED

PAGE

Opening statement by Plaintiff	4
Opening statement by the Defendant	5
Plaintiff motion for directed verdict	209
Defendant motion for directed verdict	211
Plaintiff's response	216
Court ruling on motion for directed verdict	218
Closing statement by Plaintiff	218
Closing statement by Defendant	221

COURT RULING:

Bench trial held. Testimony taken.	227
Judgment in favor of Plaintiff in the amount of \$25,909.45.	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Ann Arbor, Michigan

Thursday, April 20, 2017 - 9:03 a.m.

* * * * *

THE COURT RECORDER: We're on the record in the matter of Midland Funding versus Michael Bassett, case number 14-438-CZ.

MS. HUNT: Good morning, your Honor --

THE COURT: Morning.

MS. HUNT: -- Monica Hunt on behalf of the Plaintiff, Midland Funding.

THE COURT: All right.

MR. PARKER: Brian Parker on behalf of Michael Bassett, your Honor.

THE COURT: Morning.

MR. PARKER: Good morning.

THE COURT: Good morning. All right. You may proceed.

MS. HUNT: Thank you, your Honor. If I may briefly with an opening statement. Your Honor, may it please the Court. The matter before you today, your Honor, is a simple collection matter. The Plaintiff, Midland Funding, contends that it's the owner of a debt that was owed -- owned by Defendant, Michael Bassett. In 2004 Mr. Bassett applied for and received a credit card with FIA Card Services. The Defendant utilized that

1 credit card for many years and made payments until January
2 of 2009, leaving a balance that was due and owing in the
3 amount of \$25,606.65.

4 After the default, the Defendant's account was
5 charged off and sold to Accept Acceptance and subsequently
6 to the Plaintiff in this case, Midland Funding. The
7 Defendant never truly disputed that the account issue
8 existed or that the amounts requested were owed. The
9 Defendant's sole dispute is that Midland Funding hasn't
10 proven that it is the proper owner of this debt. Today
11 the Plaintiff will provide evidence that -- to
12 substantiate the ownership of the account, and that it is
13 entitled to judgment based on the default of the credit
14 card agreement which it acquired.

15 THE COURT: Thank you. Mr. Parker?

16 MR. PARKER: Thank you, your Honor.

17 MR. PARKER: I am here on behalf of Mr. Michael
18 Bassett, good morning, your Honor.

19 THE COURT: Morning.

20 MR. PARKER: I -- this is a simple case as Ms.
21 Hunt said, the burden of proof is on the Plaintiff, and
22 I've taken a look at their exhibit list, there is nothing
23 on the exhibit list that points to the ownership of
24 Midland Funding by Mr. Bassett. Ms. Hunt brought up the
25 fact that Mr. Bassett did not dispute the debt under 1692

1 FD -- the FD -- FDCPA, he is not required to dispute it to
2 have them prove ownership. Meaning the law specifically
3 on point says under §1692, I believe it's c, that you
4 cannot impute ownership because of the Defendant's failure
5 to dispute the debt.

6 Excuse me one moment, your Honor.

7 THE COURT: Yep.

8 (Pause)

9 MR. PARKER: Just for clarity, your Honor, it's
10 FDCPA 15 U.S.C. §1692G(c), and I will read, the failure of
11 the consumer to dispute the validity of a debt under this
12 section may not be construed by any court and -- as an
13 admission of liability. So, when you hear Plaintiff say
14 he failed to dispute it that proves ownership that is
15 actually against Federal law to say something like that.
16 Number two, as you are aware, the affidavit of defenses in
17 this case, number 15 specifically, states specifically
18 that this contract has a choice of law provision. Asset
19 Acceptance that Ms. Hunt recommended as being part of this
20 chain of title, Midland Funding, and I believe Bank of
21 America, are all Delaware corporations. Their articles of
22 corporation are in Delaware.

23 If you take a look at the business ag -- the
24 card agreement between Bank of America and Mr. Bassett, it
25 has a choice of law provision -- excuse me a second, I

1 believe that is -- in fact I put it right in my
2 affirmative defenses, your Honor, so you could see it,
3 number 26, governing law, the choice of law provision is
4 strangely enough Delaware, which is where all the parties
5 are from. That has a three-year statute of limitations so
6 it -- this case should not have been brought after 2012.
7 We've made that clear to the other side, we've made that
8 clear to this -- this Court under our affirmative defenses
9 and we'll show that. I've tried real hard to get the
10 contract out of the other side; obviously I've been unable
11 to do that, but we have a copy of a contract that my
12 client ferreted down.

13 You'll see that there is no chain of title; in
14 fact you did not hear Ms. Hunt talk about a chain of
15 title. You'll see, if you look at their exhibit list,
16 there is nothing there that shows the debt passed from
17 Bank of America to Asset Acceptance. In fact, I'm not --
18 and I don't see anything in their paperwork that actually
19 shows it's either from Bank of America or what's called
20 FIA Services, so you'll see that we'll put on -- we don't
21 have the burden of proof, we just need to knock down their
22 evidence, but they don't have any evidence to knock down,
23 that that they present we will show the Court does not
24 show a title, or a chain of ownership to Midland Funding.

25 And lastly, in conclusion, your Honor, they

1 don't have a custodian of records from Bank of America,
2 they don't have a custodian of records from FIA, they
3 don't have a custodian of records from Asset Acceptance.
4 They have, I think, somebody from Midland Funding who's
5 not even from Midland Funding. She's actually from a
6 company called Midland Credit Management, I believe, but
7 she's not even employed by the Plaintiff. They may make a
8 -- an attempt to go through 803(6), but this person does
9 not work for Bank of America, this person does not work
10 for Asset. It's quite an attenuated chain of title.

11 And as you'll see under Michigan Rules of
12 Evidence, lastly, your Honor, 106, that they've got to
13 bring everything to show something, and their exhibit list
14 does not have all the records needed that are required
15 under Michigan Rule 106. Thank you very much for
16 listening to me, your Honor.

17 THE COURT: All right. You may proceed.

18 MS. HUNT: Thank you, your Honor. I would like
19 to call my first witness, Emily Walker.

20 THE COURT: Come right up here, please. And
21 raise your right hand. Do you swear or affirm the
22 testimony you're about to give shall be the truth, the
23 whole truth and nothing but the truth?

24 MS. WALKER: Yes, I do.

25 THE COURT: Please be seated.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EMILY WALKER

called at 9:10 a.m., by the Plaintiff, sworn by the Court,
testified as follows:

DIRECT EXAMINATION

BY MS. HUNT:

Q Good morning, Ms. Walker.

A Morning.

Q Can you state your name for the record?

A My name is Emily Walker.

Q And can you tell me where you're employed?

A I'm employed with Midland Credit Management.

Q Okay.

THE COURT RECORDER: Would -- would you have her
spell her name, please?

MS. HUNT: I'm sorry.

BY MS. HUNT:

Q Can you spell your name for the record?

A Yes. Both first and last?

Q Yes, please.

A First is E-M-I-L-Y, last is W-A-L-K-E-R.

Q Thank you. And, again, can you tell me how me how --
where you're employed?

A I'm employed with Midland Credit Management.

Q Okay. And can you explain the structure of Midland Credit
Management?

1 A Midland Credit Management is the debt servicer for Midland
2 Funding, and Midland Funding is an indirect subsidiary of
3 Midland Credit Management.

4 Q Okay, thank you. And is there a parent corporation of --

5 A Yes.

6 Q -- those companies that you just listed?

7 A Yes.

8 Q Okay.

9 A Encore Capital Group is the --

10 Q Okay.

11 A -- parent corporation for Midland Credit Management and
12 Midland Funding.

13 Q Okay. Thank you. And can you tell me what your title is?

14 A I'm a senior legal specialist.

15 Q Okay. And what are your duties as a -- I'm sorry, I'll
16 take a step back. How long have you worked as a senior
17 legal specialist?

18 A I've been a senior legal specialist for about a year.

19 Q Okay, and what are your duties as -- in that position?

20 A I review documents and affidavits against our account
21 records to ensure that they contain accurate information,
22 as well as provide testimony both telephonically and in
23 person as a corporate representative on behalf of Midland
24 Funding. And I provide guidance in a leadership role for
25 other coworkers in my division.

1 Q Okay, thank you. And prior to becoming a senior -- a
2 senior legal specialist, did you hold any other roles with
3 your company?

4 A I was legal specialist.

5 Q Okay. And were there any -- what were the duties with
6 regards to that?

7 A It was the same, the senior just came with the leadership
8 responsibilities.

9 Q Okay, and how long were you a legal specialist?

10 A Four years.

11 Q Okay. And are you familiar with the account that's at
12 issue here today, the account of -- by Mr. Bassett?

13 A Yes, I am.

14 Q Okay. And how are you familiar with that?

15 A I have reviewed the account within our system, the account
16 data and the supporting documentations that were received
17 in connection with the sale --

18 Q Okay.

19 A -- of the account.

20 Q Okay. And did you have any role throughout the litigation
21 of this case?

22 A I provided an affidavit for this case approximately two
23 years ago.

24 Q Okay. All right. Now, can you tell me, are you familiar
25 with the process that Midland undertakes to acquire

1 accounts?

2 A Yes.

3 Q Okay, can you describe that process for me?

4 A Yes. When a portfolio of accounts is up for sale and
5 Midland Funding is the one purchasing that portfolio
6 accounts, a sale file is sent over to do a due diligence
7 on that sale file. It's actually a redacted portion of
8 the sale file to do, to check that they have all the
9 information that we require prior to purchasing the
10 account. When that information has been checked and it's
11 determined that everything that we would like to see when
12 we -- when Midland purchases accounts is there, they go
13 forward with the sale at that time. The entire sale file
14 is transferred over and another due diligence process to
15 check for errors or inconsistencies and data mapping with
16 the electronic data that's received is done, that process
17 Midland works closely with the seller to ensure that all
18 the data is consistent. When that process is complete,
19 the account data is loaded into Midland's system of record
20 and another due diligence process is done to ensure that
21 the -- the data transferred over correctly.

22 Q Okay. Now, when you say that they entire file is
23 transferred over, what does the file consist of?

24 A The electronic sale file is essentially an Excel
25 spreadsheet, a large Excel spreadsheet that contains all

1 the electronic data for each and every account that's
2 included within that portfolio which includes original
3 account numbers, the consumer names and contact
4 information including address and telephone numbers,
5 social security numbers, birthdates. It includes account
6 specific information like the account open date, the last
7 payment date and the charge off date.

8 Q Okay. Are there any documents that's included with that?

9 A There are supporting documents that will come over in a
10 secondary file in a PDF that will include the account
11 statements for the accounts that are purchased.

12 Q Okay. Now, are these documents that come over and all
13 this information they file -- or the file that's
14 transferred, is that retained by Midland Funding for their
15 records?

16 A Yes.

17 Q Okay. And does Midland Funding rely on these documents in
18 servicing these accounts?

19 A Yes.

20 Q Okay, and how do they rely on them?

21 A They rely on the documents to ensure that they have the
22 correct consumer and the correct amount to collect from
23 that consumer with the supporting documentation of the
24 electronic data that was transferred with the sale.

25 Q Okay. Now, this account was transferred. Who was this

1 account transferred to Midland from?

2 A Midland purchased the account from Asset Acceptance, LLC.

3 Q Okay. And can you describe your relationship with -- or
4 Midland's relationship with Asset?

5 A Yes. Asset Acceptance is a company that is under the same
6 parent company or umbrella company, Encore Capital Group,
7 as Midland Credit Management and Midland Funding.

8 Q Okay. Now, that suit or -- or, I'm sorry, this account
9 originated with another creditor, is that correct?

10 A Yes.

11 Q And who was that creditor?

12 A The original lender was FIA Card Services, N.A.

13 Q Okay. And are you familiar with the -- with FIA Card
14 Services procedures in maintaining the records that they
15 send over on purchased debts?

16 A Yes, I am.

17 Q And how are you familiar with that?

18 A I have visited one of their corporate offices and have had
19 side-by-sides with employees in how they maintain their
20 records, how they pull them up to review them, quality
21 check them for the purposes of sending the media onto
22 subsequent debt buyers.

23 Q Okay, and when you say "side-by-sides", is that a
24 training?

25 A Kind of. It's -- it's just sitting side by side and

1 watching them how they -- how they do it and them
2 explaining walking through the process of how they go
3 about searching for the account and -- and the different
4 security measures and quality checks to ensure that their
5 documentation is correct before sending it on.

6 Q So you've learned that process of maintaining those
7 records for purposes of purchase?

8 A Yes.

9 Q Is that correct?

10 A Yes.

11 Q Okay. And those documents that you just discussed, were
12 they transferred to -- are they transferred to the
13 purchasers of the debts?

14 A Yes.

15 Q Okay. And how are those documents transferred?

16 A They're transferred electronically on a secure email site.

17 Q Okay. And is -- are affidavits a part of that -- those
18 documents?

19 A Yes. There are affidavits of sale that are part of the
20 processes that I've been able to witness as well as
21 account specific affidavits of sale.

22 Q Okay. So as a part of that side-by-side learning, you
23 were able to witness the, and understand the, affidavit
24 process?

25 A Yes.

1 Q Okay. And can you tell me what that process is?

2 A Yes. They have a template that they start with for the
3 affidavit of sale, and an employee will review the records
4 including the bill of sale, the accounts that are included
5 within that bill of sale, to ensure that they're inputting
6 the correct data within the affidavit of sale including
7 the date of the sale, and date that they sign and notarize
8 the document.

9 Q Okay. And are those -- are those affidavits a part of the
10 transfer file?

11 A If the accounts are not directly purchased. So with this
12 account being it went from FIA Card Services to Asset, in
13 the sale file there was the chain of title documents from
14 FIA Card Services to Asset included. If it was a direct
15 sale, it would be a -- a wet copy seal.

16 Q Okay.

17 A That would be sent, the affidavit would be sent separately
18 so that the purchaser would have the wet copy seal.

19 Q Okay. So, Ms. Walker, I'm going to hand you a document --

20 MS. HUNT: May I approach the witness, your
21 Honor?

22 THE COURT: Sure.

23 BY MS. HUNT:

24 Q Now, can you describe that document for me -- or do you
25 recognize that document?

1 A Yes, I do.

2 Q Okay, and can you describe this document for me?

3 A This is an affi -- affidavit of sale of accounts by
4 original creditor with the purchase date of December 26,
5 2012 from FIA Card Services to Asset Acceptance, LLC, and
6 it was signed on January 4th, of 2013.

7 (At 9:21 a.m., Plaintiff's proposed exhibit #1
8 [Affidavit], was identified)

9 BY MS. HUNT:

10 Q Okay. Now, is this the type of affidavit that you just
11 spoke of that would be a part of a transferred file?

12 A Yes.

13 Q Okay. And is this the type of affidavit that you've
14 indicated that you've witnessed the process of generating
15 and having (indiscernible due to Mr. Parker speaking at
16 the same time) --

17 MR. PARKER: Your Honor, she's bringing a lot
18 of information in. Is this coming in as an exhibit or is
19 she talking from memory, what's going on here?

20 MS. HUNT: I'm laying the foundation for
21 bringing it in, your Honor.

22 MR. PARKER: All right, well I'd like to know
23 what's going on, if she's entering the exhibit she'd say
24 I'd propose an exhibit 1, is this exhibit A, what is this?
25 Thank you.

1 MS. HUNT: Well, your Honor --

2 THE COURT: To the extent that was an
3 objection, it's overruled. You may continue.

4 MS. HUNT: Thank you, your Honor.

5 MR. BASSETT: The comments that he says.

6 BY MS. HUNT:

7 Q Is this the type of affidavit that you would say for --
8 see as a part of the side-by-side training that you had?

9 A Yes.

10 Q Okay.

11 MS. HUNT: And, your Honor, at this time I
12 would like to have this document admitted as exhibit 1.

13 THE COURT: Okay. Can I see it?

14 THE WITNESS: Sure.

15 MS. HUNT: Oh, I'm sorry.

16 THE COURT: That's all right. Thank you. Are
17 you -- she got it for me, thanks.

18 (Pause - Court reviewing)

19 THE COURT: Okay.

20 MR. PARKER: Voir dire the witness, objecting
21 to this, your Honor?

22 THE COURT: Sure. Sure.

23 MR. PARKER: Thank you, your Honor. Excuse me.

24 VOIR DIRE EXAMINATION

25 (At 9:23 a.m.)

1 BY MR. PARKER:

2 Q Hi, good morning, Ms. Walker, how are you doing today?

3 A Good.

4 Q You were talking about what's -- your titling and
5 affidavit of sale that's been entered or proposed as an
6 exhibit 1, is that correct?

7 A Yes.

8 Q And Ms. Hunt didn't ask you about this, but this was
9 actually two pages you're trying to get entered, is that
10 correct?

11 A Yes, there are two pages.

12 Q And what is the second page because it's tough to read so
13 maybe you can help me?

14 A The second page is a certificate of conformity for the
15 notary, Molly McNatt, who notarized the affidavit of sale
16 of accounts by original creditor. It's a statement from
17 an attorney in the state of Delaware that states that
18 Molly McNatt was a notary public in the state of Delaware
19 and taken -- took the -- or notarized the previous
20 document in the manner prescribed by the laws of the state
21 of Delaware.

22 Q State of Delaware? Yes?

23 A Yes.

24 Q Oh, okay. And I notice you were reading part of it. I
25 would like you to read the part where it says "pertaining

1 to the acknowledgement", do you see where it says that?
2 Second line.

3 A Yes.

4 Q Could you read the next six words for me, please?

5 A After pertaining to the acknowledgment?

6 Q After the work acknowledgement, yes, please.

7 A "Or proof of deeds of real property." |

8 Q All right. Is there any real property being transferred
9 in this transaction? Yes or no, ma'am?

10 A The accounts --

11 Q Yes or no, ma'am?

12 A -- were transferred. I don't understand what you mean by
13 real property.

14 Q Was any real property transferred in the -- let's -- what
15 you're calling an affidavit of sale? Was any real
16 property transferred? Yes or no, ma'am?

17 A I'm confused at what you mean by --

18 THE COURT: She doesn't know what -- what --

19 THE WITNESS: -- real property.

20 THE COURT: -- real property is.

21 BY MR. PARKER:

22 Q All right. Do you see the words real property that you
23 just read?

24 A Um-hmm.

25 Q Do you know what real property means?

1 A I don't know the legal definition.

2 Q Do you know it has to do with real estate or property or
3 deeds? It says proof of deeds of property, of real
4 property, do you understand what that means?

5 A Okay.

6 Q Is that a credit card debt or is that a way to transfer
7 property?

8 A In this instance, what was transferred was credit card
9 accounts.

10 Q That's right, but this has to do with the transfer, if I
11 may, acknowledgment of, yes or no, the proof of deeds of
12 real property, is that correct, that you just read? Yes
13 or no, ma'am?

14 A That's what I read.

15 Q All right. And, also, Molly McNutt (sic) apparently is
16 signing something the 4th of January of 2013, is that
17 correct on that first sheet of paper?

18 A Yes.

19 Q And we haven't got to it yet, but are you saying that's
20 when the property was transferred? Excuse me, the debt in
21 this case was transferred?

22 A The 4th of January is when this document was signed.

23 Q All right. So it wasn't done at the time of the transfer
24 of the credit card, yes or no?

1 A It was done shortly after. It states in there, which I
2 read earlier --

3 Q That's not a yes or no, ma'am.

4 A -- was December 26th --

5 MR. PARKER: Your Honor, could you instruct the
6 witness to answer yes or no?

7 THE COURT: No, I will not. She's answering
8 your question, Counsel.

9 MR. PARKER: Okay, thank you, your Honor.

10 THE WITNESS: It states in there, which I read
11 prior, that on or about December 26th, 2012, FIA Card
12 Services, N.A. sold the pool of charged off accounts via
13 credit card account and a purchase agreement and a bill of
14 sale to Asset Acceptance, LLC.

15 BY MR. PARKER:

16 Q All right. And does it say that any debt of Mr. Bassett
17 was transferred with that, I think you said "a pool of
18 accounts"?

19 A It doesn't have a specific -- the specific consumer's name
20 on there --

21 Q What is a pool of accounts?

22 A -- to protect for --

23 Q What does that mean?

24 A It's a number of accounts. It's more than one.

25 Q What number of accounts were transferred in this instance?

1 MR. PARKER: -- of a debt that doesn't exist in
2 this paperwork --

3 THE COURT: Right.

4 MR. PARKER: -- there's no proper foundation
5 that this is attached here. How's it coming into the
6 weight of what --

7 THE COURT: Because the Court just overruled
8 your objection and said your objection goes to the weight
9 of evidence not its admissibility because your client's
10 name wasn't in it, so overruled and you may continue.

11 MS. HUNT: Thank you. And this is admitted as
12 exhibit 1?

13 THE COURT: Yes.

14 (At 9:30 a.m., Plaintiff's exhibit #1
15 [Affidavit], was admitted)

16 BY MS. HUNT:

17 Q Now, Ms. Walker, the second page that Mr. Parker referred
18 you to, I'm speaking about that right now, in this pool of
19 debts, are there other -- could there possibly be other
20 debts other than pure credit card debts involved in this
21 pool?

22 A No.

23 Q Okay. For purposes of this affidavit -- or for this pool
24 of debts, are there -- in your training, can you explain
25 how this affidavit is provided?

1 A This affidavit is provided in connection with the sale.
2 The bill of sale is signed first, and this is an
3 acknowledgement of that sale after the bill of sale is
4 sent to the purchaser.

5 Q Okay. Now, was this affidavit a part of the sales
6 documents that you -- that Midland received?

7 A In connection with this case, yes.

8 Q Okay. And did Midland retain this document for purposes
9 of servicing the account?

10 A Yes.

11 Q Okay. And how did it utilize this document for servicing
12 the account?

13 A It used the document to show the chain of title for the
14 accounts that were purchased in connection with this bill
15 of sale.

16 Q Okay, and what was utilized for that purpose?

17 A I'm sorry?

18 Q What as a part of this document was utilized for the
19 purposes of services?

20 A The date in the document, December 26, 2012, and the
21 original lender and the subsequent purchaser, Asset
22 Acceptance, LLC, was used to populate the chain of title
23 for the account for the original lender to Asset.

1 Q Okay. Now you stated that when Midland purchases or
2 acquires an account, you take a look at the entire file,
3 is that correct?

4 A Um-hmm.

5 Q And can you explain again what's in that file for this
6 particular account?

7 A The sale file is the electronic data that's transferred.
8 And the electronic data includes the original account
9 number, the original lender, the consumer's name and
10 contact information like address, telephone number, social
11 security number, birthdates, it includes account --
12 important account dates like the account open date, the
13 last payment date, the charge off date, it will include
14 the charge off amount and sale amount of the account. It
15 also includes other information that identifies with the
16 contract ID.

17 Q Okay. And where are those documents from?

18 A The sale file is compiled --

19 Q For this particular account.

20 A For this particular account is -- where are they
21 physically or where --

22 Q Where -- where each of those documents acquired from.

23 A The -- the sale file from FIA Card Services to Asset
24 Acceptance, the information within that sale file was
25 compiled by FIA Card Services, and then the sale file from

1 Asset Acceptance to Midland Funding, the information was
2 compiled by Asset Acceptance, LLC.

3 Q Okay. So when you or Midland accepts a file or acquires
4 an account, in your review do you look at both of those
5 files that were sent previous to the acquisition?

6 A In this case, yes.

7 Q Okay. And was -- what's before you as exhibit 1 a part of
8 that document -- or a part of that file?

9 A Yes. Yes.

10 Q Okay. And which file did it pertain to?

11 A It was -- it came in the supporting documentation in the
12 PDF file, the secondary file that was transferred with the
13 supporting documentation for the accounts that were
14 purchased, along with the account statements.

15 Q Now, Ms. Walker, I'm going to hand you another document.

16 MS. HUNT: If I may approach, your Honor.

17 THE COURT: Sure. Thank you.

18 BY MS. HUNT:

19 Q Now, Ms. Walker, can you describe that document -- or does
20 that document --

21 THE COURT: What's it marked as, Counsel?

22 MS. HUNT: I'm sorry?

23 THE COURT: What's it marked as?

24 MS. HUNT: As exhibit 2.

25 THE COURT: Okay, thank you.

1 BY MS. HUNT:

2 Q Does that document look familiar to you, Ms. Walker -- Ms.
3 Walker?

4 A Yes, it does.

5 Q Okay. And can you describe that document?

6 A Yes, this is a bill of sale and assignment of loans
7 between FIA Card Services and Asset Acceptance, LLC, dated
8 December 26th, of 2012.

9 (At 9:35 a.m., Plaintiff's exhibit #2 [Affidavit
10 of Sale], was identified)

11 BY MS. HUNT:

12 Q Okay. Now, when you purchased -- I'm sorry, when you did
13 your side-by-side with Ms. -- with Bank of -- or, I'm
14 sorry, FIA Card Services, did you have an opportunity to
15 see how these documents were maintained?

16 A Yes. They were maintained electronically within their
17 system, as well as the original copy was sent to the
18 seller..

19 Q Okay. And did you have an opportunity to see how they
20 were transferred?

21 A Not specifically how they were transferred. They
22 explained that with bills of sale that the purchaser
23 received the --

24 MR. PARKER: Hearsay, your Honor, out of court
25 statement. She's talking about what they said to her.

1 THE COURT: Your response.

2 MS. HUNT: Your Honor, she sat there training
3 with FIA Card Services. They explained to her the
4 reasoning behind and the process behind the generation and
5 the maintaining and transfer of these documents. She had
6 a one-on-one --

7 THE COURT: That's not an exception to the
8 hearsay rule, sustained.

9 MS. HUNT: Okay, thank you.

10 BY MS. HUNT:

11 Q Were -- did -- did you have an opportunity to witness how
12 these documents were transferred?

13 A Not personally, no.

14 Q Okay. All right, okay. Did you receive this document --
15 I'm sorry, in your review of the file, was this document a
16 part of your file transferred from FIA Card Services?

17 A Through Asset Acceptance, yes.

18 Q Okay.

19 MS. HUNT: Your Honor, at this time I would
20 like to have this document admitted as exhibit 2.

21 MR. HATLEM: I would like to object to that and
22 voir dire the witness, your Honor.

23 THE COURT: Sure.

24 MR. PARKER: Thank you very much, your Honor.

25 VOIR DIRE EXAMINATION

1 (At 9:37 a.m.)

2 BY MR. PARKER:

3 Q Hey, do you have a copy of this in front of you?

4 A I do --

5 Q When I say "this", it's --

6 MR. PARKER: -- what is this, exhibit 2, your
7 Honor?

8 THE COURT: That's what she said, yes.

9 BY MR. PARKER:

10 Q Proposed exhibit 2, do you have that in front of you,
11 ma'am?

12 A Yes, I do.

13 Q All right. Let's start off, where is the word "credit
14 card" in this document?

15 A It doesn't specifically state credit card.

16 Q This is -- would you con -- consider this a contract?

17 A This is a bill of sale.

18 Q Bill of sale. All right. And usually a bill of sale will
19 tell you what -- if in your vast experience you said
20 you've seen these, you've testified to these kind of
21 cases, wouldn't it tell what they're actually passing or
22 what the other side is purchasing, yes, no?

23 A Um --

24 Q Or no?

25 A -- it states that in the second --

1 Q I'll move on. You can -- I'll withdraw the question.

2 THE COURT: All right.

3 BY MR. PARKER:

4 Q If you look at the first paragraph and the last sentence,
5 do you see the -- would you read that to the Court?

6 A "Capitalized terms not defined herein shall have the same
7 meaning as defined in the Agreement."

8 Q And the agreement has a capitalized A, is that correct?

9 A Yes.

10 Q So there's an Agreement that accompanies this bill of sale
11 and assignment of loan, is that correct?

12 A Yes, there is.

13 Q Where is that?

14 A The Agreement is between FIA Card Services and Accept
15 Acceptance. It's a purchase Agreement.

16 Q You didn't answer the question. Where is the Agreement?

17 A Asset Acceptance would have that Agreement.

18 Q You haven't looked at the Agreement?

19 A No.

20 Q Of the document that says pursuant to Agreement, you
21 haven't looked at it, is that correct?

22 A I have not looked at that Agreement, no.

23 Q So how -- did you count how many times the word "loan" is
24 in this document?

25 A I did not --

1 MS. HUNT: Objection, your Honor, I don't know
2 the relevance of that question.

3 MR. PARKER: I can keep talking.

4 BY MR. PARKER:

5 Q There is no reference to any credit card. This actual
6 document is called the bill of sale and assignment of
7 loans. Now, we talked earlier about the exhibit -- first
8 exhibit that's referring to real property, and you just
9 testified to your Counsel that there is no way anything
10 other than a credit card is part of this transaction, is
11 that correct? Was that your testimony? Yes or no?

12 A It was credit cards that were --

13 Q Only --

14 A -- bought.

15 Q -- and yet this says loans. Do you know the difference
16 between a loan and a credit card?

17 A Yes.

18 Q A loan is what?

19 A A loan is --

20 Q You get the money up front and you pay it over a certain
21 time, is that correct?

22 A Yes --

23 MS. HUNT: Objection, your Honor, I don't know
24 the relevance of this. That appears to be a technical
25 term and, your Honor, a credit card can be determined as a

1 loan. There can be a line of credit in what your credit
2 card is utilized. I think the Defendant is attempting --

3 MR. PARKER: Now she's testifying and that
4 wasn't my question.

5 MS. HUNT: Defense counsel is attempting to --

6 THE COURT: No, she's responding to you.

7 MS. HUNT: -- mix up the terms here.

8 THE COURT: Okay --

9 MR. PARKER: I asked her if she knows the
10 definition of loan; she -- she told me. That was the --
11 that's what she's ref --

12 THE COURT: All right, continue.

13 MR. PARKER: In fact, she's objecting to her
14 own --

15 THE COURT: Please cont --

16 MR. PARKER: -- witness --

17 THE COURT: Please continue.

18 BY MR. PARKER:

19 Q Do you know the definition of credit card?

20 A It's a revolving credit. You have a -- a limit on a
21 credit card that you can purchase merchandise with and you
22 pay on a monthly basis.

23 Q Thank you. So a loan you get the money up front, and a
24 credit card you take the money when you want, would that
25 be a fair assessment of the differences?

1 A I guess.

2 Q Do you think that Bank of America knows the difference
3 between a credit card and what a loan is, yes or no? In
4 your --

5 MS. HUNT: Your Honor, that's speculation. He
6 -- she --

7 MR. PARKER: In fact, can I finish? Can I
8 finish?

9 BY MR. PARKER:

10 Q In your time spent sitting next to them, had -- do you
11 think they know the difference?

12 THE COURT: And your objection is what?

13 MS. HUNT: Your Honor, I'm object -- that's
14 pure speculation. He is asking her to go into the mind of
15 somebody at Bank of America, and further she indicated
16 that she sat with FIA Card Services.

17 THE COURT: Well -- well whether the witness
18 knows if Bank of America knows the difference or not would
19 be basically irrelevant in the Court's opinion. I will
20 over -- I'll sustain your objection.

21 MR. PARKER: All right.

22 BY MR. PARKER:

23 Q So the purchase agreement, they call it the "Agreement",
24 is that correct, with a capitalized A?

25 A Yes.

1 Q In this thing that you're seeking to get entered. And
2 it's dependent on the purchase agreement. The terms that
3 aren't explained you have to go to the purchase agreement,
4 correct?

5 A Yes.

6 Q That aren't -- that you've never looked at, correct?

7 A I have not looked at the Agreement in this case.

8 Q All right. So -- and yet you're being asked to show that
9 this is trustworthy and you can approve of this document
10 when it's based upon an agreement you've never read, is
11 that correct?

12 A I'm sorry, can you repeat that?

13 Q You've never read the Agreement yet you're being asked to
14 prove the trustworthiness of this one sheet of paper that
15 refers to a purchase agreement that you've never read,
16 right?

17 A I've never read the Agreement.

18 Q All right. It also talks about in capitalization Loan --
19 you see where it says Loan Agreement as BAC Bulk Asset
20 Acceptance LLC file 1212 FINAL.XISX in paragraph 8, and
21 take your time?

22 A I have, yes.

23 Q And I apologize if I -- do you want me to tell you again
24 or you -- you found it?

25 A No, I -- I --

1 Q And that's in capitalization again, Loan Agreement, have
2 you -- you haven't looked at the Loan Agreement, they're -
3 - they're two doc -- different documents?

4 A I haven't looked at the purchase agreement in this case,
5 but I have looked at that sale file.

6 Q You've looked at the sale file. And where is that sale
7 file so the Court can rule upon it?

8 A That sale file is electronically stored in Midland's
9 business records.

10 Q All right. Well, under -- in -- in Michigan, you're from
11 Minnesota, correct?

12 A Yes.

13 Q Under MRE 106, you've got to bring everything for the
14 Court to make a decision, and you're saying --

15 MS. HUNT: Objection, your Honor. He's --

16 MR. PARKER: I haven't finished.

17 THE COURT: I mean, that's not a proper
18 question.

19 MR. PARKER: All right.

20 BY MR. PARKER:

21 Q You haven't today that evidence that -- correct if I'm
22 wrong, has to accompany this sale of loans, correct? It
23 refers to it, and you don't have that with you today, is
24 that correct?

1 THE COURT: Well, first of all -- okay, go
2 ahead. You can answer the question.

3 THE WITNESS: The sale file is not included.

4 BY MR. PARKER:

5 Q Right. And so you don't have the purchase agreement that
6 is pursuant to, and you don't have the sale file as you
7 call it of the loans, is that correct?

8 A Not physically here, no.

9 Q All right. And you knew you were coming to trial today.

10 A Yes.

11 Q How long ago did you learn you were coming to trial?

12 A A few weeks ago.

13 Q And you could have brought it with you I guess, correct?

14 A No, and it's a very large file. It's -- and it stores all
15 the consumer account information for every account that's
16 purchased.

17 Q So you weren't able to just print the -- the -- the piece
18 of paper, the single document that would show Mr.
19 Bassett's account to accompany this that this refers to,
20 is that correct?

21 A It wasn't provided in this case.

22 Q All right, by you.

23 A By me.

24 Q And you're not the custodian of records for Bank of
25 America?

1 A No.

2 Q And you're not the custodian of records for FAI (sic) Card
3 Services, is that correct?

4 A No.

5 Q And that time that you sat down with Bank of America, what
6 date was that?

7 A I don't remember the exact date. It was sometime in May
8 of last year.

9 Q Oh, so you didn't even sit down with Bank of America at
10 the time that this agreement was created?

11 A Not this particular Agreement --

12 Q You had no training when this document was created with
13 Bank of America, is that correct?

14 A Not this particular Agreement.

15 Q This -- not this -- well, you know we're not talking about
16 any other Agreement. Today is the day, right? And you
17 are testifying that you've had no training with Bank of
18 America or FIA Card Services regarding this particular
19 transfer of sales, is that correct?

20 A Not this particular transfer of sales.

21 Q All right. What -- this is the only one we're talking
22 about. So, you've had no training, you haven't sat down,
23 you weren't -- oh, were you there when this document was
24 created?

25 A Was I where?

1 Q At Bank of America or FIA Card Services when they created
2 this document?

3 A No.

4 Q Can you tell me who wrote this document?

5 A I --

6 MS. HUNT: Your Honor, I have an objection and
7 I think that's irrelevant at this point and --

8 MR. PARKER: It's totally relevant. She's
9 getting it to --

10 MS. HUNT: -- this is a corporate document --

11 MR. PARKER: -- how else is it going to get
12 entered?

13 THE COURT: Overruled. You may answer.

14 MR. PARKER: Thank you, your Honor. Thank you
15 very much.

16 BY MR. PARKER:

17 Q Who wrote this Agreement?

18 A I don't know who wrote the Agreement.

19 Q All right. It was signed possibly on the 26th. Do you
20 know what date it was written, even though you don't know
21 who wrote it?

22 A I don't know the date that it was written.

23 Q All right. So let's just go through this list. There's
24 no reference to credit cards, you don't know who wrote the
25 document, you had no training when this document came out,

1 you weren't anywhere near this when it was created, the
2 two most important things that this refers to is the
3 Purchase Agreement in capitalized letters, you've never
4 seen it, you're aware that you're supposed to be here for
5 testimony weeks ago so you could have downloaded at least,
6 if Mr. Bassett is part of a loan document, you could have
7 done that but you didn't do that, there's no reference to
8 credit cards here, you don't know when this was created,
9 you don't know when it was signed, is that pretty clear?

10 A It was signed on the date that it was there --

11 Q You don't know when it was -- all right --

12 A -- that it's dated.

13 Q -- and were you there when it was signed?

14 A No, I was not.

15 Q You don't know who creat -- which one of these fellas, if
16 any of these guys created it? I think you said it was a
17 template, right?

18 A I said the affidavit of sale was a template. I don't know
19 who created the bill of sale --

20 Q Who put the information in the document?

21 A In the bill of sale?

22 Q Yeah.

23 A I don't know.

24 Q It would be fair to say have absolutely no connection to
25 the creation of this document, is that correct?

1 A I have no connection to the creation of that, no.

2 MR. PARKER: Your Honor, this is -- there's no
3 point -- this document is useless, she doesn't meet the
4 custodian of records, it's no -- absolutely zero
5 foundation. She cannot sit here today and talk about
6 something that happened between FIA Card Services and
7 Asset Acceptance. And, frankly, I -- it says Bank of
8 America on top, so I'm not sure who this is coming from,
9 it's not even about credit cards. Thank you, your Honor.
10 And this should not be admitted.

11 THE COURT: So your objection is it's useless,
12 which that isn't -- that's not a valid objection. That
13 part of it would be overruled --

14 MR. PARKER: It has no --

15 THE COURT: -- what's your next objection? To
16 what --

17 MR. PARKER: It's not trustworthy, she has no
18 connection to this. She cannot report an iota, it's a
19 hearsay document --

20 THE COURT: Okay, the objection is it's
21 hearsay. What's the exception to hearsay that would allow
22 it to be entered?

23 MS. HUNT: Your Honor, the -- the witness has
24 explained that she had -- that this document was obtained
25 by her company, by Midland Funding, as a part of the sales

1 file. They utilized it as a business record. It was
2 utilized for the purposes of servicing this account and,
3 your Honor, if I may just clarify with the witness a --

4 THE COURT: Yeah.

5 DIRECT EXAMINATION CONTINUED

6 (At 9:48 a.m.)

7 BY MS. HUNT:

8 Q Ms. Walker, can you -- Mr. Parker has indicated that this
9 account -- or this document is from Bank of America, not
10 FIA Credit Services, can you explain the FIA Card Services
11 relationship with Bank of America?

12 A Yes --

13 MR. PARKER: That wouldn't go to the admission
14 of this document, your Honor.

15 THE COURT: Well, let's let her finish and
16 we'll keep going. Go ahead.

17 THE WITNESS: Bank of America was merged into
18 FIA Card Services in October of 2006.

19 BY MS. HUNT:

20 Q Okay. And what was the purpose of that merger?

21 A It was bringing the two affinities together.

22 Q Okay. And what is the purpose of FIA Card Services?

23 A Is issuing financial money out to credit cards and other
24 types of loans.

1 Q Okay. Now, when you -- Mr. Parker honed in on the fact
2 that this document simply says loans -- strike that --
3 I'll take a step back -- when you did your side-by-side
4 with FIA Card Services, was there a -- an understanding or
5 a review of these types of documents?

6 A Yes. They -- when I sat down with FIA Card Services part
7 of the review of filling out the affidavit of sale was
8 reviewing the bill of sale, and reviewing the information
9 contained within the bill of sale including the dates, in
10 this case the December 26th date, which was then inputted
11 into an affidavit of sale.

12 Q Okay. So, for purposes of generating bills of sale, the
13 process as you understood it and as you've been able to
14 review, was that FIA Card Services would generate this
15 document from the information provided in the bill of
16 sale?

17 A Yes.

18 Q Okay.

19 MR. PARKER: I would object to that. That's
20 hearsay, too. She doesn't know what they're doing.
21 There's no -- she actually said I haven't been trained on
22 the transfer, so she wouldn't know how they transfer these
23 things.

24 MS. HUNT: Your Honor, I didn't ask about the
25 transfer, I asked about the creation of this document.

1 MR. PARKER: And she's testified she has no
2 connection to the transfer. She literally said she has no
3 connection to the training or transfer of the document.

4 THE COURT: Well, what was the specific
5 question that you asked that she answered that he's
6 objecting to?

7 MS. HUNT: I asked if she --

8 MR. PARKER: Could we read it back with the
9 court, your Honor?

10 THE COURT: I don't have that ability, Counsel.

11 MS. HUNT: I asked if she had the ability -- or
12 if she during her side-by-side if she witnessed and
13 understood the process of generating this type of document
14 with the information provided for the transfer and she
15 under -- I believe she stated that.

16 MR. PARKER: And she said I have not trained on
17 the transfer of the document --

18 THE COURT: Okay, all right, well your
19 objection was --

20 MR. PARKER: She literally just said that.

21 MS. HUNT: That was a previous answer --

22 THE COURT: -- hearsay and that's not hearsay,
23 overruled.

24 MR. PARKER: No foundation, your Honor.
25 Absolutely no foundation.

1 THE COURT: Over -- overruled. Overruled.

2 Continue.

3 BY MS. HUNT:

4 Q Okay. Ms. Walker, was this document provided as a part of
5 your -- the tr -- the file that was transferred to Midland
6 Funding?

7 A Yes.

8 Q Okay. And where did this document come from

9 A In the sale of the accounts from Asset Acceptance it was
10 received with that sale file.

11 Q Okay. And when you received this sale file there is, Mr.
12 Parker indicated, a subsequent document or groups of
13 documents which is the entire sales file, is that correct?

14 A Um-hmm.

15 Q What does that consist of?

16 A It -- it is a spreadsheet that contains the electronic
17 data of all the account information for each and every
18 account that's purchased within the portfolio.

19 Q Okay. And in your review was Mr. Parker's --

20 MR. PARKER: Wait a minute; we're talking about
21 exhibit 2. She's going way beyond exhibit 2, your Honor.

22 MS. HUNT: Your Honor, I'm talking about --

23 THE COURT: I think she's --

24 MS. HUNT: -- as Mr. Parker --

25 MR. PARKER: There's no foundation.

1 MS. HUNT: -- as Mr. Parker indicated that
2 there was a subsequent sales file --

3 MR. PARKER: This is her testimony -- this is
4 her exhibit.

5 MS. HUNT: -- that --

6 THE COURT: Right, I -- I think what you're
7 saying is that you're -- are you saying that you're -- you
8 asked me about five minutes ago could I ask a few more
9 questions --

10 MS. HUNT: Correct.

11 THE COURT: -- in response to his objection, is
12 that what we're still doing?

13 MS. HUNT: That is correct.

14 THE COURT: Okay, you can continue.

15 BY MS. HUNT:

16 Q Okay. And you did indicate that there was a subsequent
17 document or groups of documents?

18 A Yes.

19 Q And in your review, was Mr. Parker's (sic) file a part of
20 that?

21 A Yes.

22 Q Okay. And how are you aware of that?

23 MR. PARKER: Mr. Parker's file?

24 BY MS. HUNT:

25 Q I'm sorry, Mr. Bassett?

1 A I was able to review this sale file, the one that's named
2 BAC, bulk Asset Acceptance, LLC sale file 1212,
3 FINAL.XLSX, and I was able to find Mr. Bassett's account
4 in that sale file and review the account information that
5 was transferred from FIA Card Services to Asset and
6 compare it to the data that was transferred from Asset to
7 Midland.

8 Q Okay, and in your comparison that information was the same
9 information sent to -- or obtained by Midland Funding?

10 A Yes.

11 Q Okay.

12 MS. HUNT: Your Honor, I would move to admit
13 this exhibit 2.

14 MR. PARKER: I guess I've got a couple more
15 questions brought out by counsel's continued questioning
16 on this.

17 THE COURT: Okay.

18 MR. PARKER: Thank you.

19 VOIR DIRE EXAMINATION CONTINUED

20 (At 9:54 a.m.)

21 BY MR. PARKER:

22 Q I -- is -- you said you reviewed his file?

23 A I reviewed the sale file and found his --

24 Q Is that yes or no? You said you reviewed the file, ma'am?

25 A Yes.

1 Q All right. And, by the way, is it a VISA, a MasterCard,
2 Discover, which -- which card is it?

3 A Without looking at the documents I couldn't say for sure.

4 Q Well, you're being asked to talk about supposedly looking
5 at the documents so you should at least --

6 A But I don't --

7 Q -- know if it's a VISA or a MasterCard.

8 A -- have --

9 Q Which one is it, ma'am?

10 A I don't know for sure without looking. I don't have a --
11 I don't have a iron clad memory --

12 THE COURT: She doesn't know so what's your
13 next question.

14 BY MR. PARKER:

15 Q All right. All right. So, your counsel asked you if
16 you'd looked through the file and you said you did look at
17 the file?

18 A Yes.

19 Q And you just said that you don't even know if it's a VISA
20 or a -- correct, yes?

21 A I can't remember.

22 Q You can't remember but you do remember other things about
23 the file, is that correct?

24 A I remember looking at the file but I -- I don't remember
25 the specifics without looking at other documents.

1 Q Do you know who the card was brought through? Like is it
2 a E
3 Aspire card?
4 A It's a AAA card.
5 Q AAA? What's AAA?
6 A From what I know it's a -- it's a AAA card that -- a
7 credit card through AAA.
8 Q AAA, just AAA?
9 A That's what it states up in the corner of that billing
10 statements.
11 Q All right. So you're not talking about your review of the
12 loan file, you're talking about something else, correct?
13 A That it's my -- review of the entire file --
14 Q Yes or no? All right, but she's not asking you about the
15 entire file, she's asking you about your review -- I'm
16 asking you what she asked you about, that's all I can ask
17 you about, and she said you looked to the file, so I said
18 okay, you looked at the file, what's the card, you don't
19 know --
20 THE COURT: Okay, this -- this is -- you asked
21 me for some leniency to voir dire the witness in response
22 to what the counsel for Plaintiff put on in response to
23 your objection, I've done that, this is not cross-
24 examination at this point --

1 MR. PARKER: Correct, your Honor, but she's
2 attempting to get a document --

3 THE COURT: -- so -- okay --

4 MR. PARKER: -- in she's knows nothing about.

5 THE COURT: -- all right, so I -- I've heard
6 your objection so now -- you can sit down and I -- I asked
7 counsel for Plaintiff --

8 MR. PARKER: Your Honor, you seem to cut me off
9 but you don't cut the other counsel off. Could I have a
10 little fairness there, please? It's been going like that
11 all the time especially in the motions. You never stop
12 her from talking.

13 THE COURT: Well, she doesn't have the same
14 propensity to cut the other side off and to argue with the
15 Court --

16 MR. PARKER: I haven't cut it off --

17 THE COURT: -- that you do. So I'm going to
18 ask you again, counsel for Plaintiff, there's been an
19 objection to this document on the basis of hearsay. Your
20 response, please, as to why it's not hearsay. That would
21 mean give me an analysis under 803 why it's not hearsay.

22 MS. HUNT: Your Honor, if I just may really
23 quickly. Your Honor, the def -- the witness had indicated
24 that these documents -- that this document, proposed
25 exhibit 2, is a record that was received by her office --

1 THE COURT: Yes.

2 MS. HUNT: -- from the previous owner of the
3 account for purposes of -- or servicing this account.

4 THE COURT: Right.

5 MS. HUNT: It's a record that was maintained by
6 them for purposes of servicing this account in -- as a
7 business record, and further, she's indicated that she
8 understands that the information within it was -- is
9 proper based on her review of the file. Not only her
10 review of the file and the information, supporting
11 information in that file, but also in her side-by-side
12 training with the original creditor for generating this
13 type of account for purposes of sales.

14 MR. PARKER: Do I get to respond, your Honor?

15 THE COURT: Yeah.

16 MR. PARKER: Thank you, your Honor. Thank you.
17 Obviously this document is not trustworthy. What -- I
18 don't know why but Ms. Hunt didn't tell you what exception
19 she's going under and I don't want to tip her --

20 THE COURT: I didn't hear it.

21 MR. PARKER: -- up --

22 THE COURT: I didn't hear it either.

23 MS. HUNT: Well, if I may --

24 MR. PARKER: -- yeah.

25 MS. HUNT: -- your Honor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Sure.

MS. HUNT: If you want me to specifically say

--

THE COURT: I do. I want an analysis like law school on why --

MS. HUNT: Oh. Oh, sure.

THE COURT: -- this document is not hearsay --

MS. HUNT: Sure.

THE COURT: -- and that is found in Rule 803.

MS. HUNT: Right. In rule 803 it's the business exceptions record -- I'm sorry, the records regularly conducted -- of regularly conducted activity, part 6.

THE COURT: Okay. You're -- you're relying on 803(6).

MS. HUNT: Six and five, based on she has knowledge of this file and the generation of this -- of these types of documents. And further, again, this is a document that they utilize in regularly conducting their business of servicing these accounts and collecting on these accounts that are obtained from the previous owners of these accounts. And, again, your Honor, as her -- her training with both -- with FIA Card Services and this generation of the account, and her affiliation with Asset Acceptance and having as Midland Funding and Asset

1 Acceptance fall under that corporate umbrella of Encore
2 and they have the same procedures with regards to
3 maintaining the records. It's my understanding that it
4 would fall under this six.

5 THE COURT: So her response, Counsel, is that
6 803(6) accepts it.

7 MR. PARKER: Yeah, but she didn't say why.

8 THE COURT: Yeah, she -- I think -- well, she --
9 -- she didn't do a particularly broad job of it but --

10 MR. PARKER: The witness -- the witness has
11 already said she has no connection to this document. The
12 training occurred after the document was created. Let --
13 let me do what she should have done which she didn't do.
14 This was -- she had no knowledge of the person that
15 created this, and I'll use the words "a person with
16 knowledge", if kept in the regular conducted business -- I
17 asked her specifically who's the person who created that,
18 she didn't know.

19 It -- whether it's the regular practice of the
20 creation of this document, I don't know and neither does
21 she because she didn't take any training necessary to fit
22 this exception until after the document was created by the
23 person she doesn't know who created it. So she's not able
24 to be a custodian of records for anybody but Midland
25 Credit Management. Ms. Hunt keeps talking about all this

1 outside information and Asset Acceptance and Midland
2 Funding. We're not talking about that. I don't know why
3 she said five, it's a memorandum and record concerning a
4 matter which a witness had knowledge of, she already
5 testified --

6 THE COURT: Yeah, I would agree five does not
7 apply.

8 MR. PARKER: -- she already testified she has
9 no knowledge of the document.

10 THE COURT: Five does not apply.

11 MR. PARKER: So, to have -- have the document
12 come in she has to have knowledge for both of those
13 exceptions. She hasn't had the necessary training. She
14 even admitted this was great, that she has no training in
15 the transfer of these documents.

16 To get this thing in she's going to need the
17 purchase agreement and she's going to need the
18 accompanying loan sale which she admits she had access to
19 but didn't bring it in. I -- I've never seen a more
20 untrustworthy source of a document coming in. She has no
21 knowledge of this document, how it was created, at the
22 time it was created, she doesn't know who created it,
23 unfortunately or fortunately she does not meet the
24 business (indiscernible) exception. I may remind the
25 Court, the Court has probably litigated more cases than I

1 have, but the hearsay exception is an exception to the
2 general rule that exclusion.

3 A lot of attorneys think it's the norm, but it's
4 -- you really have to be trustworthy to meet the business
5 records exception. And there is no source here that she
6 can point to that she's aware of, saw created it, knows
7 who even created this document, and admits she doesn't
8 even know if it's a Visa card or doc -- or a Discover
9 card. She -- she knows nothing about this document.

10 THE COURT: Well, that -- that -- that -- that
11 has --

12 MR. PARKER: For her to have knowledge of this
13 situation she has no knowledge of this situation.

14 THE COURT: Okay.

15 MR. PARKER: She hasn't seen the Agreement that
16 this based upon. She has to have knowledge, and the
17 Agreement itself says words that are capitalized please
18 refer to the Agreement. So she can't talk on this
19 Agreement when she admits she has never seen the purchase
20 Agreement.

21 THE COURT: Well, let me just say this. Those
22 things that you just talked about, about Agreement and all
23 that, that doesn't have anything to do with whether this
24 document comes in or does not come in --

25 MR. PARKER: But it doesn't meet the exception.

1 THE COURT: -- as an -- as an exception to the
2 hearsay rule. So, Counsel for Plaintiff, once again, tell
3 me what it is about this document that meets the
4 definition of -- in order to come in it has to be a report
5 or a document, it says memorandum, report, record or data
6 compilation in any form of acts, transactions,
7 occurrences, events, etcetera, etcetera, which this
8 document would be if it -- if it goes on to be satisfied,
9 made at or near the time by or from information
10 transmitted by a person with knowledge if kept in the
11 course of regularly conducted business activity, and it
12 was a regular business -- practice of that business
13 activity to make the memorandum or -- or report or keep
14 it.

15 So, if you want to ask her some more questions
16 if you think you can make -- make that foundation, you can
17 do that.

18 MR. PARKER: Your Honor, if I may very, very,
19 very, very respectfully --

20 MS. HUNT: Thank you, your Honor --

21 MR. PARKER: -- why are you giving her such
22 leeway to do the job you said she should have done the
23 first time? You even had to tell her what the exception
24 was. I very strongly object to this. You keep giving her
25 a hand. She's an attorney like you and I. She should

1 have got this the first time. She didn't even know the
2 exception, now you're giving her more leeway. It's clear
3 this is -- the witness has no connection and you're kind
4 of helping her along, your Honor.

5 MS. HUNT: Your Honor, I --

6 MR. PARKER: Very respectfully.

7 THE COURT: Are you --

8 MS. HUNT: -- apologize if -- your Honor, I
9 apologize if I earlier did not cite the exact Rule. I
10 attempted to explain it; I apologize for that, for not
11 stating it, but as your Honor has granted, I -- I thank
12 you for allowing me to ask a few more questions of Ms.
13 Walker.

14 DIRECT EXAMINATION CONTINUED

15 (At 10:05 a.m.)

16 BY MS. HUNT:

17 Q Ms. Walker, looking at proposed exhibit 2, can you tell me
18 when this was generated?

19 A I don't know when the document made but it was executed on
20 the 26th of 2000 and --

21 MR. PARKER: What more do you need?

22 THE WITNESS: -- the 26th of December of 2012.

23 BY MS. HUNT:

24 Q Okay, and --

25 MR. PARKER: Yes or no when it's me.

1 BY MS. HUNT:

2 Q -- can you tell me when in your review of this file when
3 the account was sold to -- from FIA Card Services to
4 Asset?

5 A It was on December 26th, of 2012.

6 Q Okay. So for the purposes of this -- this transfer, this
7 document was to support that sale, is that correct?

8 A Yes.

9 Q Now, is this the type of document that is a part of the
10 transfer in -- in general with Midland Funding? Your
11 business is purchasing data, is that correct?

12 A Midland Funding, yes.

13 Q Okay. And in your --

14 MR. PARKER: Your Honor, we're going backwards.
15 She's re-voir dire'ing her from the beginning. You
16 actually gave her leeway for something extra. She's going
17 backwards.

18 MS. HUNT: I'm just attempting to lay a
19 stronger foundation.

20 MR. PARKER: She's already said she doesn't
21 know when it was made. What's more to be said? She
22 doesn't know when it was made.

23 THE COURT: Please continue.

24 BY MS. HUNT:

1 Q When -- is this the type of document that is provided when
2 a debt is purchased?

3 A Yes.

4 Q Okay. And in purch -- and in purchasing debts from FIA
5 Card Services, is -- directly, is this the type of
6 document that you would receive?

7 A Yes.

8 Q Okay. And Midland Funding, do they purchase debts
9 historically from FIA Card Services?

10 A Yes.

11 Q Okay. And does this document deviate at all from those
12 documents?

13 A No.

14 Q Okay. And when you -- this is a document that is reg --
15 regularly kept for your purposes of servicing accounts?

16 A Yes.

17 Q Okay. Thank you.

18 MR. PARKER: It's gotta be trustworthy, your
19 Honor, and she just said I don't know when this document
20 was made. I could go over and bore you with the list of
21 reasons why this is not anywhere near meeting the business
22 record exception, but she's got to have at least be a
23 person with knowledge. She had no training, she admits
24 that any training she had occurred after this, she doesn't
25 know who created this, she's clearly looking at some

1 documents that she doesn't want to show you but she
2 assures us that those documents support this exception but
3 she's got to bring those documents. Under MRE 106, which
4 accompanies this, she has to show those extra documents.

5 THE COURT: You know, Counsel, I noticed that
6 you said that before. You -- you have a misunderstanding
7 of what 106 is; 106 has nothing to do with this --

8 MR. PARKER: I'm just reading the Rule, your
9 Honor.

10 THE COURT: Well -- well then you can read it
11 but apparently it's -- you haven't used it in --

12 MR. PARKER: As to the business --

13 THE COURT: -- the context that it's used in --
14 in litigation and trials.

15 MR. PARKER: As to business records exception
16 she does not even come close to meeting the
17 trustworthiness necessary to report if this particular
18 document transferred the debt. The word credit card isn't
19 even in the document --

20 THE COURT: Right.

21 MR. PARKER: -- she doesn't know who created
22 it, she wasn't there when it was signed, she's not with a
23 person with knowledge. She doesn't even identify it was
24 conducted -- created in the regular business activity
25 because she was not part of that until, I think, over two

1 years later, and she just sat down with him once. There's
2 no trustworthiness. Ms. Hunt refers to the documents that
3 she received; not once has she provided something where
4 Asset said that these documents are trustworthy.

5 There is no trustworthiness in this document.
6 This witness should not be talking about this document;
7 this is a document that should be coming in through Bank
8 of America, FIA Card Services or possibly Asset
9 Acceptance. She's so far down the line, and bless her
10 heart she admits she has no connection to the document,
11 she literally said I have no connection to the document --

12 MS. HUNT: Your Honor, I don't think she
13 literally said that --

14 THE COURT: Thank you --

15 MR. PARKER: -- so I would rule that this not
16 meet --

17 THE COURT: Thank you --

18 MR. PARKER: -- the business records exception
19 --

20 THE COURT: All right. Thank you.

21 MR. PARKER: -- 6, thank you.

22 MS. HUNT: And, if I may really quickly touch
23 on a point that Mr. -- Mr. Parker just stated. Ms. Walker
24 did not say that she has no -- she does not know that this
25 is trust -- or that Asset doesn't know that this is

1 trustworthy. Asset and Midland Funding fall through the
2 same umbrella --

3 MR. PARKER: She's testifying, your Honor.

4 MS. HUNT: -- and she's just -- she -- the
5 witness stated that they fall under the same umbrella.
6 This was provided from Asset to Midland. It was a
7 document that they utilized in their regular course --

8 MR. PARKER: Hearsay on hearsay, your Honor.
9 That's hearsay upon hearsay.

10 MS. HUNT: -- she just stated it.

11 MR. PARKER: She just admitted it, your Honor.

12 MS. HUNT: She just stated it.

13 THE COURT: Okay, thank you. Witness, have you
14 been involved in other such sales of Asset's involving
15 your company, purchases of Asset's?

16 THE WITNESS: Not directly involved --

17 MR. PARKER: There you go.

18 THE WITNESS: -- because that's part of the
19 purchase department, but we have been informed of the
20 acquired --

21 THE COURT: Well, what I'm saying is have you
22 been in other cases such as this where you have looked at
23 and presumably -- I guess the reason why you're here is to
24 be able to establish that the chain of acquisition -- have
25 you been involved in other cases like this?

1 THE WITNESS: Yes.

2 THE COURT: And in all those cases that you've
3 been in, how many of those other cases involving this
4 basic same issue have you been involved in?

5 THE WITNESS: Just a handful.

6 THE COURT: Okay. And in the ones that you've
7 been involved in that involved sales of -- loner credit
8 card portfolios, has a bill of sale such as this been
9 included in there?

10 THE WITNESS: Yes.

11 THE COURT: And would this have been -- is this
12 bill of sale in this case and the other cases that you've
13 been involved in, is that something that is regularly
14 included in whatever you call this entire package that you
15 look at?

16 THE WITNESS: Yes.

17 THE COURT: And is it -- do -- is it your
18 understanding that when the sales of loans or credit card
19 debts have been made, is this something that one would
20 expect to find in the -- in the file?

21 THE WITNESS: Yes.

22 MR. PARKER: Can I address one minor thing,
23 your Honor?

24 THE COURT: Yes.

1 MR. PARKER: Thank you very much, your Honor.
2 Ms. Walker, you said you were involved in other cases?
3 The Judge has taken over the questioning, do you remember
4 a case in Arizona, Maricopa County, that the Judge is
5 referring to?

6 THE WITNESS: I didn't refer to anything in
7 Maricopa County.

8 MR. PARKER: No, you said other cases, your
9 Honor. You opened the door, I'd like to ask her about one
10 of those cases that she was in.

11 THE WITNESS: I -- I --

12 THE COURT: Okay, go ahead.

13 MR. PARKER: The case was *Midland Funding*
14 versus *Joanne McConnell*, you were an expert witness in
15 that like you are today, correct, or a witness?

16 MS. HUNT: Your Honor --

17 MR. PARKER: Your Honor -- yes?

18 THE COURT: What does that got to do with this?

19 MR. PARKER: Because I can tell you exactly
20 what happened when she testified the same way that --
21 exactly what you said, and the Court of Appeals found that
22 -- if I may quote, your Honor --

23 THE COURT: Sure.

24 MR. PARKER: -- Midland Funding failed to meet
25 the burden as it never produced the underlining contract

1 or credit card agreement, the terms of any contract, the
2 interest rate, they failed to supply, and literally it's
3 the same case, the loan file, they refused to provide
4 schedule A, they were -- the case was overturned because
5 they did not meet the business record exception to the
6 hearsay law because Ms. Walker could not identify any of
7 the records that accompanied the bill of sale, and the
8 Court was clear on that and I can provide the case number,
9 and I can give you the case, you can take a look before
10 you decide, but in exactly what you just asked her, the
11 Court of Appeals overturned Ms. Walker because she had no
12 clue about the sales process and refused to identify how
13 she came to the information just as today she seems to
14 talk about a sales document but didn't bring it with her.

15 MS. HUNT: Your Honor, I would object based --
16 that is court -- that case in that court has absolutely no
17 ruling over the decision of this court, and further, the
18 Defendant -- or the witness did state that -- how she was
19 familiar with how these documents are provided.

20 THE COURT: Right.

21 MS. HUNT: She did state how she is familiar
22 with the information provided in this particular case and
23 she did state that this is the exact type of document as
24 your Honor just asked if this was the exact type of
25 document that is retained and obtained --

1 THE COURT: Right.

2 MS. HUNT: -- for the purpose of the sale.

3 MR. PARKER: And, your Honor, this case -- in
4 that case it was an FIA Card Services where they clearly
5 said she did not provide the loan schedule, no loan
6 schedule was attached to the exhibit, your Honor, and the
7 bill of sale from Asset to Plaintiff transferring the
8 purchase agreement was unreliable also because they didn't
9 attach Schedule A either. There was no connection.

10 THE COURT: Well, I -- I don't --

11 MR. PARKER: That's a case that you asked for.

12 THE COURT: Obviously I don't know anything
13 about that case and --

14 MR. PARKER: Well, you opened the door, your
15 Honor.

16 THE COURT: Well -- the only thing before the
17 Court at issue right now at this particular moment, it may
18 well be that Counsel for Plaintiff will never be able to
19 establish a connection, I don't know, we're only beginning
20 the case, the only thing before the Court's consideration
21 at this moment is whether exhibit 2 should come in as an
22 exception to the hearsay rule under 8032 -- or 803(6), and
23 I'm satisfied that there's a sufficient foundation laid by
24 this witness that this was kept in the normal course of
25 business, would be expected to be found in a business

1 transaction such as this, and she has been involved in
2 other ones. Whether or not there's a schedule attached to
3 it or another agreement or anything else, that may be true
4 that ultimately that's a problem, I don't know, but the
5 only thing right now is whether this document has
6 sufficient --

7 MR. PARKER: Trustworthiness, your Honor?

8 THE COURT: Such as -- so far -- insofar as it
9 goes, yes, because it -- insofar as it goes to establish
10 that basically there was a sale between Asset Acceptance
11 and FIA Card Services for some --

12 MR. PARKER: A sale of what, your Honor?

13 THE COURT: -- portfolio called BAC's sale file
14 which she testified she did review and contained the
15 Defendant's account. So, I'm going to object -- overrule
16 your objection and admit exhibit 2. Next, continue.

17 (At 10:15 a.m., Plaintiff's exhibit #2
18 [Affidavit of Sale], was admitted)

19 MS. HUNT: Thank you, your Honor.

20 DIRECT EXAMINATION CONTINUED

21 BY MS. HUNT:

22 Q And, again, Ms. Walker, as just a refresher, this document
23 was obtained by Midland Funding?

24 A Yes.

1 Q Okay. And how was it used in the servicing of this
2 particular account?

3 A It was used to denote the chain of title and transfer
4 dates of the account from the original lender to the
5 subsequent purchaser and then finally Midland Funding.

6 Q Okay. And was this a document that Midland Funding relied
7 on for the purposes of that servicing?

8 A Yes.

9 Q Okay. And who did Midland obtain this particular account
10 from?

11 A Midland obtained the account from Asset Acceptance, LLC.

12 Q Okay, and can you again describe that relationship?

13 A Asset Acceptance was purchased by our parent corporation,
14 Encore Capital Group, so it is a sister corporation.

15 Q Okay. And are you familiar with their role under the --
16 as the sister corporation?

17 A As of right now they are not purchasing or collecting on
18 any debt with the exception of ones that were already in a
19 judgment status.

20 Q Okay.

21 A All other accounts were transferred over to Midland Credit
22 Management for servicing.

23 Q Okay. And can you explain that transfer process?

24 A A bill of sale was done for a transfer of accounts. There
25 was numerous transfers done since they had a -- a large

1 inventory, and a portfolio of accounts was transferred at
2 one time -- excuse me -- just like a sale the accounts
3 were treated just like it was a normal sale come in, do
4 the due diligence process, work closely with Asset
5 Acceptance to ensure that that data came over correctly
6 with no errors or inconsistencies and was loaded into the
7 system of records.

8 Q Okay. If I may -- do you need your water?

9 A Yes, please.

10 MS. HUNT: May I, your Honor?

11 THE COURT: Yeah.

12 MR. PARKER: Of course.

13 THE WITNESS: Thank you.

14 MS. HUNT: You're welcome.

15 BY MS. HUNT:

16 Q So, Ms. Walker, when this account was transferred to
17 Midland from Asset, what documents would have been
18 provided?

19 MR. PARKER: Your Honor, it wasn't transferred
20 from Midland to Asset.

21 BY MS. HUNT:

22 Q I'm sorry, from Asset to Midland.

23 A From Asset to Midland there would have been a bill of sale
24 and affidavit of sale, and the electronic sale file.

25 Q Okay, and what is pertained in this electronic sale file?

1 A The -- it comes over in a couple parts. One is the
2 electronic data and the other is the supporting
3 documentation including any credit card statements or
4 other documentations in connection with the accounts.

5 Q Okay. Now was this account -- or account at issue a part
6 of that transfer?

7 A Yes.

8 Q Okay.

9 MS. HUNT: Just a moment, your Honor, I
10 apologize.

11 BY MS. HUNT:

12 Q Now, when you say the affidavit of sale, can you explain
13 what that -- what that means?

14 A The affidavit of sale is again a statement from an
15 employee of Asset Acceptance, LLC that reiterates that the
16 accounts were transferred to Midland Funding, and in this
17 case it states that the accounts that are being
18 transferred were previously purchased from FIA Card
19 Services on December 26th of 2012.

20 Q Okay. Ms. Walker, I'm handing you a document. Can you
21 describe what that document is?

22 A This is the affidavit of sale that I had just previously
23 referenced. It is from an employee of Asset Acceptance
24 and it reiterates that on August 8th of 2013, Asset
25 Acceptance sold a pool of charged off accounts to Midland

1 Funding, LLC and that Asset Acceptance had previously
2 purchased the accounts from FIA Credit Services on
3 December 26th of 2012.

4 Q Okay, and is this a document that was transferred along
5 with the sale of this account to Midland?

6 A Yes.

7 Q Okay. And can you tell me when it was -- why it was
8 generated?

9 A It was generated to -- in connection with the bill of sale
10 to reiterate the fact that the accounts were transferred
11 to Midland Funding through a bill of sale.

12 Q Okay. And in review of your -- in your review of this
13 account, was this a part of the Defendant's file?

14 A Yes.

15 Q Okay.

16 MR. PARKER: Just kind of remembered that?

17 MS. HUNT: Yes, I'm laying a foundation that
18 you've wanted me to do.

19 BY MS. HUNT:

20 Q Is -- can you tell me when this was -- when this was
21 generated or round about when this was generated?

22 A The affidavit was signed on November 20th of 2013.

23 Q Okay. And is this a document that Midland Funding
24 utilized in servicing this account?

25 A Yes.

1 Q Okay. And is this a document that Midland Funding
2 routinely receives for these types of transfers in sales?

3 A Yes.

4 Q Okay. And you're familiar with the transfer or, I'm
5 sorry, are you familiar with the transfer of sale -- or
6 transfers in sales of accounts from Asset Acceptance?

7 A Yes.

8 Q Okay. And one more time can you explain how that -- those
9 documents are transferred?

10 A The electronic data and the supporting documentation is
11 transferred electronically. The bill of sale and the aff
12 -- affidavit of sale like this is transferred through the
13 mail so that they -- Midland Funding receives the wet seal
14 copy.

15 Q Okay. And was that wet seal copy received by Midland
16 Funding?

17 A Yes.

18 Q And are you familiar with how this -- how this record or
19 this document was generated or maintained by the creators
20 of this document?

21 MR. PARKER: Is it generated or maintained?

22 BY MS. HUNT:

23 Q Or, I'm sorry, the --

24 MR. PARKER: Objection, foundation of question
25 and the form.

1 BY MS. HUNT:

2 Q Are you familiar with how Asset received this document?

3 A How Asset received it or how Midland received it?

4 Q Um, well first tell me how Midland received it??

5 A Well, Midland received the document via mail to get the
6 wet copy seal.

7 Q Okay. Now, is this a document that is requested?

8 A This document is -- is requested on all purchased accounts
9 from any creditor.

10 Q Okay. Okay, and who is it requested by?

11 A The purchaser.

12 Q Okay, and in this case it was?

13 A Midland Funding.

14 Q Okay. And, again, this was -- this is a document that is
15 maintained as a part of your -- your records -- Midland's
16 records?

17 A Yes.

18 Q Okay.

19 MS. HUNT: And, your Honor, I would move to
20 have this admitted as exhibit 3.

21 MR. PARKER: Voir dire your witness, your
22 Honor?

23 THE COURT: Yep.

24 MR. PARKER: Thank you, your Honor.

25 VOIR DIRE EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

At 10:25 a.m.

BY MR. PARKER:

Q Ms. Walker, did you create this document?

A No, I did not.

Q Were you there when this document was created?

A No, I was not.

Q Do you know Amber Bialkowski, did I correct -- did I say that correctly?

A I don't know her personally.

Q All right. Did you watch her create this document?

A No.

Q Did she create this document?

A I wasn't personally there --

Q So you have no knowledge how she created this document, correct?

A I wasn't personally there.

Q All right. So that's a yes, you had no knowledge of how this document was -- don't look at her, look at me -- you had no knowledge, is that correct?

A I -- like I said, I wasn't personally there.

Q Fair enough. Where does it say in here that an account of Mr. Bassett passed along with this purchase or sale, whatever this is?

A Again, this document pertains to a pool of accounts, so each individual account would not be listed on this

1 document to protect the confidentiality -- confidentiality
2 and propriety information of all the consumers'
3 information.

4 Q Why? Where was this document going? Was it going into
5 the public?

6 A It -- this document pertains to all of the accounts.

7 Q Not to Mr. Bassett's?

8 A Not just to one account at a time because --

9 Q That's correct so --

10 A -- the pool of accounts was purchased.

11 Q -- this has nothing to do with Mr. Bassett's account?

12 A Yes, Mr. Bassett's account was included within this
13 transfer.

14 Q And where -- I'm sorry, I only have one page, where does
15 it say that?

16 MS. HUNT: Your Honor, objection, she just
17 stated that --

18 THE COURT: Yeah, she said it's -- it's not in
19 there.

20 MR. PARKER: All right. So you're aware of
21 that, your Honor, that she says it's not in there?

22 THE COURT: Yeah.

23 MR. PARKER: Okay, thank you.

24 THE COURT: Very much.

25 BY MR. PARKER:

1 Q And is this a -- a pool of credit card debts?

2 A Yes, it's a pool of credit card -- charged off credit card
3 accounts.

4 Q How do you know that from looking at this document?

5 A Midland's business is purchasing credit -- charged off
6 credit card debts.

7 Q This has to do with Asset Acceptance, though.

8 A Yes, and Asset Acceptance -- or Midland Funding purchased
9 the pool of charged off accounts from Asset Acceptance.

10 Q And you're saying Asset Acceptance doesn't take anything
11 but credit card debt?

12 A I'm not saying that --

13 MS. HUNT: Your Honor, objection. He's putting
14 words in her mouth she did not say.

15 MR. PARKER: That's what I'm asking her.

16 BY MR. PARKER:

17 Q Is that correct, yes or no?

18 A No, I did not say that.

19 Q All right. Do they take loans, do they buy -- does Asset
20 Acceptance buy loans, personal loans?

21 A Asset isn't in the business of purchasing more but yes,
22 consumer loans are included.

23 Q Okay, good. And so with that knowledge, Asset Acceptance
24 has not specified whether this is a personal loan as its
25 stated on the document between FIA and Asset, and they

1 haven't said it's a credit card, is that correct, in this
2 document?

3 A It doesn't specifically state --

4 Q All right.

5 A -- it says that all the accounts were purchased from FIA
6 Card Services on December 26th of 2012.

7 Q All right. So this is being brought in to show that a
8 debt was transferred from Asset to Midland, is that
9 correct?

10 A That was previously transferred from FIA Credit Services,
11 yes.

12 Q All right. And you admit there's no mention of Mr.
13 Bassett's account in this?

14 A Not on this document.

15 Q But you are seeking to show that this debt Mr. Bassett was
16 transferred through this document, correct?

17 A Yes.

18 Q All right. And there's no reference to credit card. All
19 right, is there reference to Mr. Bassett's account number?

20 A No. Again --

21 Q All right.

22 A -- that's confidential and proprietary information.

23 Q Well, actually what you do is you -- you get rid of all
24 the numbers like you did in the affidavit that you were
25 talking about that you created and you just leave --

1 THE COURT: Okay --

2 MS. HUNT: Objection, is that a ans -- a
3 question?

4 THE COURT: -- let's -- you know -- sustained.

5 MR. PARKER: -- I didn't finish.

6 THE COURT: Sustained, sustained.

7 BY MR. PARKER:

8 Q All right. So no account number. Is there any connection
9 in this document to Mr. Bassett that you can point to for
10 the Court?

11 MS. HUNT: Objection, asked and answered.

12 BY MR. PARKER:

13 Q Is there?

14 THE COURT: Has she already said there isn't
15 any?

16 MR. PARKER: All right. That should be good
17 enough for the Court. Your Honor, this cannot come in,
18 it's not trustworthy, there's no ref -- it's not connected
19 to -- again, not connected to Mr. Bassett, there's no
20 foundation, if Ms. Bialkowski wants to come in who -- who
21 the witness admits she's never met and didn't watch her
22 write this or create this. This has no foundation and
23 it's a hearsay document.

24 MS. HUNT: Your Honor, again, this is a
25 document that was kept in -- again, under MRE 806 --

1 803(6), this was a document that was requested by Midland
2 Funding for the purchase of this account from Asset
3 Acceptance. Ms. Walker has indicated that this is a
4 document that was prepared for this sale. It was
5 maintained within -- it was received within this sale
6 file, she reviewed the file understanding that this was a
7 part of that file. It was kept for the purposes of
8 servicing this account. And in their regular business of
9 servicing this account, this was utilized for that.

10 THE COURT: The objection is overruled, it will
11 be admitted pursuant to 803(6).

12 MS. HUNT: Thank you, your Honor.

13 (At 10:30 a.m., Plaintiff's exhibit #3
14 [Document], was admitted)

15 THE COURT: Your objection with regard to
16 whether Mr. Bassett was named or connected to it goes to
17 the weight, not the admissibility.

18 DIRECT EXAMINATION CONTINUED

19 (At 10:30 a.m.)

20 BY MS. HUNT:

21 Q Now, Ms. Walker, in looking at exhibit 3, was this
22 utilized in servicing Mr. Bassett's account?

23 A Yes.

24 Q And how was that utilized?

1 A It was utilized to show the chain of title of the accounts
2 from the original lender all the way through to Midland
3 Funding.

4 Q Okay. And when you received this document, when Midland
5 received this document, where was it received from?

6 A It was received from Asset Acceptance, LLC.

7 Q Okay. All right. And have you been involved in the
8 transfer of accounts from Asset Acceptance to Midland
9 Funding?

10 A Not personally --

11 Q Okay.

12 A -- but I've -- after they've gotten into this system of
13 records I've worked many --

14 Q Okay, so you're familiar with accounts that have been
15 transferred from Asset to Midland?

16 A Yes.

17 Q Okay. Can you -- you've already explained how that
18 process works, is that correct?

19 A Yes.

20 Q Or the transfer process. Can you explain what documents
21 are received from Asset to Midland?

22 A The documents received in connection with the sale are any
23 bill of sale from an original lender, the affidavit of
24 sale and (indiscernible), there is account statements that
25 are received, there are other supporting documentations

1 that are available on the accounts received from the
2 original lender.

3 Q Okay.

4 A Through Asset Acceptance.

5 Q Okay. And in your review of this file, did you have the
6 opportunity to review everything that was transferred to
7 Midland from Asset?

8 A I was able to review all the supporting documentations and
9 the sale file.

10 Q Okay. And in your review, what did you look for?

11 A I looked for -- when I looked at the sale file I looked to
12 ensure that the -- Mr. Bassett's account was included in
13 there and that the account information matched what our
14 system contained and what was transferred between FIA Card
15 Services and Asset to ensure that they contained the same
16 accurate information. I looked at the credit card
17 statements and the credit card agreement in connection
18 with his account and reviewed to ensure that the dates
19 matched that were given, the last payment date matched,
20 the last payment amount matched, and the charge-off date
21 and charge-off amount matched.

22 Q Okay. Okay. And when you did this review, did you review
23 the documents that were transferred from FIA Card
24 Services?

25 A Yes, I did.

1 Q Okay, and were -- were those a match?

2 A Yes.

3 Q Okay. Was there any indication that this account was not
4 a part of the transfer from FIA Card Services?

5 A No, there was no indication.

6 Q Okay. And is it your understanding that this account was
7 transferred from FIA Card Services to Asset --

8 A Yes.

9 Q -- based on the information that you received?

10 A Yes.

11 Q Okay. And based on the information that -- or your review
12 of the file, was this account, Mr. Bassett's account a --
13 an account that was transferred from Asset Acceptance to
14 Midland?

15 A Yes.

16 Q Okay. Now you indicated that there is a bill of sale.
17 Can you describe that? The bill of sale from Asset to
18 Midland as a part of that package?

19 A Yes, there's a bill of sale that has the -- the bill of
20 sale at the top and then it has them -- it's between Asset
21 Acceptance and Midland Funding, it's dated August 8th of
22 2013, and it's signed by both a representative of Asset
23 Acceptance and a representative of Midland Funding.

24 Q Okay. I want to hand a document to you. And is this
25 document familiar -- or is it familiar?

1 THE COURT: So I assume this is 4?

2 MS. HUNT: Yes, it's for proposed #4.

3 THE WITNESS: Yes.

4 BY MS. HUNT:

5 Q Okay. And can you describe this document?

6 A This is the bill of sale between Asset Acceptance, LLC and
7 Midland Funding, LLC for the accounts transferred on
8 August 8th of 2013.

9 (At 10:35 a.m., Plaintiff's exhibit #4 [Bill of
10 Sale], was identified)

11 BY MS. HUNT:

12 Q Okay. And can you describe for clarity purposes how the
13 language behind Midland's documents, how they were
14 created?

15 A The language is -- this is a -- a template of the bill of
16 sale is -- is created and checked off by legal and is used
17 with Asset Acceptance just like other companies would have
18 the same -- the -- the language in it is -- is checked off
19 by legal in this case for this account here. This was
20 drawn up between -- by our legal department in Midland
21 Funding and then drafted between Asset Acceptance, LLC and
22 Midland Funding, LLC.

23 Q Okay. And when you say "checked off", it was approved by
24 your legal department, is that correct?

25 A Yes.

1 Q Okay. Now, in the construct of this document, was there
2 some sort of review or determination of how the language
3 should be stated?

4 A I wasn't a part of that review, but I know that it was --
5 it was done within our legal departments.

6 Q Okay. All right. But as a senior legal specialist and
7 previously a legal specialist, you understand the -- the
8 forms and the templates that's utilized within your
9 department?

10 A Yes.

11 Q Is this a document that's typic -- typically utilized in
12 purchasing an asset or a debt?

13 A Yes.

14 Q Okay. And can you tell me when this document was created?

15 A The document was executed on August 8th of 2013.

16 Q Okay --

17 MR. PARKER: She asked her when she was
18 created, not when it was executed so I object to her
19 answer not being -- following her question.

20 THE COURT: You want to rephrase?

21 MS. HUNT: Sure.

22 BY MS. HUNT:

23 Q Well, again, can you state when it was executed?

24 A Yes, it was executed on August 8th of 2013.

1 Q Okay, and for the purposes of this -- this account, do you
2 know approximately when it was generated?

3 A I don't know when for sure that the template was generated
4 or even when the information was filled in on this one.

5 Q Okay. Now, was this generated for the purpose of this --
6 this pool of sale -- this sale of pool of documents or
7 debts?

8 A Yes.

9 Q Okay. And in your understanding of the transfer of
10 accounts from Asset to Midland, is this a document that is
11 typically transferred?

12 A Yes.

13 Q Okay, and was that document transferred in this account?

14 A Yes.

15 Q Okay. And in your review of this file, was this document
16 a part of this particular transfer?

17 A Yes.

18 Q Okay. Was this document accompanied by Mr. Bassett's
19 file?

20 A Yes.

21 Q Okay. Now, this document re -- refers to a Schedule A,
22 can you explain what Schedule A is?

23 A The Schedule A is a document that because the sale file's
24 transferred electronically, they don't list all the
25 accounts that are included in that file, so the Schedule A

1 is a section that just states where the file can be found,
2 on what site it can be found, what -- we use a file
3 transfer protocol site which is a secure email site that
4 needs specialized login and -- and password information to
5 get into it to be able to transfer files over into
6 Midland's system.

7 Q Okay. And did you have an opportunity to review that --
8 that schedule?

9 A I was able to review the sale file, yes.

10 Q Okay. And was this account a part of that sale file?

11 A Yes.

12 Q Okay, and again, why isn't that sale file made public or
13 readily available?

14 A It contains all the electronic data for all the accounts
15 that are purchased so to -- to supply that it would be
16 thousands and thousands of pages long and it would have
17 all the other consumer account information that would be
18 confidential proprietary.

19 Q Okay, and approximately how many consumer debts were sold
20 with this, can you --

21 A You know, I -- I don't know for sure with this one. Every
22 one is different. It could be a few thousand; it could
23 be, you know, tens of thousands.

1 Q Okay. But it's not made public for the purposes of risk -
2 - not even wanting to risk one particular consumer's
3 information?

4 A Correct.

5 Q Correct? Okay. And, Ms. Walker, can you explain why
6 this document was -- was provided to Midland?

7 A Yes, it's used to show the chain of title and ownership of
8 the account by Midland Funding.

9 Q Okay. And do you or Midland regularly maintain this
10 record for purposes of servicing your accounts?

11 A Yes.

12 Q Okay. And for this particular account did you maintain it
13 for servicing this account?

14 A Yes.

15 Q Okay. All right.

16 MS. HUNT: Your Honor, at this time I would
17 move to have this admitted as exhibit 4.

18 THE COURT: Is -- is Schedule A --

19 MR. PARKER: Your Honor --

20 THE COURT: -- con -- the copy you handed me
21 just is one page, is Schedule A cop -- the copy you handed
22 me just is one page. Is Schedule A attached to it?

23 MS. HUNT: Oh, I apologize, your Honor. I
24 sincerely apologize.

25 THE COURT: That's okay.

1 MS. HUNT: (Indiscernible)

2 THE COURT: Okay.

3 MS. HUNT: This is -- and if I may -- if I can
4 get into that, your Honor?

5 THE COURT: Yeah, go ahead.

6 BY MS. HUNT:

7 Q Very quickly. What is -- you -- do -- I just handed you
8 the second page, is that correct?

9 A Yeah.

10 Q Okay, and what is the reason for the -- the --

11 A It lists --

12 Q -- bar --

13 A -- purchased account files file names.

14 Q Okay.

15 A And -- and where they can be found.

16 Q Okay, and that's only one page. What is the purpose of it
17 just being one page when there were --

18 A Because it only was the -- the file name of -- of --

19 Q Okay.

20 A -- the file that contains all of the account data so --

21 THE COURT: Is this what you were referring to
22 earlier where you said there's a -- it -- it -- it
23 contained a -- a website or something you could go to?

24 THE WITNESS: Yeah, a -- a file, name or file
25 path to where the file can be --

Barker

1 THE COURT: So when this blacked out at the top
2 here, that -- what would have been underneath that before
3 it was blacked out was the way to click onto this
4 particular --

5 THE WITNESS: It would have been similar to --
6 if you look at exhibit 2, it would have been similar to
7 the file name there. It would have been a file name --

8 MR. PARKER: Could you please read what that is
9 you're referring in exhibit 2 so we get the same thing?

10 THE WITNESS: The BAC, Bulk Asset Acceptance
11 LLC Sale File 1212 Final.

12 MR. PARKER: Thank you.

13 THE COURT: Okay.

14 THE WITNESS: dot.ExcelXS.

15 BY MS. HUNT:

16 Q So can you explain the purpose of it being blacked out?

17 A Midland does that since it -- it -- it consistently reuses
18 the same file name with a different date naming
19 convention, and they use that for like business -- they
20 don't want other businesses to be able to take that and
21 use it --

22 Q Okay.

23 A -- for their own.

24 Q Is that a proprietary purpose?

25 A Yes.

1 Q Okay. And that second page is that routinely blacked out?
2 A Yes.
3 Q Okay. And on all of your -- the bills of sales for all of
4 the accounts, is it blacked out for that purpose?
5 A The only thing that it wouldn't be blacked is if there was
6 a date that would have been left unblocked out but the
7 rest of it would have been blacked out.
8 Q Okay, and in this instance would there have been no date
9 or since it's all blacked out?
10 A It just was all blacked out.
11 Q Okay.
12 A By our -- our -- our post-purchase team.
13 Q Okay. And the link or the path that you've indicated that
14 is under this black bar, when you click on that what does
15 it lead to?
16 A It leads to a secure email site with login information to
17 get into to be able to transfer the account over into
18 (indiscernible) systems.
19 Q Okay, and what does that consist of the -- behind that?
20 A Midland uses FTP which is a file transfer protocol site.
21 The sellers are able to place the file on there, either in
22 the whole or in parts depending on how large the file is,
23 and then Midland is able to go into that file that they
24 placed it into on their end and then be to pull it over
25 into Midland's system.

1 MS. HUNT: I'd like to have this admitted as
2 exhibit 4, your Honor.

3 MR. PARKER: Voir dire, your Honor?

4 THE COURT: Yes.

5 MR. PARKER: Thank you very much, your Honor.

6 VOIR DIRE EXAMINATION

7 (At 10:47 a.m.)

8 BY MR. PARKER:

9 Q I take it Schedule A is part of exhibit 4, is that
10 correct?

11 THE COURT: It is.

12 MR. PARKER: All right. Thank you. Excuse me
13 -- proposed exhibit 4.

14 BY MR. PARKER:

15 Q You're saying you put a black mark over the private
16 information of Mr. Bassett, is that what you're saying?

17 A No, I said I -- the information blacked out is the file
18 path of where the entire sale file can be found.

19 Q So it isn't representative of the Bassett account, is that
20 correct?

21 A The individual accounts are not listed on this blackout
22 portion.

23 Q Thank you. So have you -- did you see behind this black
24 mark that covers everything up, just for anybody that
25 reads this transcript there's everything that was -- is

1 written on Schedule A Purchased Account Files is
2 completely blacked out, is that correct?

3 A Yes.

4 Q And -- and before they did this, whoever -- did you do
5 this, did you black this out?

6 A No, I did not.

7 Q Did you see what was under it before they blacked it out?

8 A I did not.

9 Q So you don't know what's under this?

10 A I've been trained by our --

11 Q If you didn't see it.

12 A -- department on what's under it.

13 Q If you could answer my question. I know you've been
14 through training, we all have, do you know what's behind -
15 - did you watch this and see this before they blacked it
16 out, yes or no?

17 A No, I didn't see it before it was blacked out.

18 Q All right. So it's just a piece of paper with a black
19 mark on it as far as it stands today, correct?

20 A Yes.

21 Q All right. Now let's go to the first sheet, bill of sale.
22 Do you have that in front of you?

23 A Yes.

24 Q That references Schedule A as holding the purchased
25 accounts, is that correct?

1 A It states that --

2 Q Purchased accounts described in the purchased accounts
3 files identified --

4 A Files.

5 Q -- on Schedule A, is that what it says?

6 A Purchased account files identified.

7 Q All right. That's fine. And you don't know what's
8 behind, as you already said, what's on Schedule A, so that
9 wouldn't be a true statement, would it?

10 THE COURT: What?

11 MS. HUNT: I would object, your Honor. She
12 didn't say she didn't know what was behind it.

13 THE COURT: I don't understand what you just
14 said. Yeah, I don't get that either.

15 BY MR. PARKER:

16 Q You -- you don't have anything today that represents
17 Schedule A that they're referring to, that's fair.

18 A This is blacked out to --

19 THE COURT: She said it -- it blacked out a
20 file path which takes you to the entire file of accounts
21 purchased, one of which was Mr. Bassett's file.

22 MR. PARKER: But she doesn't know if this
23 Schedule A, this is what we're asking her to do, has what
24 you're helping her to look at.

25 BY MR. PARKER:

1 Q So you don't know if the Schedule A that they're referring
2 to holds the information or files that you're actually
3 attaching to this document as Schedule A, isn't that
4 correct?

5 A I've been able to look at the sale file that's in
6 connection with this bill of sale --

7 Q Fantastic. Now, let's get back to this document that
8 we're trying to enter. A document marked Schedule A is
9 also -- also referenced as Schedule A in the bill of sale,
10 is that correct?

11 A Yes.

12 Q Yet this Schedule A does not represent the files and
13 purchased accounts because you don't know, you don't know
14 what's behind the redacted portion, isn't that correct?
15 Isn't that correct?

16 A I don't know the exact --

17 Q Thank you very much for being honest. And you were not
18 there when the -- this document, bill of sale was signed?

19 A I was not personally there, no.

20 Q Were you there when it was created at least?

21 A No.

22 Q No? Okay, did you help put the information into the
23 document?

24 A No.

25 Q Have you looked at the Schedule A?

1 A I've looked at the sale file.

2 Q You didn't answer my question. Please answer my question.

3 Have you looked at the Schedule A?

4 A I've looked at the sale file that's in connection with the

5 bill of sale and Schedule A.

6 Q I'm going to ask you one more time --

7 THE COURT: She answered it, Counsel. You may

8 not like it --

9 MR. PARKER: She has not answered whether she

10 looked at the --

11 THE COURT: -- but that's her answer, so you'll

12 just -- that's what we'll have to live with.

13 BY MR. PARKER:

14 Q I would like a yes or no answer if you looked at the

15 Schedule either you're seeking to introduce, please.

16 A I've looked at --

17 Q Schedule A, have you looked at it?

18 A -- the file name.

19 Q The file name?

20 A Or the file. I've looked at the electronic file. The

21 sale file.

22 Q The file.

23 A That would be contained --

24 Q But you've not --

25 A -- on that Schedule A.

1 Q -- thank you. But you have not looked at the Schedule A,
2 isn't that correct?

3 MS. HUNT: Your Honor, she's -- she's stated
4 that the Schedule A consists of that pack and that's what
5 she's looked at --

6 THE COURT: That's true.

7 MR. PARKER: If she could just answer the
8 question yes or no.

9 BY MR. PARKER:

10 Q Yes you have or no you have not.

11 THE COURT: Don't answer it. I'll sustain your
12 objection.

13 MR. PARKER: Don't answer it? Aye. It's very
14 consistent, your Honor.

15 THE COURT: We try to be consistent here.

16 MR. PARKER: I'd like some fairness on my side,
17 too, if you don't mind.

18 THE COURT: I've given you plenty of fairness.

19 MR. PARKER: Uh-huh. Well I notice you haven't
20 been helping me as much as you've been helping Ms. Hunt
21 and I just would like that same fairness.

22 BY MR. PARKER:

23 Q Some of the documents that are attached in Schedule A, are
24 they the Visa card, MasterCard, Discover card of Mr.
25 Bassett, which one?

*Didn't memorize whether Visa or Mastercard
Not memorized everything else*

[Handwritten mark]

1 A I don't remember exactly which one it is. I didn't
2 memorize whether it was Visa, MasterCard or Discovery
3 (sic) card.

4 Q Are the pool of documents that you say you've looked at, I
5 think you called it the sales documents, does it hold
6 Visa, Discover --

7 A It --

8 Q -- and MasterCard?

9 A -- I believe it holds the Visa and MasterCard ones, a
10 combination of both.

11 Q Thank you very much, you said you "believe", is that yes
12 it does or -- or you're not sure?

13 A Yes, it does.

14 Q It holds both Visa and MasterCard?

15 A Yes.

16 Q You've seen Visa and MasterCard?

17 A Yes.

18 Q How is that identifying --

19 THE COURT: Excuse me, but you wanted voir dire
20 on her motion to admit --

21 MR. PARKER: I'm trying to get there, thank you
22 very much, your Honor.

23 THE COURT: -- to -- to admit the exhibit and
24 now you're asking about other things, so --

1 MR. PARKER: Because her answer was -- when I
2 asked her about Schedule A you sustained that she can talk
3 about the sales documents only so I have to inquire on
4 that because of the way you set it up. What do you want
5 me to do? Can we go back to Schedule A?

6 THE COURT: Well, I'm going to -- I'm -- I'm
7 ready to rule. I'll admit --

8 MR. PARKER: All right.

9 THE COURT: -- I'll admit --

10 MR. PARKER: Of course.

11 THE COURT: -- exhibit 4 --

12 MR. PARKER: That's a shock. Thank you very
13 much, your Honor.

14 (At 10:53 a.m., Exhibit #4 [Bill of Sale], was
15 admitted)

16 DIRECT EXAMINATION CONTINUED

17 (At 10:53 a.m.)

18 BY MS. HUNT:

19 Q Ms. Walker, you have exhibit 4 before you, you've
20 indicated that this was a part of the sale file that was
21 transferred from Asset?

22 A Yes.

23 Q Okay. How does Midland Funding utilize this document?

1 A It utilizes it to show the chain of title of the purchased
2 accounts from the original lender through a subsequent
3 debt buyer and then to Midland Funding.

4 Q Okay. Now, in utilizing this particular document -- I'm
5 going to take a step back, are you -- do you utilize this
6 particular document for the servicing of -- servicing of
7 Mr. Bassett's file?

8 A Yes.

9 Q Okay. And with regards to the attached pool of debts, or
10 the electronic file of debts, was Mr. Bassett's file a
11 part of those debt pool?

12 A Yes.

13 Q Okay. And was that pool in connection with this
14 particular bill of sale?

15 A Yes.

16 Q Okay. Now, once that transfer took place from Midland
17 Funding to -- I'm sorry, from Asset Acceptance to Midland
18 Funding, what is Midland Funding's procedures of process?

19 A Again, the accounts go through a due diligence process a
20 number of times before the account is actually loaded into
21 the system, and then again once it is loaded into the
22 system to ensure that the -- the data was transferred
23 correctly and accurately. The -- when the accounts are
24 entered into the system a field data sheet is printed off
25 of the sale file for each and every account that's

1 included in there so that there's a hard copy of the elect
2 -- the electronic data that is provided for each and every
3 account included within that sale file. And then the
4 account is -- a validation letter is sent on the accounts
5 as required by the FDCPA.

6 Q Okay. Now, you said that there is a due diligence process
7 that takes place, can you describe that?

8 A Yes, that -- the due diligence process, there's a -- a
9 manual and automated data mapping of the data that comes
10 over to ensure that there are no errors or inconsistencies
11 or missing information with the information that's
12 received. Midland Funding works closely with the sellers
13 during this process, it's done for -- for every sale
14 regardless of its original lender or debt -- subsequent
15 debt purchaser or debt seller. They work closely with the
16 seller to ensure that that information is accurate, or if
17 there is any inconsist -- inconsistencies that those can
18 be -- that they can be figured out or -- or reconciled, if
19 they can't the accounts aren't purchased and are given
20 back essentially to the seller. So the -- only the
21 accounts that pass that due diligence process are loaded
22 into the system.

23 Q Okay. And was the account at issue here today, Mr.
24 Bassett's account, was that one that passed?

25 A Yes, it was.

1 Q Okay. And when you say that Asset Acceptance works close
2 -- I'm sorry, Midland Funding works closely with the
3 sellers, what's verified with that close relationship or
4 interaction?

5 A They work in connection with reviewing the file to ensure
6 that the information -- there's no errors or incon --
7 inconsistencies, they email back and forth if there's
8 something that's found or if there's -- the seller's
9 constantly doing checks to ensure that none of their
10 accounts that they're selling come up with bankruptcies or
11 decessments or something like that in the process of the
12 sale, in which case Midland is also doing that on their
13 end to ensure that nothing is missed in the cracks between
14 the -- the sale and the transfer.

15 Q Okay. Now, you mentioned that a field data report is
16 generated, what is that?

17 A It's a redacted version of the electronic sale file that
18 only shows the account information for that particular
19 consumer without risking the privacy of the other
20 consumers' information.

21 Q Okay. I'm handing you proposed exhibit 5. And can you
22 describe that document?

23 A Yes. This is the field data sheet which is the redacted
24 version of the electronic data from the sale file that's

1 transferred that provides the account information for this
2 consumer's account.

3 (At 10:58 a.m., Plaintiff's exhibit #5 [Field
4 Data Sheet] was identified)

5 BY MS. HUNT:

6 Q Okay. And how -- I'm sorry, who generates this document?

7 A The -- the -- the document is printed by Midland Credit
8 Management from the electronic records that were provided
9 by Asset Acceptance.

10 Q Okay. And where did that information come from?

11 A The information came from Asset's records in connection
12 with the sale from FIA Credit Services.

13 Q Okay. And is this generated upon the receipt of the
14 account once it passes the process you just indicated?

15 A Yes.

16 Q Okay. And is this a record that Midland Funding routinely
17 utilizes when purchasing accounts?

18 A Yes.

19 Q Okay. And in this instance was it utilized in the
20 purchase of this account?

21 A Yes.

22 Q Okay. And was it utilized in the servicing of this
23 account?

24 A Yes.

25 Q Okay. And what is utilized with regards to that?

1 A It is a summary of the account information that was
2 purchased --

3 Q Okay.

4 A -- in the sale.

5 Q Okay. And when this document was generated by Midland,
6 can you tell me where it was generated or what department
7 or --

8 A It's generated in our corporate office in San Diego within
9 our Business Development Team.

10 Q Okay. And how is it transferred to this particular file
11 or provided as a part of this particular file?

12 A So when the accounts are loaded in the system they are
13 each and every portfolio is -- is given its own portfolio
14 number, so then each and every account with -- included
15 within that portfolio is linked to that portfolio number.
16 As well as each and every original account number is given
17 its own MCM account number so that all --

18 Q Okay, wait, I'm sorry to stop you, when you say MCM
19 account number, what is that?

20 A It's just that -- an account number that MCM assigns to an
21 account that is purchased so that it's easily located
22 within our system.

23 Q Okay, and can you just state who MCM is?

24 A Midland Credit Management, sorry.

25 Q Okay. Okay. And I'll let you continue to finish.

1 A That way the account is linked by those three numbers so
2 the portfolio level documents like the bill of sale and
3 the affidavit of sale are uploaded to the accounts on a
4 portfolio level, so they are uploaded to the portfolio
5 which means that they are available when you look up an
6 account, they show up under every account that's included
7 within that portfolio. And then the field data sheets are
8 uploaded to the MCM number which is connected to the
9 original creditor number which is then connected to the
10 portfolio number so then that saves under that accounts
11 records.

12 Q Okay. And do you know when this document was generated?

13 A The process is within the 30 days of the -- of the sale.

14 Q Okay, so Midland's regular process is within 30 days of
15 obtaining a file?

16 A Yes.

17 Q And it -- does it have to pass your process at that time?

18 A Yes.

19 Q This document would be generated for that sales purpose?

20 A Yes.

21 Q Okay.

22 MS. HUNT: Your Honor, I would move to have
23 this admitted as proposed exhibit 5.

24 MR. PARKER: May I voir dire, your Honor?

25 THE COURT: Yes.

1 MR. PARKER: Thank you, your Honor.

2 VOIR DIRE EXAMINATION

3 (At 11:02 a.m.)

4 BY MR. PARKER:

5 Q Is this the same information, if you know, from FIA to
6 Asset Acceptance?

7 A Yes, it is.

8 Q And does that same information that you testified was
9 private and you didn't want the Court to see it, is that
10 the same information that made this data sheet?

11 A The information is -- is from that sale file --

12 Q All right. So now you --

13 A -- from the electronic data.

14 Q -- want the Court to see this but you don't want the Court
15 to see the other document which you're saying is from the
16 same sale file, is that correct? I mean, your privacy
17 concerns don't seem to be a matter anymore. I'm just
18 wondering why.

19 A This --

20 MS. HUNT: Your --

21 THE WITNESS: -- only shows the information
22 concerning this account.

23 BY MR. PARKER:

24 Q All right.

25 A It doesn't contain all the other consumer information.

1 Q That's correct. And -- but you didn't supply that same
2 compilation with the FIA to Asset and Asset to Midland, is
3 that correct?

4 A Asset did not provide a document that had the similar
5 thing that Midland Credit Management prints out.

6 Q All right. But FIA you're saying did to Asset.

7 A FIA sent a sale file which contained all the account data
8 which is what I referred -- or reviewed --

9 Q All right. You've answered the question.

10 A -- I reviewed the sale file --

11 Q So now you've displayed the private information you didn't
12 want to display in this document, and you're saying the
13 information doesn't come from Asset?

14 A The information on here matches the information that FIA -
15 - FIA Card Services gave to Asset in the sale of the
16 account from FIA to Asset --

17 Q Were you here for her opening statement and this is a
18 chain of title case, so I'm going to ask you the question
19 again. This information doesn't come from Asset
20 Acceptance, is that correct?

21 A No.

22 Q Thank you very much for your honesty. Okay. It -- you
23 haven't blacked out anything, you've -- but you have
24 blacked out the Social Security -- Social Security number,
25 at least some of it, and I thank you for that --

1 MR. PARKER: As far as a foundation, your
2 Honor, the only other question I would have is --

3 BY MR. PARKER:

4 Q What I don't understand is the purchase balance, what is
5 that?

6 A The purchase balance includes interest that was assessed
7 to the account by the original lender.

8 Q Oh, thank you. How much is interest and how much is
9 principal?

10 A The charge-off amount was the \$25,606.65. Then there's a
11 -- approximately like -- I don't -- I can't do math that
12 fast -- 26,374 that was purchased --

13 Q I apologize -- I was referring to the purchase balance.
14 How much of that is principal and how much is interest?

15 A I don't have a breakdown.

16 Q If I may ask, how you came to 26,374.79?

17 A I didn't come to that number. That number was transferred
18 over.

19 Q So you have no connection to how that number made it to
20 this data sheet?

21 A It was purchased interest on the account from the original
22 lender.

23 Q Thank you. If you could answer my question?

24 THE COURT: What's the question?

25 BY MR. PARKER:

1 Q You have no knowledge of how that amount occurred. Like
2 how much of it is principal from 2009 to -- excuse me --
3 2013, you don't know how much is principal, you don't know
4 how much is --

5 THE COURT: She said that she didn't.

6 BY MR. PARKER:

7 Q Is that correct, you said you didn't?

8 A No, I don't.

9 Q Thank you. So you can't testify as to why that number is
10 there as far as what it's made up of, is that correct?

11 A It's the purchase -- the amount that the account was
12 purchased at.

13 Q From not -- no knowledge of yours? You just read
14 something, is that correct?

15 A I don't have personal knowledge of how that balance came
16 to be.

17 Q You don't even know if that's correct, isn't that correct?

18 A The charge off amount was the amount that matched the
19 supporting documentation and the purchase balance is not
20 what we're seeking today.

21 Q Who's "we"?

22 A Not what Midland Funding is seeking.

23 Q Okay, thank you.

24 THE COURT: What -- what is -- what does it
25 mean, what is charge off amount? What does that mean?

1 THE WITNESS: Charge off amount is the amount
2 that the credit card was charged off at pursuant to the -
3 the credit card company when the account was in default
4 for more than 180 days.

5 THE COURT: Okay, so basically the -- that was
6 the last known amount that they claim that they were owed?

7 THE WITNESS: Yes.

8 THE COURT: And so what is the purchase
9 balance, what does that mean?

10 THE WITNESS: The purchase balance was -- it
11 included interest that the original lender tacked onto the
12 account prior to selling it.

13 THE COURT: Okay, I understand. Thank you.

14 THE WITNESS: It wasn't sought in the suit,
15 though.

16 THE COURT: All right. I understand. Anything
17 further?

18 MR. PARKER: Yes, thank you, your Honor.

19 VOIR DIRE EXAMINATION CONTINUED

20 (At 11:07 a.m.)

21 BY MR. PARKER:

22 Q You volunteered some information I didn't ask you for but
23 --

24 MR. PARKER: If I may approach, your Honor?

25 THE COURT: Well -- yeah.

1 MS. HUNT: Your Honor, if I could see what
2 he's showing the witness?

3 MR. PARKER: You already have it. It's --

4 THE COURT: Well show it to her --

5 MS. HUNT: Well, I would like to know what it
6 is.

7 THE COURT: -- show -- show her what you want
8 the witness to look at --

9 MR. PARKER: All right. It's going to take a
10 couple pages but it's their documents. It's Plaintiff's
11 brief in support of its motion for summary disposition.

12 MS. HUNT: Your Honor, we're here today --

13 THE COURT: Yeah, what does that got to do with
14 whether this document comes in or not?

15 MR. PARKER: Well, for some reason you said
16 we're here today seeking a certain amount.

17 THE COURT: Yeah.

18 MR. PARKER: For that information to be
19 reliable and trustworthy, I've got to know the basis of
20 what she's saying is correct and reliable and trustworthy.

21 THE COURT: Can you get behind a microphone
22 because we can't hear you when you're out here?

23 MR. PARKER: Sure. This is the -- the basis
24 of something coming in is the reliability and

1 trustworthiness, and I apologize for standing over there,
2 your Honor --

3 THE COURT: That's all right.

4 MR. PARKER: She, for some reason, volunteered
5 that what Midland Funding is seeking is a certain amount.
6 So for this document to come in it has to be honest and
7 correct, so she said this is what we're seeking. I have
8 Midland's own documentation; it says different amounts
9 which would go to the reliability --

10 THE COURT: Well, I -- I -- okay --

11 MR. PARKER: -- and trustworthiness.

12 THE COURT: -- I understand your objection but
13 it's overruled.

14 MR. PARKER: All right. Thank you, your Honor.

15 THE COURT: So I'll admit the document.

16 MR. PARKER: Thank you, your Honor.

17 MS. HUNT: Thank you, your Honor.

18 (At 11:08 a.m., Plaintiff's exhibit #5 [Field
19 Data Sheet], was admitted)

20 DIRECT EXAMINATION CONTINUED

21 BY MS. HUNT:

22 Q Now just to clarify, Ms. Walker, you indicated that this
23 is a document, exhibit 5, is a document that is generated
24 by Midland Funding, is that correct?

25 A Yes.

1 Q And where is the information within it -- where does that
2 come from?

3 A It comes from the electronic sale file.

4 Q Okay. And where is that generated from -- or who is that
5 provided by?

6 A The information in the sale file is compiled by Asset from
7 information provided by the original lender.

8 Q Okay, so the information from that comes from -- in this
9 particular document at least it comes from Asset
10 Acceptance?

11 A From the sale file.

12 Q Okay, correct. And as a part of this document -- or, I'm
13 sorry, in reviewing this document, was that a part of the
14 sale file that you reviewed?

15 A Yes.

16 Q Okay. And the information contained within this document,
17 was it contained within the sale file that you reviewed?

18 A Yes.

19 Q Okay. And does that document -- does this -- that file --
20 was that Mr. Bassett's file?

21 A Yes.

22 Q Okay. Now, the information within this document, Mr.
23 Parker asked if this could have been the information
24 provided in exhibit A, is that the same information
25 provided in exhibit A?

1 A It -- I reviewed the -- the sale file from exhibit A and
2 it is -- this information is the same information
3 contained on that sale file that's contained in this sale
4 file.

5 Q Okay. But there's other information prov -- contained in
6 exhibit A not related to this file, is that correct?

7 A Yes.

8 Q Okay. And is it possible -- strike that -- why wasn't, if
9 this can produced, why couldn't exhibit A be produced?

10 A The -- their process was a little different and I don't
11 know if they printed out one of these for each and every
12 pro -- each and every account like Midland does, but that
13 wasn't part of the transfer, that wasn't something that
14 was sent over.

15 Q Right, this was generated by Midland Funding, correct?

16 A Yes.

17 Q Okay. And what was sent over with that pool of accounts
18 in exhibit A consisted of more than just this account
19 information?

20 A Yes.

21 Q So it could for privacy purposes, could it be released or
22 provided?

23 A No, it had -- it had information containing to the sale
24 between Asset and -- and FIA Card Service which couldn't
25 be provided without other redactions and whatnot.

1 Q Okay. And is that based on the other consumer accounts
2 that were a part of it?

3 A Yes.

4 Q Okay. So in providing this document is there any breach
5 of privacy that would have been perhaps breached had
6 exhibit A been exposed?

7 MR. PARKER: Objection, form of the question.
8 I have no idea what she said.

9 THE COURT: I don't -- I don't know how that
10 matters. It's not relevant.

11 MS. HUNT: Okay. All right, well I'll
12 withdraw, your Honor.

13 BY MS. HUNT:

14 Q Okay, so Ms. Walker, in your review of this file, was this
15 a file that was transferred, this file being Mr. Bassett's
16 file, was that a file that was transferred from Asset to
17 Midland?

18 A Yes.

19 Q Okay. And you've --

20 THE COURT: Are you -- you're referring to this
21 file or that file, are you referring to a packet of --

22 MS. HUNT: I'm referring to the account.

23 THE COURT: Okay.

24 MS. HUNT: To the account in general.

25 THE COURT: Okay.

1 BY MS. HUNT:

2 Q Was this account transferred in -- from Asset to Midland?

3 A Yes.

4 Q Okay. And can you tell me what was a part of this account
5 file that was transferred?

6 A The electronic data that is provided here as well as the
7 chain of title information from the previous sale, the
8 bill of sale, an affidavit of sale from Asset Acceptance,
9 as well as credit card statements and a card agreement.

10 Q Okay. Now, when you -- you've indicated earlier that when
11 you obtain files that have been transferred, you compare
12 to make certain all information matches. Was that done in
13 this account?

14 A Yes.

15 Q Okay. And can you again tell me what you reviewed to make
16 certain that they were -- they matched?

17 A Yes, I reviewed the electronic data, the -- of both files
18 from FIA Card Services to Asset and then from Asset to
19 Midland, as well as the credit card statements and
20 cardholder agreement pertaining to this account.

21 Q Okay. And in your review, did you review the affidavits
22 that we've presented as exhibits today?

23 A Yes.

24 Q Okay, and did you utilize those documents to -- in
25 furtherance of servicing this account?

1 A Yes.

2 Q Okay. And you mentioned earlier that there are -- that
3 there were verifications that were sent. Can you explain
4 why verifications are sent -- take a step back -- what are
5 verifications?

6 A According to the FDCPA, a debt collection company is
7 required to provide notice to the consumer that they now
8 own their debt and provide the details of the original
9 debt.

10 Q Okay. And was a verification sent in this account?

11 A Yes.

12 Q Okay. And can you tell me who it was sent to?

13 A It was sent to Michael E. Bassett.

14 Q I'm handing you a document. Can you describe that for me?

15 A Yes, this is the validation letter that's dated November
16 27th, of 2013, to the consumer stating that their FIA Card
17 Services Account was sold to Midland Funding and Midland
18 Credit Management, a debt collection company, is
19 collecting on and servicing the agent.

20 Q Okay.

21 A And it provides the account details up in the top right
22 box, that MCM number, current owner, original creditor,
23 the balance, payment due date, and then down in the
24 payment certificate it provides the original account
25 number, as well as a payment due to date and then page 2

1 provides the disclosure information. If they -- what to
2 do if they dispute the debt.

3 Q Okay. Now, where was this -- this document generated?

4 A The document was generated in MCM, Midland Credit
5 Management, and mailed by a third party.

6 Q Okay. And can you tell me again why was this generated?

7 A This was generated to give Mr. Bassett notice that the
8 account was sold to Midland Funding.

9 Q Okay. And is this a document that Midland Funding
10 routinely provides after the purchase of an account?

11 A Yes.

12 Q Okay. So on all of the account files this document is --
13 or purchased accounts, this document was generated?

14 A Yes, a validation letter is sent out.

15 Q Okay. And this doc -- this particular letter was sent out
16 for this file?

17 A Yes.

18 Q Okay.

19 MS. HUNT: Your Honor, I'd like to move to have
20 this admitted as exhibit -- proposed exhibit 6.

21 MR. PARKER: Your Honor, we're going to save
22 the Court some time. Just for the purposes of saving you
23 some time, we'll agree that these letters were created by
24 MCM.

25 THE COURT: Okay, 6 is admitted.

1 (At 11:17 a.m., Plaintiff's exhibit #6 [Letters]
2 were admitted)

3 MS. HUNT: Thank you.

4 BY MS. HUNT:

5 Q Now, was this letter sent to Mr. Bassett?

6 A Yes.

7 Q Okay. Were there any communications -- I'm sorry, was --
8 was this letter returned?

9 A This letter -- this one in particular was not returned.

10 Q Okay. You said this one in particular.

11 A Yes.

12 Q Okay and why do you say that?

13 A Because there was previous letters sent on the account to
14 two previous addresses that were returned as
15 undeliverable.

16 Q Okay. And how did you confirm that this was a deliverable
17 address?

18 A The address was found using an external source. The
19 credit reports and other ex -- external sources are used.
20 It was sent and it was not returned back.

21 Q Okay. And did Mr. Bassett communicate with Midland
22 Funding after this account was -- or this letter was sent?

23 A Not after this letter was sent. The only communication
24 was after the suit was filed.

1 Q Okay. And was that dispute of this account? What -- that
2 communication you mentioned?

3 A No, it wasn't.

4 Q Okay. And what is the purpose of -- I'm sorry you've
5 already stated the purpose of this letter. Is there a --
6 a reason behind this letter for servicing this account?

7 A The FDCPA requires that we give notice to the consumer and
8 then if we don't have a -- a address that's correct or --
9 or a good address, we stop collection on the account until
10 we do have a good address.

11 Q Okay.

12 THE COURT: At this time I'm going to take a
13 break. We have a -- take a plea in a criminal case.
14 We'll reconvene in a few moments when that's over.

15 MS. HUNT: Sure. Sure.

16 THE WITNESS: Thank you. I have to pee.

17 THE COURT: We'll take a recess in this case
18 for a few minutes. You can step down. Thank you.

19 THE WITNESS: I was going to ask. Thank you.

20 (At 11:19 a.m., the witness temporarily left the
21 witness stand)

22 (Court reconvenes at 11:48 a.m. and the witness
23 retakes the stand)

24 DIRECT EXAMINATION CONTINUES

25 (At 11:49 a.m.)

1 BY MS. HUNT:

2 Q Ms. Walker, you do understand you're still sworn in?

3 A (Nodding affirmative)

4 Q Okay, Ms. Walker, before the recess we ended with -- I
5 believe it was admitted as exhibit 6, the verification
6 letter. And, again, can you reiterate to the Court the
7 purpose for that letter?

8 A The --

9 MR. PARKER: Asked and answered, your Honor.

10 THE COURT: Which one is it? What are we
11 referring to, 6?

12 MS. HUNT: Exhibit 6.

13 THE COURT: Okay. Yeah, I think she's already
14 testified to it.

15 MS. HUNT: Okay.

16 BY MS. HUNT:

17 Q And you -- you stated that there were two previous letters
18 that were sent and returned?

19 A Yes.

20 Q Okay. And was the purpose for this letter to confirm --
21 in addition to the reasons stated, to confirm the exist --
22 or the location of the Defendant?

23 MR. PARKER: Leading the witness, your Honor.

24 THE COURT: Sustained. What was the purp --

25 BY MS. HUNT:

1 Q Were there any additional purposes for this letter?

2 A It was the -- for first initial contact with the consumer.

3 Q Okay.

4 A To establish a -- a possible relationship to -- to
5 successfully navigate through the account.

6 Q Okay. Now, Ms. Walker, you indicated earlier that in
7 addition to the affidavits and the documents you stated
8 that are part of the transfer file there is a -- are there
9 statements you stated?

10 A Yes.

11 Q Okay. And what are these statements, account statements?

12 A They are a periodic billing statements from a FIA Card
13 Services issued AAA card.

14 MR. PARKER: Your Honor, just to save the Court
15 some time, we'll stipulate to the admission of these
16 documents.

17 THE COURT: Thank you. They're admitted. What
18 do you have them marked as?

19 MS. HUNT: They'll be marked as exhibit 7.

20 THE COURT: Okay, thank you.

21 (At 11:51 a.m., Plaintiff's exhibit #7

22 [Documents], were admitted)

23 BY MS. HUNT:

24 Q Now, Ms. Walker, were these documents a part of the sale
25 file in this -- for this account?

1 A Yes.

2 Q Okay. Did you review those statements?

3 A I did.

4 Q Okay. And when this account was received by Midland
5 Funding, were they reviewed?

6 A Yes.

7 Q Okay. And what were they reviewed for?

8 A They were reviewed to ensure that as a part of a media
9 audit to ensure that the consumer name matched, the
10 account number matched the electronic data that was
11 transferred, as well as pertinent dates like the last
12 payment date and the last payment amount matched up with
13 all the sent over electronically.

14 Q Okay. And did those -- that information match?

15 A Yes.

16 Q Okay. And did you utilize the statements for service --
17 for the purposes of servicing this account?

18 A Yes.

19 Q Okay. Now --

20 THE COURT: So, based upon Counsel's
21 stipulation, 7 is admitted.

22 MS. HUNT: Yes.

23 BY MS. HUNT:

1 Q Now the account statements, do you utilize them for -- to
2 obtain other information with regards to the agreement
3 between the parties?

4 A Yes. There's -- there's a redacted portion of terms on
5 the -- page 2 it says important information about your
6 account.

7 Q Okay. And how does Midland utilize that for purposes of
8 servicing this account?

9 A It gives the -- a brief description of calculation of
10 balance subject to finance charges, payments and how
11 payments are applied, periodic rate, finance charge
12 computation and then the statement itself gives the - what
13 the daily rate is, a breakdown between the bal -- the
14 different types of transactions, balance transfers, cash
15 advances or purchases.

16 Q Okay. So does Midland utilize that information for -- as
17 the terms of the contract?

18 A Yes.

19 Q Okay. And can you explain how in your review you were
20 aware that this was originated with FIA Card Services?

21 A Yeah. Page 2 also says -- or has a -- a miscellaneous
22 portion, it's on the right hand side down towards the
23 bottom of the page, bolded miscellaneous and then it says
24 for the complete terms and conditions of your account
25 consult your credit card agreement. FIA Card Services is

1 a trade name of FIA Card Services, N.A. This account is
2 issued and administered by FIA Card Services, N.A.

3 Q Okay. Now you indicated earlier that -- strike that --
4 when you reviewed this file, were the statements -- when
5 you did your due diligence comparison, were these
6 statements a part of that file?

7 A Yes.

8 Q Okay. Were these statements a part of the file submitted
9 by FIA Card Services?

10 A To Asset?

11 Q Yes, I'm sorry.

12 A Yes.

13 Q Okay. And were these files -- or these documents
14 submitted from Asset to Midland?

15 A Yes.

16 Q Okay. And did you do utilize thee documents for purposes
17 of servicing your account?

18 A Yes.

19 Q Now, when you did your side by side with FIA Card
20 Services, were you made aware of how these documents were
21 maintained for purposes of the -- the sale of the account?

22 MR. PARKER: Your Honor, she was not part of
23 this when this was created, so when she says "these
24 documents, is she referring to assets or --

25 MS. HUNT: I'll rephrase.

1 MR. PARKER: -- general? Thank you.

2 MS. HUNT: I'll rephrase. I'll rephrase.

3 THE COURT: Thank you.

4 BY MS. HUNT:

5 Q When you did your side-by-side with -- with FIA Card
6 Services, were you trained on how these types of documents
7 are maintained for purposes of the sale?

8 A Yes.

9 Q Okay. So are you aware of how this type of document would
10 have been transferred for the purposes of this particular
11 sale?

12 A Yes.

13 Q Okay. And was this a -- this document in your review of
14 the file, a document that was submitted with this
15 electronic pool of files that you've been able to review?

16 A Yes.

17 Q Okay. So in your review of this -- of this file as a
18 whole, can you tell me the status of this account with
19 Midland Funding?

20 A Yes. The account is in a charged off and default status.
21 It is -- there has been no payments made to the account
22 since Midland purchased the account. The balance due and
23 owing on the account is the \$25,606.65.

24 Q Okay. And how do you know that information is accurate?

1 A I reviewed the electronic data and reviewed the final
2 statement which is the balance less a final late fee, the
3 balance on the last statement that we have is \$25,567.65,
4 and another late fee, the balance -- the difference
5 between the charge off balance and this balance is \$39.00.

6 Q Okay. And you stated that there were no payments made to
7 Midland? Do you know when the last payment was made to
8 FIA Card Services?

9 A The last payment documented on the account statement that
10 we have in front of us is February 26th of 2009.

11 MR. PARKER: Could she point to exactly what
12 document she's referring to when she's making that
13 testimony?

14 THE COURT: Sure. Could you show us what
15 you're looking at?

16 THE WITNESS: It is the -- if you go eight
17 statements in --

18 THE COURT: Eight statements in.

19 THE WITNESS: -- it will have March 2009 at the
20 top.

21 THE COURT: Not pages but statements?

22 THE WITNESS: Pages, sorry.

23 THE COURT: Pages, okay. One, two, three,
24 four, five, six, seven, eight, okay. March 2nd, 2009? No,
25 sorry, March -- when was it? Say it again?

1 THE WITNESS: Of the -- the -- the month at the
2 top of the statement is March 2009 statement.

3 MR. PARKER: So you're saying it's eight pages
4 in?

5 THE WITNESS: Yeah, you take away eight pages
6 and it's the ninth one.

7 THE COURT: Yeah. Yeah. Right, the ninth
8 page is the ninth page in.

9 MR. PARKER: May I just have a quick second so
10 I can get to where she's talking about?

11 THE COURT: Yeah, yeah.

12 MR. PARKER: Thank you, your Honor. Let me put
13 my glasses on.

14 THE COURT: It's a statement, it says -- at the
15 top it says March 2009 statement.

16 MR. PARKER: Great. The -- the question was
17 how do you know that he owes the amount that he does?

18 THE COURT: I think the specific question --

19 MS. HUNT: No, I asked --

20 THE COURT: -- was when was the last payment
21 shown to be made.

22 MR. PARKER: Okay, thank you.

23 THE WITNESS: The -- in the transaction section
24 -- section which is in the middle of the page, it shows
25 BA, electronic payment on 2/26 of \$492. Reviewing the

1 rest of the statements there's no subsequent payment made,
2 and that payment also reflects on the electronic data from
3 the field data sheet on exhibit 4 -- 5 --

4 BY MS. HUNT:

5 Q Exhibit 5.

6 A Five, exhibit 5 that's shown as the last payment date of
7 2/26/2009 in the amount of \$492, so those two items match.

8 Q Okay, thank you for that. Now, Ms. Walker, how does
9 Midland utilize the information regarding the purchases
10 that are made and the payments that were made with regards
11 to servicing the account -- or does it tell you anything
12 about the account?

13 A It shows that there's an account due and owing, or there's
14 an account that was started and -- and has a balance on it
15 again.

16 Q Okay. Does it reflect anything about activity or the
17 responsibility of the account?

18 A It shows that -- it shows purchases and adjustments made
19 on the account and in, you know, the -- the page 2, the
20 important information about the account, it does -- excuse
21 me -- let me find the exact spot, though, sorry --

22 Q And when you say "page 2", is this for any other statement
23 --

24 A Any page 2 of any statement.

25 Q -- okay.

1 A Sorry. I can't find the exact phrase but it shows use of
2 the account which upon use of the account by the
3 statements it -- it -- they're agreeing to the terms --

4 Q Okay.

5 A -- that they're using the account and that they're
6 agreeing to pay for the account.

7 Q Okay. Now in your review of the file that you've received
8 that was from FIA to Asset to you, were there any disputes
9 by the Defendant with regards to the existence of the
10 account?

11 MR. PARKER: Objection, relevance.

12 THE COURT: Overruled.

13 THE WITNESS: There was no active disputes on
14 the account when it was purchased.

15 BY MS. HUNT:

16 Q Okay, thank you. Now, stepping away from this -- this
17 account in particular, does your duties or a part of your
18 role include the role of an affiant for Midland?

19 A Yes.

20 Q Okay. And are you familiar with the affidavit processes
21 with regards to Midland Funding?

22 A Yes.

23 Q Okay. Can you explain those processes to me?

24 A Accounts that are sent through the legal channel are
25 partnered with our (indiscernible) firms and internal

1 legal firms. When they receive the accounts in their time
2 that they work on them when they're ready to proceed with
3 litigation they request an affidavit through our system.
4 That affidavit prints out in an affiant's name. The
5 affiant then reads the affidavit, validates the data
6 points contained within the affidavit. When that passes
7 or that all the information is correct, then it is signed
8 and notarized and mailed.

9 Q Okay. So the information that is pulled, can you tell me
10 --you said it's pulled for the purposes of the --
11 generating the affidavit, who does that?

12 A Can you repeat that?

13 Q For the -- the information that's within the body of the
14 affidavit itself, who pulls and reviews that information
15 for the affidavit?

16 A The affidavit when it's requested the firm is required to
17 send along a record, an electronic record, that fills in
18 the -- the information that a financial -- information
19 that they have on the account, the Defendant name, stuff
20 like that, the account number, and then we review it
21 against our system to ensure that the information that
22 they have matches what we have in our system and is
23 accurate before signing the affidavit and sending it out.

24 Q So the affiant makes that verification?

25 A Yes.

1 Q Okay. And once the affidavits are reviewed and drafted,
2 how are they signed?

3 A When a -- documents are ready to be notarized the person -
4 - or the affiant would go and put their name on the notary
5 board, the notary would then come and get them when it was
6 their turn, they would be sworn in and then sign and date
7 the affidavit in front of the notary and hand it over to
8 the notary.

9 Q Okay. And when you say "put your name on the notary
10 board", is this just a board within your offices?

11 A Yeah.

12 Q It's just --

13 MR. PARKER: Where -- where's this going, your
14 Honor? What's the relevance of this?

15 MS. HUNT: Your Honor, the witness was a
16 affiant for a document that was within this case. It
17 appears to be an issue for the Defendant based on the
18 information that was provided. I just want to clarify
19 with Ms. Walker those processes.

20 MR. PARKER: Should she maybe show us the
21 affiant -- affidavit she's talking about?

22 MS. HUNT: I'm not talking about any specific
23 affidavit at this point --

24 MR. PARKER: Then what's the relevance --

25 MS. HUNT: -- at this point.

1 THE COURT: Well, I'll give you a little more
2 latitude. You can continue.

3 MS. HUNT: All right. You know, your Honor, I
4 will abandon that line of questioning.

5 BY MS. HUNT:

6 Q Finally, Ms. Walker, you've indicated that -- and -- and
7 just for clarity purposes, you stated earlier that there
8 was a -- a letter that was previously sent to Mr. Bassett
9 that was returned.

10 MR. PARKER: Second time asked -- asked and
11 answered, your Honor.

12 BY MS. HUNT:

13 Q I'm going to hand you a document.

14 MR. PARKER: Is this a new exhibit?

15 MS. HUNT: It is.

16 THE COURT: Thank you.

17 BY MS. HUNT:

18 Q Can you describe that document?

19 A This was the first letter that was sent out on the case --
20 the account. It was dated August 15th, of 2013. It is a
21 notice of new ownership and (indiscernible) review letter.

22 Q Okay. And was that the letter that you indicated was
23 returned?

24 A Yes.

1 (At 12:07 p.m., Plaintiff's exhibit #8 [Letter],
2 was identified)

3 BY MS. HUNT:

4 Q Okay. And what was the purpose of this letter?

5 A It was the initial communication again to inform the
6 consumer that Midland Funding had purchased their account.

7 Q Okay.

8 A And to give them the disclosure notices on what to do if
9 they dispute the debt.

10 Q Okay. And upon that return of this letter, what -- what
11 happened?

12 A Collection activities were stopped on the account to -- to
13 allow the collector's time to find a serviceable address.

14 Q Okay. All right. So you've indicated that based on the
15 status of this account with Midland Funding, it's your
16 belief that this is a defaulted account where no payments
17 have been made?

18 A Yes.

19 Q How do you come to that conclusion?

20 MR. PARKER: Asked and answered again.

21 MS. HUNT: She hasn't explained how she came to
22 that conclusion.

23 THE COURT: Overruled. Go ahead.

1 THE WITNESS: In my review of the account, there
2 is a balance due and owing on the account that matches the
3 balance received in connection with the sale.

4 BY MS. HUNT:

5 Q Okay. And that information that you received, that
6 information was received as all sales documents or sales
7 accounts would be received by Midland for any other sale,
8 not necessarily specifically this one, is that correct?

9 A Yes, that's correct.

10 Q Okay. And was -- I'm sorry -- you utilized this
11 information for the purposes of -- in general servicing
12 accounts?

13 A Yes.

14 Q And for this particular account you utilized this
15 information for purposes of servicing this account?

16 A Yes.

17 Q Okay.

18 MS. HUNT: Your Honor, at this time I have no
19 further questions.

20 MR. PARKER: Your Honor, may I --

21 THE COURT: Please, cross-exam.

22 MR. PARKER: Thank you, your Honor.

23 THE COURT: Yes.

24 CROSS-EXAMINATION

25 (At 12:09 p.m.)

1 BY MR. PARKER:

2 Q So your counsel didn't ask you how much is owed on the
3 contract. How much is owed on the contract?

4 A \$25,606.65.

5 Q The letter you just introduced, I believe it's exhibit 8,
6 says a different number.

7 A Exhibit what?

8 Q Well, I don't -- I'm not sure she if clarified --

9 THE COURT: Eight?

10 BY MR. PARKER:

11 Q -- it was exhibit 8.

12 THE COURT: Eight, I think, yeah.

13 BY MR. PARKER:

14 Q Let's say it's exhibit 8. That says a different number.

15 A If you look on the right hand side in the statement
16 portion it breaks it down, the balance --

17 Q All right. Hold on; let me get my glasses on. I
18 apologize. The right hand side, okay.

19 A Yes, it has the balance of \$25,606.65 which is the charge
20 off amount --

21 Q All right.

22 A -- and then it has the 5% interest rate accrued at \$768.14
23 --

24 Q How did you come up with 5% of an interest rate?

1 A That was the purchased amount. If you look at the amount
2 the \$26,374.79 matches the purchase balance on exhibit --
3 was that 5 again, 5, it matches that purchased balance.
4 Q I'm really -- I don't think the Court is clear on that
5 either. What is a purchased amount?
6 A It is the amount that's purchased that's owing on the
7 account including any interest that's been assessed to the
8 account by the original lender.
9 Q All right. After the charge off or before charge off?
10 A After the charge off.
11 Q So you're saying the original lender, which is a mortgage
12 loan term, you meant the orig -- original creditor?
13 A FIA Credit Card Services.
14 Q Charges it off but continues to charge interest and then
15 passes it down to you guys?
16 A They -- they have the right to charge interest and sell it
17 with that interest --
18 Q Based upon what? You've said they have a right interest.
19 Even though your counsel didn't bring about how much is
20 owed on this, I'm going to ask you what is their right to
21 charge anything? What is that based upon?
22 A That they're issuing funds for the -- for (indiscernible)
23 of merchandise.
24 Q That doesn't tell me anything. What -- what were you
25 trying to say when you said that?

1 A That -- well, you said how --

2 Q Let me ask you the question again. What is the basis of
3 your charging any amount?

4 A We're not charging anything extra. The amount that we are
5 seeking, that Midland is seeking, is the \$25,606.65 --

6 Q All right. We -- we were talking about how you said after
7 charge off they're allowed to charge interest even though
8 -- you understand what charge off is, correct?

9 A Yes, I do.

10 Q They no longer have the account, but you're saying you
11 received charge off plus interest that FIA is charging
12 even though they no longer own the account.

13 A That's --

14 THE COURT: Well, why are we even taking up
15 time with this since they're not seeking that --

16 MR. PARKER: Because there's no basis to charge

17 --

18 THE COURT: They're seeking the \$25,000 --

19 MR. PARKER: Let me put it this way.

20 BY MR. PARKER:

21 Q You understand that when Midland purchased a document they
22 stand in the shoes of FIA or the original creditor, is
23 that correct?

24 A Yes.

1 Q And they have to go with the terms of the original
2 contract, isn't that correct?

3 A Yes.

4 Q They can't charge something different than the original
5 contract, am I correct?

6 A Yes.

7 Q All right. You've reviewed the original contract?

8 A I have not reviewed the original contract for this
9 account.

10 Q Then as you sit in front of the Court right now you can't
11 tell me what the original contract says as far as interest
12 charged, is that correct?

13 A Not exactly.

14 Q Well, either you can or you can't.

15 A Well, I don't have it in front of me, I haven't reviewed
16 it, so I can't give you the exact numbers.

17 Q All right.

18 MR. PARKER: May I approach the witness what
19 I'm going to call exhibit 9 -- or we can call it my
20 exhibit 1, whatever is easier.

21 THE COURT: We'll call it your exhibit 1, sure.

22 MR. PARKER: I'm going to show you -- you have
23 a copy of this? Oh, may I approach the witness, your
24 Honor?

25 THE COURT: Yes.

1 BY MR. PARKER:

2 Q Ma'am, I'm handing you an affidavit. I'm going to
3 (indiscernible) you through it.

4 MR. PARKER: Sorry, I apologize for not talking
5 in front of a mic.

6 THE COURT: Do you have an extra copy?

7 MR. PARKER: Thank you, your Honor, that's a
8 great observation.

9 THE COURT: How many pages is it?

10 THE WITNESS: It's two pages.

11 THE COURT: I can just have -- I can just have
12 my clerk make a copy of this for me?

13 MR. PARKER: Yes, thank you. I could find it
14 but then you'd have to wait longer.

15 THE COURT: That's all right. This will be
16 faster.

17 MR. PARKER: Wow, it's right there, that's
18 excellent.

19 THE COURT: Yeah, it's right here. Didn't used
20 to be but it is now.

21 MR. PARKER: Yeah. Can you make two copies so
22 I can have one?

23 THE COURT: Sure.

24 MR. PARKER: Thank you, sorry.

25 (Pause)

1 THE COURT: Thank you. Staple this back
2 together for you.

3 MR. PARKER: Are we going to make this exhibit
4 9?

5 THE COURT: You were going to make it 1.

6 MR. PARKER: Oh, okay.

7 THE COURT: Defendant --

8 MR. PARKER: Defendant's exhibit 1.

9 THE COURT: -- 1, yep.

10 MR. PARKER: It's a rebuttal, though, so.

11 BY MR. PARKER:

12 Q You just testified that you have not looked at the
13 contract so you can't tell me the terms, is that correct?
14 That's what you just testified, yes ma'am?

15 A Yes.

16 Q All right. Could you go to paragraph 4 -- well, let's do
17 this. It says at the top it's an affidavit in support of
18 Plaintiff's submission, is that correct?

19 A Yes.

20 Q You are the affiant of this document?

21 A Yes.

22 Q And we won't get into how it was notarized, but you swore
23 that you'd tell the truth, is that -- are you looking at
24 her again, please look at me, you swore you would tell the
25 truth, is that correct?

1 A Yes.

2 Q And it says I serve around the penalty of perjury that the
3 foregoing statements are true and correct --

4 THE COURT: Get to your point, Mr. --

5 MR. PARKER: Parker.

6 THE COURT: -- Parker, thank you.

7 MR. PARKER: Thank you.

8 BY MR. PARKER:

9 Q Paragraph 4 says "attached hereto is a true and correct
10 copy of the credit agreement provided to Plaintiff", is
11 that correct?

12 A It has more to that statement.

13 Q Sorry?

14 A It has more to that statement.

15 Q Well, I was just -- if I --

16 A But, yes, it does begin with that.

17 Q -- so you said you hadn't seen the actual agreement, is
18 that correct?

19 A I'd seen an example if you read further on or an exemplar
20 --

21 THE COURT: Right.

22 THE WITNESS: -- of such agreement --

23 BY MR. PARKER:

24 Q All right. So is that what --

25 A -- applicable to accounts.

1 Q All right. So is that what you meant when you said that
2 you'd seen an example of such agreement?

3 A Yes.

4 Q Thank you. And what did that agreement say as far as the
5 terms?

6 A It was -- I have not a concrete memory like that. I -- I
7 cannot remember the exact --

8 Q But you seem to remember everything that Mr. Basset --

9 A -- terms.

10 Q -- did wrong or what he charged. How do you not remember
11 the terms of agreement you said that you reviewed?

12 A I can't remember every word I've ever read -- read.

13 Q All right. So how does the Court know what you've looked
14 at if it's not in front of you? It doesn't have a memory
15 either but you've got to show that there was a contract
16 this was based upon, and it is your testimony, is it not,
17 that you've never looked at the contract in this case, is
18 that correct?

19 A I said I didn't look at the exact contract.

20 Q Fair enough. Have you ever looked at Bassett's contract?

21 A I have looked at an exemplar agreement that was provided
22 by FIA Credit Services.

23 Q But not Bassett's contract, yes?

24 A No.

25 Q No, I have not looked at Bassett's contract.

1 A Correct.

2 Q So it wouldn't have passed with FIA to Asset Acceptance,
3 as far as you know, is that correct?

4 A FIA Card Services sent an exemplar of an agreement --

5 Q Not the actual --

6 A Not the actual agreement.

7 Q All right. And you also did not provide the Court some
8 documentation -- and let's do this appropriately -- I
9 believe it was exhibit 2, if you would go to that, ma'am?
10 Correct me if I'm wrong, the bill of sale assignment of
11 loans. Now I'm going to go over this stuff again because
12 when we went over it before it was having to do with
13 whether it comes as an exhibit --

14 MR. PARKER: And I very much apologize for
15 repeating this, your Honor, but I've got to create a
16 record here.

17 BY MR. PARKER:

18 Q There is no reference in exhibit C that Mr. Bassett's debt
19 passed from FIA Card Services to Asset Acceptance, is that
20 clear --

21 THE COURT: Okay, you established that
22 previously so what's the next point.

23 MR. PARKER: Uh, okay. But, your Honor, I'd
24 like to have her say that, if you don't mind. There's no
25 record --

1 THE COURT: Well, she's already said it many
2 times previously on your questions. She said no, Mr.
3 Bassett's not specifically identified in this -- in this -
4 - in this document.

5 BY MR. PARKER:

6 Q And you understand for him to be libel to Midland because
7 this is a chain of title case, right? We can't just say
8 it's part of it, we have to show it's part of it. would
9 you agree? Or you just don't think that's true?

10 A I think the documents show a chain of title and the fact
11 that I've reviewed --

12 Q All right.

13 A -- them and the sale files --

14 Q Thank you. Show me the documents that are attached to
15 exhibit 2 that show a chain of title, thank you?

16 A This document right here shows that the accounts that were
17 owned by FIA Card Services were transferred to Asset
18 Acceptance on December 26th of 2012. This BAC, Bulk Accept
19 Acceptance, LLC sale file, 1212final.xlsx contained Mr.
20 Bassett's account.

21 Q Okay, both the Court and I can read, where's the proof
22 that his account was included in that chain -- in that
23 bulk, as you call it, where's that proof so the Court can
24 look at it? It can't make a dec -- decision on what you
25 want to see until you show it. Please show the Court his

1 A It states that -- it says all of the loans included on the
2 electronic --

3 Q That's right.

4 A -- file --

5 Q I need to waste my time, and I certainly don't want to
6 waste yours, but the word "loan" is used eleven times, the
7 word credit time -- card is not used. Do you wish to read
8 that or will you take my word for it?

9 A I'll take your word for it.

10 Q Okay. So this was an assignment of loans from either Bank
11 of America, could be a mortgage loans, if it was credit
12 cards they'd say the difference, correct?

13 A Not necessarily, this is --

14 Q All right. Do you have proof that it was credit cards
15 that were being --

16 A I don't have direct proof.

17 Q That's right, you don't. By the way, in your review of
18 the exemplar, I think you called it or example of the
19 contract, what did it say as far as the terms?

20 A I don't remember exactly.

21 Q All right. I started my opening statement talking about a
22 choice of law, can you tell me what the choice of law
23 provision when you looked at the example?

24 A I cannot tell you --

1 MS. HUNT: Your Honor, objection. Those are
2 legal terms and obviously the witness is not a lawyer --

3 MR. PARKER: Those are the terms that she's
4 reviewed, your Honor. I can't get any more simpler than
5 that. She's reviewed it.

6 THE COURT: Do -- do you know anything about
7 choice of law in -- in these documents?

8 THE WITNESS: I read it in the thing but I
9 can't remember anything about it.

10 MR. PARKER: Right.

11 THE COURT: She can't remember. Next question.

12 BY MR. PARKER:

13 Q But you did read there was a choice of law you just said?

14 A I -- I read the agreement but I can't remember --

15 Q Okay.

16 A -- any specific --

17 Q Let me pass to you the --

18 A -- thing about it right now.

19 Q All right. Let me ask you do you know what a choice of
20 law is? Did it peak your interest as to what that was?

21 A No.

22 Q All right. Do -- are you aware that these are Delaware
23 companies in the chain of title, correct?

24 A Yes.

1 Q All right. And they have a provision in there where the
2 Delaware company that created the contract says we want
3 everything applied in Delaware jurisdiction, do you recall
4 reading that or know what that means?

5 MS. HUNT: Your Honor, I'm going to object. I
6 don't know the relevance of this. This was a topic or an
7 -- an objection that was a part of the Defendant's motion
8 for summary disposition which this -- I'm sorry, his
9 counter-claim which was disposed of by our motion for
10 summary disposition. So I don't know --

11 MR. PARKER: Before that happened it was in my
12 affirmative defenses --

13 MS. HUNT: -- what the relevance is for this
14 purpose --

15 MR. PARKER: -- #15, your Honor. I'm entitled
16 to talk about it. It's my aff -- it's the same as a
17 pleading.

18 THE COURT: Okay.

19 MR. PARKER: And that wasn't kicked. Yes,
20 your Honor?

21 THE COURT: Yeah.

22 MR. PARKER: Thank you, your Honor.

23 BY MR. PARKER:

1 Q I'm going to provide you an exemplar, let's call it an
2 exemplar, and you tell me if this refreshes your memory as
3 to the choice of law. Do you want me to tell --

4 MR. PARKER: May I approach, your Honor?

5 THE COURT: Yeah.

6 MS. HUNT: Your Honor, I haven't seen this
7 document.

8 THE COURT: But, you know, here -- here -- my
9 question --

10 MR. PARKER: Is to refresh your memory.

11 THE COURT: -- is why have you not brought this
12 -- if this is going to be dispositive, in your opinion of
13 my either lack of jurisdiction or -- well, I'll leave it
14 at that, why -- why wasn't this brought before the Court
15 prior to this?

16 MR. PARKER: Put it right in the pleading. I -
17 - I --

18 THE COURT: Well --

19 MR. PARKER: -- what I wanted to do is I kept
20 asking them for the actual agreement --

21 THE COURT: Yeah.

22 MR. PARKER: -- they won't give it to me and
23 they will say it's either A, B, C, D and their response is
24 none of those are the original agreement. My job is not
25 the burden of proof. It's their job, your Honor.

1 THE COURT: Right. So let's make this --
2 MR. PARKER: I don't have the --
3 THE COURT: -- a little faster. Tell me what -
4 - give me a copy of this and show me where it is and what
5 you think --
6 MR. PARKER: Thank you.
7 THE COURT: -- that means and I can rule --
8 MR. PARKER: That's what I can do.
9 THE COURT: -- on it pretty quick I think.
10 MR. PARKER: Thank you. May I approach?
11 THE COURT: You may.
12 MR. BASSETT: Brian, do you also want to give
13 him the caselaw?
14 MR. PARKER: I've got caselaw but you don't
15 want to be inundated.
16 THE COURT: Right.
17 MR. PARKER: Go to 15, your Honor. Is it 15?
18 MR. BASSETT: 26.
19 MR. PARKER: 26, your Honor. You know we had
20 a motion to compel where I was trying to get documents out
21 of them, so I'm trying the best I can, your Honor. If you
22 look at 26 law titled "Governing Law", may I read it into
23 the record?
24 THE COURT: Yeah.

1 MR. PARKER: The agreement in your account
2 shall be governed by and interpreted in accordance with
3 Delaware law -- these are two Delaware corporations -- and
4 the laws of the United States regardless of where the
5 company's located or where the cardholder uses the
6 account, you hereby submit to the jurisdiction of any
7 state or federal court in Delaware, this agreement is
8 entered to -- into Delaware and all credit will be
9 extended by us from Delaware -- by the way, your Honor,
10 Delaware has a three year statute of limitations which
11 ended on December 26th, 2012 --

12 THE COURT: It says any state or federal court
13 located in Delaware --

14 MR. PARKER: In Delaware, correct.

15 THE COURT: Well, there's not two states or
16 five states in Delaware, it says any state or federal
17 court located in Delaware.

18 MR. PARKER: Yeah, that's in Delaware.

19 THE COURT: Huh? Any state, it says any state
20 --

21 MR. PARKER: Jurisdiction --

22 THE COURT: -- or federal court in Delaware --

23 MR. PARKER: Oh, I get what you're saying.

24 Your Honor, it means any state of federal court, meaning -

1 - like I do work in federal court in Michigan and Florida.
2 In Florida there's the state of Florida courts --

3 THE COURT: Okay, all right. Go ahead.

4 MR. PARKER: Okay? I just read about this in
5 the New York Times, it's called -- it's special comer and
6 they did -- they did -- and so --

7 THE COURT: Go ahead. I see what you're --

8 MR. PARKER: -- and, by the way --

9 THE COURT: -- I see what you're saying. It
10 could be interpreted to mean --

11 MR. PARKER: An ambiguity's on the draftsman,
12 your Honor.

13 THE COURT: Okay, go ahead.

14 MR. PARKER: So the caselaw in Michigan is
15 quite clear that you have to follow the choice of law of
16 the contract, just as you have to follow the terms.

17 THE COURT: Okay.

18 MR. PARKER: They're attempting to do -- this
19 is a breach of contract action, they're attempting to say
20 the contract was breached. Well, they have to follow the
21 contract, too. And I can give you no better way that I've
22 showed you, Delaware has a three year statute of
23 limitations, 226, 2012, and frankly, she's aware of that.
24 She should have said something. I tried to get the

1 information and I would ask before I go any further, the
2 Court rule that this be dismissed with prejudice --

3 THE COURT: Well, I'd like to listen to the
4 response to that --

5 MR. PARKER: May I just finish. I -- I --

6 THE COURT: Yeah, yeah.

7 MR. PARKER: -- I know I've yelled at you and I
8 apologize, you're the boss, your Honor, but I'd like this
9 dismissed without prejudice because I recognize they do
10 have the right to bring it again, but the statute of
11 limitations in Delaware is three years, so I don't want to
12 be draconian but we have to follow the contract.

13 THE COURT: Okay.

14 MR. PARKER: And this is a breach of contract
15 action, your Honor. Thank you.

16 THE COURT: All right.

17 MS. HUNT: Your Honor, this was a matter that
18 was brought up with -- on Defendant's counter-claim. The
19 trace of law provision is -- it's been stated by court
20 after court after court, and I apologize that I don't have
21 the caselaw here in front of me but it was stated --

22 MR. PARKER: I do, your Honor.

23 MS. HUNT: -- in my motion for summary
24 disposition that the court has -- that most courts see the
25 statute of limitations as a pro -- more procedural rather

1 than substantive. And in this instance -- and -- and I
2 believe your Honor is correct in reading that this can be
3 brought in any court as sought by the -- by the creditor
4 in this matter, and at this point it's Midland Funding.

5 But the issue of statute of limitations is one
6 that is more of procedure in which the location of the
7 Defendant --

8 THE COURT: Well --

9 MS. HUNT: -- would be --

10 THE COURT: -- that's -- that's the second part
11 of his objection, the -- the statute, and that would be --
12 he's saying that if you were restricted only to Delaware
13 state courts and federal courts, then the statute,
14 allegedly, in Delaware, has run.

15 MS. HUNT: Um-hmm.

16 THE COURT: We'll accept that for the sake of
17 the argument.

18 MS. HUNT: Sure.

19 THE COURT: So -- but first, before we get
20 there, he's saying you can't bring this action in Michigan
21 because this says it has to be brought in Delaware. So,
22 what's your response to that?

23 MS. HUNT: Again, as -- as listed in those --
24 that caselaw, those -- the -- the governing provisions are
25 basically for -- for purposes of proc -- substance rather

1 than procedure. And in this instance had -- had suit been
2 brought against Mr. Bassett in the state of Delaware, that
3 violates the federal -- the FDCPA. Mr. Bassett is here in
4 the state of Michigan, so following procedure and the
5 FDCPA, he's -- he's -- suit is required to be brought in
6 this inst -- or in this state. I --

7 THE COURT: I'll tell you what I'm -- okay, go
8 ahead, I won't cut you off. Keep going.

9 MS. HUNT: No, I'm sorry, go ahead.

10 THE COURT: No, I was just going to say I want
11 to see some -- some caselaw --

12 MR. PARKER: I've got it.

13 THE COURT: -- on this issue, and it's 12:30 so
14 I'm going to take a noon -- take an hour recess, and when
15 you come back you can have a chance to show me anything --

16 MR. PARKER: May I approach and give you four
17 cases directly on point, your Honor?

18 THE COURT: Sure, you may.

19 MR. PARKER: Thank you. I'm ready for you.

20 THE COURT: And -- and do you have copies for
21 her? I mean, does she know what we're talking about here?

22 MR. PARKER: Can I put them in the record, your
23 Honor?

24 THE COURT: You -- you -- yeah.

1 MR. PARKER: Thank you very much. I am
2 prepared to you. First case is noted are the Michigan
3 courts generally enforce contractual forum selection
4 clauses, MCL 600.6453, that is the *Offerdahl* case. I will
5 read the cite for you, your Honor, thank you for your
6 patience, I know you're hungry, *Offerdahl* versus
7 *Silverstein*, 224 Mich App 417, 419, 569 N.W.2d 834, a 1997
8 case. The second case is the *Turcheck* case, *Turcheck*
9 versus *American Financial*, 227 (sic) Mich App 341, 725
10 NW2d --

11 THE COURT: We don't need the second part.

12 MR. PARKER: All right. Thank you. And that
13 says Michigan Legislature is elected to honor the parties
14 contractual choice of forum in the absence of certain
15 factors by requiring a Michigan court to dismiss or stay
16 actions in which it is demonstrated that the parties have
17 agreed, the parties have agreed, that a forum other than
18 Michigan shall be the exclusive forum for resolution of
19 disputes --

20 THE COURT: Well, that's not what this provision
21 says but --

22 MR. PARKER: -- it's -- I mean, it --

23 THE COURT: I mean, no, I mean seriously --

24 MR. PARKER: -- you -- these are her arguments
25 she's supposed to make, not you, your Honor.

1 THE COURT: -- this says -- this talks about
2 governing law, it doesn't say that Delaware is the
3 exclusive jurisdiction in which case, you know, dispute
4 can be resolved. I mean, it says Delaware law --

5 MR. PARKER: Yeah --

6 THE COURT: -- it -- it says two things. It
7 says the agreement is governed and interpreted in
8 accordance with Delaware law and the law of the United
9 States regardless of where the company's located or where
10 the card -- card -- cardholder uses the account, and it
11 says you, as the cardholder, are hereby -- you -- you --
12 and you hereby submit to the jurisdiction of any court --
13 state or federal court located in Delaware --

14 MR. PARKER: In Delaware.

15 THE COURT: -- yeah, I know, I said that --

16 MR. PARKER: She's not bringing Delaware law in
17 this case, your Honor, so --

18 THE COURT: I -- I under --

19 MR. PARKER: -- at the very least what you're -
20 - where you're going trying to help her, she's not
21 bringing Delaware -- the court in Michigans (sic) are very
22 clear, Michigan courts will enforce a forum selection
23 clause as written.

24 THE COURT: Well, I've -- I've seen forum
25 selection clauses and this is not a forum selection clause

1 to the extent that it's exclusive. It doesn't say -- I've
2 seen plenty of them that say, you know, a -- a dispute or
3 a lawsuit or -- well -- may only be resolved and the
4 parties agree that it may only be brought in the state of
5 X or Y. This doesn't say that, but this might say that if
6 there was some question about whether you could be, you
7 know, sued in the case, that you have to look to Delaware
8 law --

9 MR. PARKER: All right. At a minimum they
10 haven't done that so they --

11 THE COURT: Okay.

12 MR. PARKER: -- brought the wrong case in the
13 wrong place. If you --

14 THE COURT: Well, I'll -- I'll look at --

15 MR. PARKER: -- want it in front of your court
16 with Delaware law, I got a couple of bars not -- not --
17 neither one of them is Delaware.

18 THE COURT: Well, I'll look at your cases over
19 lunch and then -- and we'll ask counsel to respond.

20 MR. PARKER: Absolutely. I just want to
21 correct something.

22 THE COURT: Sure.

23 MR. PARKER: The agreement in your account
24 shall be governed and interpreted, there's not one bit of
25 governance or interpretation by this Plaintiff who has the

1 burden of proof using Delaware law, do we agree, your
2 Honor?

3 THE COURT: I don't know. I don't know that we
4 need to get to -- I haven't heard -- come to anything that
5 needs to be decided about interpreted or dealt with --

6 MR. PARKER: I am not surprised that you just
7 said that, your Honor, but if you want to keep asking I
8 can give you more stuff or I can give you these files
9 right now.

10 THE COURT: Well, I'll take a -- I'll take a --

11 MR. PARKER: There's only so much I can do.
12 I'm prepared for you, your Honor --

13 THE COURT: Okay.

14 MR. PARKER: -- and you seem to want to help
15 her more than you want to help me. Do you want my
16 caselaw, your Honor?

17 MR. PARKER: Okay, may I?

18 MR. BASSETT: Just those two?

19 MR. PARKER: Just these two, yes.

20 THE COURT: I do.

21 MR. PARKER: I'm approaching the bench, your
22 Honor.

23 THE COURT: Thank you.

24 MR. BASSETT: Those are the two published.

25 MR. PARKER: These are published cases.

1 THE COURT: Perfect. I'll look at them, thank
2 you.

3 MR. PARKER: Thank you very much, your Honor.

4 THE COURT: All right. We'll take a recess and
5 reconvene at 1:30 or thereabouts.

6 THE COURT RECORDER: All rise.

7 (At 12:33 p.m., the witness temporarily left the
8 stand)

9 (At 12:33 p.m., a recess was taken; resumed at
10 1:47 p.m.)

11 THE COURT RECORDER: -- session.

12 THE COURT: You may be seated. All right.

13 Are we on the record?

14 THE COURT RECORDER: (Inaudible)

15 THE COURT: Okay. Over the noon recess, I did
16 examine the cases cited by Mr. Parker. I did look at some
17 other cases as well. Anything further?

18 MS. HUNT: Yes, your Honor.

19 THE COURT: Sure.

20 MS. HUNT: Over the break -- thank you for
21 giving me the opportunity to --

22 THE COURT: Um-hmm.

23 MS. HUNT: -- do a bit more research on this
24 issue. And I would like -- like it to be noted that the
25 agreement that the Defendant is utilizing is not one that

1 he obtained from our office. It is not one that he
2 obtained from Midland themselves, or from Bank of America,
3 so it's curious as to where that -- that document came
4 from. But, nonetheless, we did a bit of research and
5 there are two cases in particular.

6 Well, first, the Michigan statute 600.75 -- 745
7 states that the choice of law provisions are generally
8 accepted and utilized with a few exceptions, and one of
9 them is if the other state would subst -- would be
10 substantially less convenient place for the action to take
11 place. And in this instance both the parties are here in
12 the State of Michigan. And, again, the FDCPA requires
13 that suit be filed in the location of the Defendant.

14 Further, there's a case of *Hudson v Mather*, it's
15 283 Mich App 91, which states that even if there is a
16 choice of law provision, that if the parties throughout
17 the case have referenced and utilized Michigan law, then
18 Michigan would be the place where the trial, the state,
19 would be held. Further, *Lakeland Regional -- Regional*
20 *Health Systems versus Walgreen's Health Initiatives Inc.*,
21 604 of supplement 2d 983, is of the Western District of
22 Michigan, it states that -- I'm sorry, I'm sorry, I
23 apologize, your Honor, the Lakeland Regional Health System
24 states that in the event that both parties utilize that,
25 the Michigan law, then Michigan would be the place that

1 this trial was held. It is *Hudson v Mather* that states
2 that parties' choice of law provision will not be followed
3 if the chosen state has no substantial relationship to the
4 parties or the transaction and there is no reasonable
5 basis for choosing that state's law.

6 And in this instance again, your Honor, both the
7 parties are here in the state of Michigan. Midland is
8 taking action in the State of Michigan, the Defendant is
9 here within the state of Michigan, and at that this point
10 there is no relationship between the parties and the state
11 of Delaware which is referenced in the agreement that the
12 Defendant has set forth. So, your Honor, we believe that
13 the lawsuit was properly brought in the state of Michigan
14 pursuant to the case law I just cited. It is in the
15 proper venue and, again, the document provided by the
16 Defendant was not provided by the Plaintiff in this
17 matter.

18 THE COURT: Okay, thank you.

19 MR. PARKER: Thank you --

20 THE COURT: Yes.

21 MR. PARKER: -- your Honor. Just to touch upon
22 what Ms. Hunt said. We've already established as the
23 Court knows without even me asking the witness, Midland
24 stands in the shoes of the contracting party, so it
25 wouldn't be an inconvenience. Otherwise, they are not the

1 contracting party. So these two people got together and
2 they had a marriage called a contract and they agreed that
3 Delaware and nowhere else would be where you need to go.
4 Midland can't say we're already here. They're the ones
5 that filed it against the contract which they stood in the
6 shoes of the contracting party.

7 Number two, I asked for the original contract,
8 you can't go anywhere with a breach of contract without
9 the terms of the contract, and it wasn't me that brought
10 up the exemplar, it was Ms. Walker that said I had to
11 follow an example. I didn't have the original contract,
12 and I said, well, I happen to have one and she says, okay,
13 and she looked at it and that's when she -- she opened the
14 door. When she opened the door, which Plaintiff had --
15 excuse me -- Defendant had put in his affirmative defenses
16 and confirmed those affirmative defenses, she opened the
17 door and we presented an exemplar.

18 And the reason why she told you about the
19 exemplar, your Honor, because she told you in a sworn
20 affidavit that she'd reviewed the contract. When she was
21 put in a corner like that she said, no, I reviewed an
22 exemplar. Well, here's an exemplar. She doesn't get to
23 choose that, too, to avoid telling us about so that's why
24 that came out. So Lakeland wouldn't apply because if you
25 stand in the shoes of the contracting party you are in

1 Delaware. Everybody's Delaware here. Mr. Bassett did not
2 bring this case, they did, the contracting party, so,
3 therefore, this should not go forward, this case should be
4 dismissed without prejudice, they can bring it in Delaware
5 according to the contract. Thank you, your Honor.

6 THE COURT: Thank you.

7 MS. HUNT: Just briefly, your Honor.

8 THE COURT: Yeah.

9 MS. HUNT: Mr. Parker just referencing this
10 agreement, this agreement that supposedly his client --
11 well, that his client did breach, but it's important to
12 remember that this is a credit card agreement, or a credit
13 card breach of contract case. And it's been stated over
14 and over by both Michigan statute and state -- or court
15 law -- case law that an agreement isn't necessary and that
16 an application isn't necessary. The fact that the
17 Defendant utilized the credit card, their statements
18 reflecting the use of the credit card, purchases and
19 payments and the Defendant received those account
20 statements proves the existence of an agreement. And
21 those statements reflect the terms of the agreement, along
22 with additional language with regards to default, what
23 happens in the event of default, but it also includes the
24 interest rate, all of that other information that would be
25 pertaining within an agreement, so.

1 THE COURT: Thank you. Anything else?

2 MR. PARKER: Sorry, but she brought something
3 new.

4 THE COURT: That's okay.

5 MR. PARKER: It's a breach of contract action.
6 She supposed to supply the contract, and I tried to get it
7 out of the people that are suing and I was unable to do
8 that, but in order to get to damages, your Honor, as you
9 know, you have to prove an existence of the contract that
10 shows you how you get to damages. So I'm trying to get to
11 how they say she owed -- Mr. Bassett owes a certain amount
12 in a breach of contract context.

13 If they want to say there is not contract, I'm
14 happy to stand on that because then what are they claiming
15 was breached? They can't say this person owes \$25,000 if
16 they don't have the terms why, so with Ms. Walker opening
17 the door, I provided the exemplar, and the exemplar is
18 very clear that she depends upon to get to -- from point A
19 to point B that you have to use the choice of
20 (indiscernible) of it, that's the parties contracted --

21 THE COURT: Thank you.

22 MR. PARKER: -- you can't avoid that.

23 THE COURT: All right.

24 MR. PARKER: Thank you.

25 THE COURT: First of all, with respect to what

1 was provided by defense counsel with regard to an --
2 apparently an exemplar of a Bank of America credit card
3 agreement, leaving aside whether it is this agreement or
4 not, but they're relying on that in support of the
5 Defendant's contention that this lawsuit may only be
6 brought in Delaware. The Court rules and finds that this
7 is not a -- a forum selection clause, it is a governing
8 law clause, and it does not say it may only be brought in
9 Delaware, it says essentially the -- the gravamen of what
10 the paragraph does is do two things. Number one, it says
11 it's -- it's -- this is governed by and interpreted in
12 accordance with Delaware law, secondly, regardless of
13 where you are you agree to submit to the jurisdiction of a
14 Delaware court. It doesn't say exclusive.

15 The cases provided by defense counsel are easily
16 distinguishable because in each of those cases it was a
17 forum selection clause where it said both parties -- we're
18 looking first at the *Turcheck* -- *Turcheck* case. It says
19 both -- quote both parties hereby agree that the Circuit
20 Court of Pierce County, State of Washington, shall have
21 exclusive jurisdiction to hear -- hear and determine any
22 disputes. In the case -- the other case I was provided by
23 defense counsel, which is the *Hansen Family Trust* case, in
24 that case there were apparently two competing agreement
25 clauses. One said if the parties agree and stipulate that

1 any and all claims, demands, disagreements, etcetera,
2 shall be adjudicated exclusively in Pima County, Arizona
3 Superior Court. The other clause apparently that was hit
4 -- said this shall be -- shall be adjudicated exclusively
5 in the Federal or State Court sitting in Delaware, which
6 court shall have the sole and exclusive jurisdiction and
7 venue for adjudication of all claims. That's not in this
8 language. This language in this clause, 26 -- 26, does
9 not say that. So, I'm going to deny your motion to
10 dismiss and we'll continue.

11 Let me -- and you can have these back, sir.
12 This is your copy of your --

13 MR. PARKER: Your Honor, you said -- but
14 Delaware law applies in your ruling. So we're going to --

15 THE COURT: So?

16 MR. PARKER: -- apply Delaware law?

17 THE COURT: I don't know. No one's told me
18 that anything's different about Delaware law then Michigan
19 Law so --

20 MR. PARKER: But I don't have the burden of
21 proof. I'm telling you it's different.

22 THE COURT: I -- I -- I -- not necessarily.

23 MR. PARKER: You're necessarily --

24 THE COURT: I -- as far as I'm concerned, right
25 now, unless you contend that for some reason some other

1 provisions apply and you can show me what they are, we're
2 going to proceed under Michigan law. Go ahead.

3 MS. HUNT: Thank you, your Honor. Ms. Walker,
4 take the stand.

5 THE COURT: And, furthermore, even if arguendo,
6 it could have been claimed that this was a -- a
7 contractual forum selection agree -- clause or agreement
8 for the reasons argued by Plaintiff's counsel, the
9 statute, 600.745(3) provides exclusions to that, and one
10 of them is if it would be substantial as convenient for
11 trial of the action then in this state, then everybody in
12 this case is in this state, the Defendant's in this state,
13 the Plaintiff counsel is in this state, the Defendant
14 resided in this state when --

15 MR. PARKER: Plaintiff is in Minnesota, your
16 Honor.

17 THE COURT: Right now Plaintiff's counsel, who
18 has appeared in this case, is here so. Anyway, for those
19 reasons -- but more importantly, unequivocally, this is
20 not an exclusive form selection clause. Please proceed.

21 CROSS-EXAMINATION CONTINUED

22 (At 1:59 p.m.)

23 BY MR. PARKER:

24 Q So you've not seen the contract, that was your earlier
25 testimony?

1 A I've not seen the one that was --
2 Q Applied to Mr. Bassett?
3 A Right.
4 Q All right. So you haven't seen Mr. Bassett's contract,
5 and so you wouldn't be able to say how much interest he
6 was charged, correct?
7 A The interest was --
8 Q Pursuant to the contract.
9 A Not pursuant to the contract, but the interest was laid
10 out on the --
11 Q All right, that's what I was looking for.
12 A -- statements.
13 Q And you were also saying we're almost done with exhibit 2,
14 I -- I won't go over it because the Court will yell at me,
15 but clearly there's nothing mentioned about the credit
16 card in exhibit 2?
17 A No.
18 Q Unless you see something, right? And also the first
19 sentence says this bill of sale and assignment of loans is
20 made and entered into between Asset Acceptance, the
21 purchaser, and FIA Card Services, the seller, pursuant to
22 the loan/sale agreement, correct?
23 A Yes, that's what it says.
24 Q And you don't have a copy of that with you, is that
25 correct?

1 A No, I do not.

2 Q You're not entering that in -- but even though this bill
3 of sale is pursuant to the agreement you don't have it
4 today to give to the Court, correct?

5 A No, I do not.

6 Q All right. So there are terms in this contract, let's
7 call it a contract, it isn't, it's a bill of sale, that
8 need to be explained and they spec -- specify those terms
9 that need to be defined you have to go to the purchase
10 agreement, correct, it says that or you want me to read it
11 to you again?

12 A No, it says the -- pursuant to the loan agreement it's
13 made and entered into between Asset and FIA Card Services
14 pursuant to the loan agreement.

15 Q Right. So if you want definitions you'd have to go to the
16 purchase agreement that you don't have today, is that
17 correct?

18 A No, I do not.

19 Q All right. So we don't have the pool of docs -- of -- of
20 debts, we don't have the purchase agreement that should be
21 attached to this, this is -- itself is called exhibit C, I
22 don't know where A and D and B are, but we have nothing as
23 you agreed before, you have nothing that shows the Bassett
24 debt transferring with this document, is that correct?

25 A Not with me.

1 Q Thank you.

2 MR. PARKER: Did the Court hear that, your
3 Honor?

4 THE COURT: I did.

5 MR. PARKER: Thank you very much, your Honor.

6 BY MR. PARKER:

7 Q So, and that's what a chain of title is. You know what a
8 chain of title is? Should I explain it or do you know?

9 A I know what a chain of title is.

10 Q And each one is as strong as its weakest link, so you just
11 described no link. So let's go to the Asset Acceptance
12 contract that you say exists between Asset Acceptance and
13 Midland Funding, do you have that in front of you?

14 A The bill of sale?

15 Q All right, let's call it that. And I apologize for the
16 delay, ma'am, I've got to find it because if I'm talking
17 about the wrong one I'll get yelled at. Do you have a
18 copy -- oh, I've got it. Okay. All right. So, now,
19 exhibit 4 is it? Do you have listed as exhibit 4?

20 A Yes.

21 Q The bill of sale, at least that's what it says, correct?

22 A Yes.

23 Q And that it says there's an -- an accompanying document
24 schedule A?

25 A Yes.

1 Q And you've no evidence that there's any debts with you
2 today passing with the transfer of -- did they call it a
3 pool? With the pool from Asset Acceptance to Midland
4 Funding, you've no evidence that the Bassett debt passed
5 with that, is that correct?

6 A Exhibit 5 is a redacted --

7 Q Oh, okay.

8 A -- version of the --

9 Q Let me --

10 A -- electronic sale mentioned in exhibit 4.

11 Q Okay, hold on. Which do you have as exhibit 5?

12 A The field data sheet.

13 Q Will you hold it up for me? Oh, that was created in 2013,
14 right?

15 A That was printed.

16 Q After this document was created?

17 A After which document?

18 Q The -- exhibit 4.

19 A It was printed from the sale file from this exhibit 4.

20 Q All right. That's what you're saying. By the way, do you
21 know how much money I have in my hand?

22 A No, I do not.

23 Q Why?

24 A Your hand is closed.

25 Q You can't see it, right? Would you just take my word for

1 it that I've got \$5 in there?

2 A No.

3 Q Because you have to see evidence, is that correct? Is
4 that correct?

5 A Yes.

6 Q Right. So you don't have any accompanying evidence with a
7 bill of sale, exhibit 4, showing the Bassett debt
8 traveling with it, is that correct? Do you see evidence
9 travelling with it? You've attached Schedule A, does that
10 have the Bassett debt?

11 A The electronic file that was transferred with this bill of
12 sale, yes.

13 Q And it shows for us today, could you just show me where it
14 shows that today?

15 A This is a part of that electronic --

16 Q No, you're showing us something later --

17 A -- sale --

18 Q -- on, ma'am, stick to the --

19 A -- but this is a part of that electronic sale --

20 THE COURT: Counsel, you know, it's really
21 interesting you think that it -- your questions are so
22 clever, she's testified about six times now that Mr.
23 Bassett's name was not in these documents, but that a file
24 at the end that was attached as exhibit A contained among
25 maybe tens of thousands of others, Mr. Bassett's debt. I

1 heard what you said before, I've heard it six times,
2 you're not making any progress or headway with me by
3 continuing to ask her the same question about that there -
4 - his name is not in there so --

5 MR. PARKER: Your Honor, thank you.
6 Respectfully, you're a judge, but you don't get to judge
7 the way I do my job. You already -- you've already dec --

8 THE COURT: Oh, I think you're -- I think
9 that's where you may be confused. I'm not going to --

10 MR. PARKER: Right.

11 THE COURT: -- but I could.

12 MR. PARKER: Yeah.

13 THE COURT: But I'm not going to.

14 MR. PARKER: You've already come to a decision
15 on this case.

16 THE COURT: No, I haven't. No, I haven't.

17 MR. PARKER: You've heard her say she has no
18 connection and he has no connection yet you just said I
19 saw the debts. You've seen nothing of the debt transfer
20 that you just told her --

21 THE COURT: I didn't say anything about seeing
22 the debts.

23 MR. PARKER: All right. Thank you.

24 THE COURT: I said nothing about seeing the
25 debts.

1 MR. PARKER: Thank you. Thank you.

2 THE COURT: I said she's testified six times
3 that the debt transferred by way of a file electronically.
4 I -- you have made your point in spades that there's
5 nothing in the documents with Mr. --

6 MR. PARKER: Bassett.

7 THE COURT: -- Bassett's name on it until we
8 get down to the ones that are attached -- or marked as --

9 MR. PARKER: I will be -- I will tell you
10 something --

11 THE COURT: -- exhibit --

12 MR. PARKER: -- personal, your Honor. I am
13 just trying to make sure that you get it. You've told me,
14 Parker, you're being too much, I get it, Parker, is that
15 what you're saying?

16 THE COURT: Next question.

17 MR. PARKER: Thank you, your Honor.

18 BY MR. PARKER:

19 Q As I said before with the last exhibit, a chain of link --
20 a link is a -- a chain is only strong as its weakest link.
21 You've testified there was no evidence in the first chain
22 of Mr. Bassett's debt, now in the assignment chain you
23 still have not presented the Court with evidence --

24 THE COURT: Is that a question?

25 MR. PARKER: I haven't finished, your Honor.

1 THE COURT: Put it in a question.

2 BY MR. PARKER:

3 Q You still --

4 MR. PARKER: I --

5 BY MR. PARKER:

6 Q -- you still haven't produced evidence to the Court that
7 the debt followed this particular document, correct?

8 A Exhibit 5, the date correlates to the date of the bill of
9 sale, and that's part of that electronic sale that was
10 transferred.

11 Q All right. Thank you. And why did you not bring that
12 contemporary with August 8th as opposed to when that was
13 created by your testimony by Midland? I'm talking about
14 the documents created by Asset and Midland. Are you
15 saying Midland created exhibit 5 at the same time and
16 what's your evidence?

17 A Exhibit 5 is printed, it's not created. It's printed from
18 the electronic sale that was transferred.

19 Q All right. If I could see the electronic sale so we can
20 show the Court?

21 A This is the redacted portion that only reflects --

22 Q For the record, you're pointing to exhibit 5.

23 A Yes. That only reflects the consumer's account that was
24 pulled directly from that sale file.

25 Q Right. And -- and does it say it was a Visa or a

1 MasterCard?

2 A It does not.

3 Q All right. So it's missing some information, is that
4 correct?

5 THE COURT: That's your -- I mean, that's your
6 interpretation.

7 MR. PARKER: All right.

8 BY MR. PARKER:

9 Q All right. Is it missing the fact that it's --

10 MR. PARKER: See, you're doing it again, your
11 Honor. You're saying you're neutral and you're --

12 THE COURT: No, you said it's missing --

13 MR. PARKER: -- I --

14 THE COURT: -- information.

15 MR. PARKER: -- once --

16 THE COURT: I don't know, it is?

17 MR. PARKER: All right.

18 THE COURT: Or isn't it? Who --

19 BY MR. PARKER:

20 Q Is -- is there a Visa or a MasterCard information in
21 exhibit 5?

22 A No.

23 THE COURT: And so -- so my point is --

24 BY MR. PARKER:

25 Q And was it cr --

1 is that correct?

2 A Yes.

3 Q All right. And that's what you're presenting to the Court
4 at this time, correct?

5 A Yes.

6 Q All right. So we don't have any evidence of the debt
7 passing. Now, you want to say that exhibit 5 comes from
8 the sale documents, correct?

9 A It's from the sale file.

10 Q The sale file. Do you have the sale file with you today?

11 A No.

12 Q All right. So who created exhibit 5?

13 A Exhibit 5 is --

14 Q Who created exhibit 5?

15 A Exhibit 5 is printed by Midland Credit Management from the
16 electronic records provided by Asset.

17 Q Thank you. Now, let's get back to my question. Who
18 created exhibit 5?

19 THE COURT: She answered it. Next question.

20 BY MR. PARKER:

21 Q The business created it, you're saying, MCM?

22 A It was printed by Midland Credit Management from the
23 electronic sale file.

24 Q It was already created --

25 A That was compiled --

1 Q -- they just printed it?

2 A It was just printed.

3 Q Someone else had created it?

4 A It was printed from the electronic records --

5 Q Yes.

6 A -- provided by Asset --

7 Q Right.

8 A -- pursuant to the bill of sale.

9 Q All right. And, again, when I print, I press print and it
10 puts out a document for me, you're saying the document was
11 already created before it got to MCM and you -- let me
12 finish -- and you press print, yes or no?

13 A The document was in an Excel spreadsheet with all of the
14 consumer account information. It was funneled to only
15 show this account information and -- and printed.

16 Q All right. And the document before you has -- nothing's
17 blacked out?

18 A No.

19 Q And yet you testified earlier that the reason why
20 everything was blacked out is because you had privacy
21 concerns, and I think you said I didn't want to put the
22 account number and I didn't -- and I -- I didn't know if
23 you mentioned the MCM number, but that's -- you didn't
24 want to show the account number to the public, is that
25 correct?

1 A For other consumers' account that's not subject to this --
2 Q Right.
3 A -- case.
4 Q Which goes to my original point. If you're able to print
5 it out almost a year later, why didn't you print it out to
6 show maybe -- to show your link is strong between FIA and
7 Asset?
8 A I didn't work for Asset.
9 Q All right. So you can't do anything like that for Asset,
10 is that correct?
11 A I can look at the sale file --
12 Q All right.
13 A -- but I can't print anything out. I don't have --
14 Q But you have the burden of proof. You're presenting
15 something is true but you're not showing the Court --
16 THE COURT: Is that a question? Next question.
17 I want to hear questions.
18 BY MR. PARKER:
19 Q -- which is -- isn't that true?
20 THE COURT: If it would be up to me --
21 BY MR. PARKER:
22 Q We've already touched upon that, he's right, now it's the
23 seventh time, you're right. Okay. In a breach of
24 contract you've probably heard you need damages. I'm not
25 sure how you get to the damages that Midland Funding is

1 asking for so I'm going to ask you a number of questions
2 on that, okay? Yes?

3 A Okay.

4 Q All right. So when the contract was going from -- excuse
5 me, when the debt was going from Midland -- excuse me,
6 Asset to Midland, how much was owed?

7 A The charge up amount was \$25,606.65. Midland Funding
8 purchased the account with a balance of \$26,374.79.

9 Q And you're saying that's true because it's on exhibit 5?

10 A That's the amount that was due and owing at the time of
11 purchase.

12 Q Listen to my question again. You're reading from exhibit
13 5, correct?

14 A I see from exhibit 5, and I can also verify that amount on
15 other exhibits.

16 Q All right. How much was owed on the account when FIA sold
17 it to Asset?

18 A In my review of the account, and of the sale file from FIA
19 Card Services to Asset, the same amounts were due and
20 owing at the time of the sale between FIA Card Services
21 and Asset Acceptance.

22 Q And did you bring something today to show that?

23 A No, I did not.

24 Q All right. So you didn't do that, and that's -- again,
25 that's that weak link we were talking about. And how much

1 of the 25 -- let's call it 25,000, was principal? Meaning
2 how much he owed before you get to interest.

3 A I do not know.

4 Q And how much was interest involved in that 25, 26 that was
5 owed?

6 A Which -- which amount are you asking about? The charge
7 off amount or the --

8 Q Well, we'll go -- thank you, ma'am. We'll go for what
9 your -- your company is seeking which is 25 -- do you have
10 the exact amount that your company is seeking or do you
11 want me to get it for you?

12 A \$25,606.65.

13 Q And how much of that is principal?

14 A I do not know.

15 Q How much of that is interest?

16 A I do not know.

17 Q How much of that is late charges?

18 A I don't know.

19 Q Other -- is there any other fees in there that are being
20 charged that you don't know about? Meaning is there
21 something where he applied for a line of credit inside the
22 amount that he didn't pay for? Is there anything like
23 that involved?

24 A The balance is comprised of the interest fees, finance
25 charges and purchased merchandise.

1 Q But you aren't able to tell me which is which?

2 A I can't break down the amount, no.

3 Q All right. So you have no proof of that?

4 A The final statement shows a balance of the -- well, it's
5 \$25,606.65 minus 39, so if I look at the final statement -
6 -

7 Q So you said minus 39? Why is that?

8 A Because the last statement was prior -- a month prior to
9 charge off, and it is -- the balance on it is \$25,567.65.
10 There's a difference be -- of \$39 between that and the
11 charge off amount which was a month later indicating
12 another late fee applied to the account.

13 Q And you don't know how much late fees are being charged in
14 this?

15 A According to this last statement, this one is \$39.

16 Q That's just for one month?

17 A It's on the previous month as well.

18 Q Yeah, so you don't know how much lar -- is involved in the
19 25,000, how many late fees?

20 A No, I do not.

21 Q All right. I also noticed in exhibit 2 there's no
22 reference -- I'll wait until you get to exhibit 2 --
23 before we go any further, do you have easy access to the
24 sale file?

25 A Of which sale file?

1 Q That you keep referring to, ma'am?

2 A Well, there's two different sales files -- sale files that
3 I've re -- reviewed.

4 Q Oh.

5 A One from FIA Card Services to Asset and one from Asset to
6 Midland Funding.

7 Q And when you say you reviewed them, do you just click a
8 mouse and you can go through a website to take a look at
9 them?

10 A No.

11 Q How -- what do you do to get to those?

12 A I actually have to go through legal and have a paralegal
13 in our legal department walk with me through it over
14 sharing screens.

15 Q All right. And so you have a -- the ability to download
16 this information?

17 A No, I do not.

18 Q You have the ability to view it?

19 A I have the ability to view it.

20 Q And you have the ability to print it if you wanted to?

21 A No, I do not.

22 Q How would you do that?

23 A How would I do --

24 Q Like if the Court wanted to see actual proof of the debt,
25 how would you produce that?

1 A That would be produced in our legal department.

2 Q All right. So you talked earlier how you go through a
3 lawyer that creates a document, then the document is sent
4 back to you for your confirmation that it is the correct
5 amount, correct?

6 A Um-hmm.

7 Q So you could do that same process again by going through a
8 lawyer to get the information to show that the Bassett
9 debt went from one link to the other, correct?

10 A I've reviewed it --

11 Q Could you answer my question, please?

12 A -- the -- but it would have to go through the legal --

13 Q Right.

14 A -- department to get --

15 Q Like you do when you create a complaint. You could do
16 that, right?

17 A I've never done it --

18 Q That wasn't my question.

19 A -- personally.

20 Q And that's interesting --

21 A I don't know --

22 Q -- that you say --

23 MS. HUNT: Your Honor, I'm going to object. I
24 don't know where this is --

25 THE COURT: She said she doesn't know just now.

1 MR. PARKER: All right.

2 BY MR. PARKER:

3 Q That's interesting; you said you've never done it.

4 A I've never printed a document.

5 Q All right. But if you had to you'd go through legal to do
6 it.

7 A Yes.

8 Q And you didn't.

9 A Not in this case, no.

10 Q Okay. Not in any case apparently to show proof.

11 A No.

12 Q All right. Now I noticed in both exhibit 3 -- 2, which is
13 the -- that loan document again, and exhibit 4, not only
14 do they not talk anything about Bassett or the account
15 number or any of this stuff, they also don't say anything
16 about AAA Financial Services, is that correct?

17 A No, they do not.

18 Q All right. I'm getting close. What were the terms of the
19 contract? What did the parties agree to?

20 A I don't have the specific terms but there's a portion of
21 the terms laid out in page 2 of the -- any of the
22 statements that have important information about your
23 account --

24 Q Which you talked about before but you couldn't point out
25 what you were talking about, is that correct?

1 A Well, it has information on grace period, calculation of
2 balances subject to finance charges, payments, total
3 periodic rate finance charge comp -- computation, how they
4 allocate the payments, payment due dates and keeping their
5 account in good standing --

6 Q And are all those terms in the original contract?

7 A I've not seen the original contract -- contract.

8 Q Okay. How about is it in the exemplar?

9 A Without seeing the exemplar, I couldn't tell you for sure.

10 Q But you signed an affidavit saying you had viewed it and
11 it was true.

12 A Yes, I have viewed an exemplar, but I don't have an
13 eidetic memory. I can't remember every word I've ever
14 read.

15 Q That's right, so you'd have to produce it to get it into
16 court, correct?

17 A Yes.

18 Q All right. Ma'am, you said, I believe twice, that part of
19 your data -- either your data processing or a creation of
20 any document from the sale file, or viewing it, is you --
21 you -- you -- you contact the credit report, then you
22 check Mr. -- look at me -- you -- you cont -- you look at
23 Mr. Bassett's credit history, is that correct?

24 A Can you -- I'm not understanding what you're asking there.

25 Q All right, I'll ask the question that your counsel asked

1 you. Do you look at Mr. Bassett's credit report or credit
2 history?

3 MS. HUNT: I'm going to object because that was
4 not a question asked by me. If he's trying to get
5 something else out that's a -- a --

6 MR. PARKER: Nope, that's what you were asking.

7 MS. HUNT: -- question he's going to have to
8 answer, but I never asked about credit reports.

9 BY MR. PARKER:

10 Q Do you look at his credit report and his credit history?

11 A I do not, no.

12 Q Does someone at Midland Credit or Midland Funding look at
13 his credit report history?

14 A Yes.

15 Q They do?

16 A Yes.

17 Q And why do they do that?

18 A It's a part of the due diligence process and the finding
19 accurate infor -- or verifying accurate information.

20 Q And you create a report or credit report, you down -- do
21 they download his report, what do they look at?

22 A I don't know for sure.

23 Q Have you seen his credit report?

24 A No, I have not.

25 Q All right. So that isn't part of any sales file that you

1 viewed or any sales file at all?

2 A No.

3 Q No? Okay. Isn't that -- isn't that true that you said
4 you received his address from the credit report in your
5 testimony?

6 A The address was updated from a credit report but I didn't
7 do it --

8 Q Who did?

9 A -- and I didn't view it. It was part of the collections
10 department that was finding information on Mr. Bassett to
11 find an accurate address.

12 Q And they downloaded some credit reports to get his
13 address?

14 A I don't know if they downloaded them; I don't know how
15 that works, that's not my department.

16 Q What is a credit report?

17 A Huh?

18 Q What is a credit report?

19 MS. HUNT: Your Honor, objection to the
20 relevance of this.

21 THE COURT: Yeah, how's it relevant.

22 MR. PARKER: A little leeway just to -- just
23 one more question? Is that yes, your Honor?

24 THE COURT: Yes.

25 MR. PARKER: Oh.

1 BY MR. PARKER:

2 Q What is a credit report, you keep referring to a credit
3 report.

4 A They -- it's a -- they search the Social Security number
5 and the consumer's name to find updated addresses.

6 Q And the reason why --

7 MR. PARKER: Thank you for the leeway, your
8 Honor, the only reason I asked that I asked your counsel
9 for those credit reports and their answer to number 14 was
10 neither Plaintiff nor the Stillman Law Office are in
11 possession of the consumer credit reports.

12 BY MR. PARKER:

13 Q So what were you looking at?

14 A Like I said before, I didn't do the update. When I viewed
15 it the account in our system it said it was updated -- the
16 address was updated to an external source which is skip
17 tracing and credit reports.

18 Q All right, okay, thank you very much. Oh, you touched
19 upon something, Encore purchased Asset Acceptance and
20 Midland Funding, did I get that right?

21 A Midland Credit Management and Midland Funding were already
22 a part of Encore Capital Group.

23 Q All right. So what did Encore purchase?

24 A Encore purchased Asset Acceptance, LLC.

25 Q Okay, and do you know when that was?

1 A I don't have the exact date but I believe it was in June
2 of 2013.

3 Q Okay.

4 MR. PARKER: I'm -- I'm coming to an end, your
5 Honor, I just one more thing to do.

6 THE COURT: Okay.

7 BY MR. PARKER:

8 Q I'm going to present to you what I've presented to the
9 Court and what I've presented to Ms. Hunt.

10 MR. PARKER: It's 10? Is it exhibit 10 or
11 exhibit 3?

12 THE COURT: Oh. It's yours it should be
13 whatever the next one is in your sequence.

14 MR. PARKER: Exhibit 2 --

15 THE COURT RECORDER: You've introduced exhibits
16 but you have not entered -- we have not admitted them.

17 MR. PARKER: All right. We did the contract
18 but that didn't come in, so that's not an exhibit. So
19 this would be exhibit 1 then?

20 THE COURT RECORDER: Well, no, we're still
21 going to call it 3.

22 THE COURT: No, I think --

23 MR. PARKER: Okay, call it 3?

24 THE COURT: Yeah, yeah, call it 3 but have any
25 -- any of his been admitted?

1 THE COURT RECORDER: No.
2 THE COURT: Okay.
3 MR. PARKER: Thank you, your Honor.
4 THE COURT: Yep.
5 MR. PARKER: May I approach, your Honor?
6 THE COURT: Sure.

7 BY MR. PARKER:

8 Q Do you recognize what you have before you?

9 A Yes.

10 Q All right. Thank you. And those are two press releases
11 from Asset Acceptance and Encore, and one is the press
12 release of Encore and I believe the other is Asset
13 Acceptance website saying, hey, we've now been purchased
14 by Encore, is that correct?

15 A Yes.

16 Q And what I've done, I've made this easy so I can finish.
17 The -- Asset Acceptance actually details the type of debts
18 that it purchased, doesn't it?

19 A Yes --

20 Q I -- I think they say four things. So I've circled one of
21 the debts to bring this to an end, what is the circle that
22 I am circling? What --

23 A Consumer loans.

24 Q Say it again, please?

25 A Consumer loans.

1 Q That's right, Asset Acceptance buys loans, doesn't it?

2 A Yes.

3 Q Does it buy credit cards?

4 A Yes.

5 Q And in that instance it says that, doesn't it? It says we

6 buy credit cards -- in fact, please read that for us.

7 A Asset Acceptance has -- have purchased over 60 million

8 individual consumer -- actually it says combined, Encore

9 and Asset Acceptance have purchased over 60 million

10 individual consumer accounts including credit card,

11 telecommunications, consumer loans and other related

12 assets with a face value of over 130 billion.

13 Q And it makes a distinction between credit cards and

14 consumer loans, doesn't it?

15 A Yes.

16 Q All right. Which exhibit 1 and exhibit 2 don't? They say

17 loans, is that correct?

18 A I believe exhibit 1 --

19 Q Let's just go straight to ex --

20 A -- states account.

21 Q Let's go to exhibit 2. I am beating a dead horse, but I

22 just want to end it. It talks about loans that Asset is

23 purchasing, correct, not credit cards but loans.

24 A It says assignment of loans.

25 Q That's right. Thank you very much.

1 MR. PARKER: At this time I have no other
2 questions.

3 THE COURT: Okay --

4 MR. PARKER: Depending on what she does.

5 MS. HUNT: Very quickly.

6 REDIRECT EXAMINATION

7 (At 2:28 p.m.)

8 BY MS. HUNT:

9 Q Just to reit -- reiterate, Ms. Walker, Mr. Parker stated
10 that the -- both the bill of sales for both FIA Card
11 Services to Asset and Asset to Midland did not reference
12 either the AAA card or Mr. Bassett's name. Can you again
13 explain for the Court the reason behind their not being --
14 the specificity in that acc -- in that affidavit or those
15 affidavits?

16 MR. PARKER: Do you want her to keep going over
17 what you told me she can't keep going over, your Honor?

18 MS. HUNT: He asked about it --

19 MR. PARKER: Asked and answered several times.

20 MS. HUNT: -- he asked about the reason why the
21 AAA wasn't necessarily in there. That wasn't a part of my
22 original --

23 THE COURT: Okay. Very briefly --

24 MS. HUNT: -- question.

25 THE COURT: -- and then we can move on.

1 THE WITNESS: The bill of sale, both exhibit 2
2 and 4, cover a pool of accounts, more than just one, so
3 the individual information regarding specific accounts
4 would not be included on the bills of sale or the receipt
5 of the sale for each transfer.

6 BY MS. HUNT:

7 Q Now, Mr. Bassett (sic) asked you what was the agreement in
8 this case. What was -- I'm sorry, Mr. Parker asked what
9 was the agreement in this case, what -- what was the
10 purpose of the original loan -- or the original credit
11 card?

12 MR. PARKER: She's not qualified to answer
13 that. She was not voir dire'd to know what that is.

14 THE COURT: What was the -- what -- question,
15 what was the purpose of the original credit card?

16 MS. HUNT: What was -- what was the purpose of
17 the original agreement, I'm sorry, I may have said credit
18 card.

19 MR. PARKER: Purchase agreement. Which
20 agreement?

21 THE COURT: I'm not sure --

22 BY MS. HUNT:

23 Q The original agreement with the original creditor?

24 MS. HUNT: I'll -- I'll clarify, your Honor.

25 THE COURT: Yes.

1 MS. HUNT: I'll rephrase.

2 BY MS. HUNT:

3 Q Mr. Parker asked you what was the -- what was the
4 agreement for or reference the agreement? Do you know why
5 there was a -- why this thing -- how it was initiated, why
6 it was initiated?

7 MR. PARKER: I don't understand the question,
8 your Honor. It's just not clear.

9 MS. HUNT: I'll -- I'll strike the question.

10 THE COURT: Okay.

11 BY MS. HUNT:

12 Q Mr. Bass -- or Mr. Parker asked about credit card -- or,
13 I'm sorry, credit reporting. Now you've stated that
14 Midland utilizes credit reports for purposes of location,
15 is that correct?

16 A (No audible response)

17 Q Okay. Now, you don't know that they're necessarily kept
18 for any specific --

19 A No, I don't know.

20 Q -- purpose? And in your understanding are they kept for
21 any specific purposes?

22 A No.

23 Q And are credit reports a part of the sale file from the
24 previous purchaser's, in this case Asset and FIA Card
25 Services?

1 A No.

2 Q Okay. So those would not be a part of the sale file, is
3 that correct?

4 A Correct.

5 Q Okay. Now, Mr. Parker spent some time on asking about the
6 difference between the charge off amount and the amount
7 that was being -- that was stated on the two letters that
8 was presented. Now, the charge off amount, what it --
9 what was that amount?

10 A \$25,606.65.

11 Q And it's your understanding that that's the amount that
12 was sued upon?

13 A Yes.

14 Q Okay. And the \$26,000 figure was not sued upon, is that
15 correct?

16 A Correct.

17 Q Okay. And why was that?

18 A Midland's business prac -- practices are that when an
19 account gets to the legal channel, any interest that is
20 being sought above and beyond the charge off account is
21 not sought.

22 Q Okay. And it's been beaten as a dead horse that there are
23 no -- there is nothing in these documents or in the
24 affidavit or the -- the two affidavits themselves that
25 specifically reference Mr. Bassett, but your review of the

1 file indicates that this was a part -- that this account
2 was a part of that, is that correct?
3 A Yeah.
4 Q That those sales documents. Were the statements a part of
5 the sale documents?
6 A Yes.
7 Q Okay. And who are the statements addressed to?
8 A They are addressed to Michael E. Bassett.
9 Q Okay. And those are a part of the file that you received
10 -- or that Midland received from Asset Acceptance?
11 A Yes.
12 Q Okay. And in your review of the sale file from FIA Card
13 Services, were these statements with Mr. Bassett's name on
14 them a part of that?
15 A Yes.
16 Q Okay. And did those statements correlate with the
17 information provided with those two sale files?
18 A Yes.
19 Q Okay.

20 MS. HUNT: I have no further questions, your
21 Honor.

22 MR. PARKER: Briefly on the affidavit, and for
23 the Court, maybe -- I don't know if we made the affidavit
24 an exhibit number --

25 RE CROSS-EXAMINATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(At 2:33 p.m.)

BY MR. PARKER:

Q -- do you have that in front of you, ma'am?

A Yes.

Q Did we make it -- I was rather clunky in bringing that in.

THE COURT: Did -- Terri, did he have that identified as 2?

THE COURT RECORDER: Two.

MR. PARKER: Two? All right, thank you.

THE COURT RECORDER: Number 1, 2 and 3.

BY MR. PARKER:

Q Your counsel just brought up the affidavit again. I'm -- who is the original creditor, is it Bank of America or FIA Card Services?

A FIA Card Services N.A. is the original lender -- or the original creditor.

Q And how do you know that?

A It states on the -- the billing statements and that's who the account is sold from.

Q It also says AAA Financial Services, are they the original creditor, too?

A No.

Q All right. Then if you would go to your affidavit, paragraph 4. You -- you reference -- at the bottom you say applicable to accounts issued by FA -- FIA Card

1 Services and/or its predecessor and interest. Who is that
2 predecessor and interest?

3 A It's -- that's a standard language, it's and/or.

4 Q All right. You didn't answer the question.

5 A In this case, FIA Card Services is the original creditor.

6 Q You didn't say that, though. You said and/or, which is
7 it?

8 A It's an and/or, it's an either or type thing. It's
9 there's a predecessor in interest --

10 Q But I didn't say either/or because legal words matter. It
11 says and/or, you wrote this, did you write this?

12 A No, it's a template.

13 Q Oh, who put this information into this affidavit?

14 A I did.

15 Q So you put in the non-blacked out information of the MCM
16 number back in July 14th, is that correct?

17 A Yes.

18 Q And the last four of the original account number?

19 A Yes.

20 Q You were capable of putting that together, is that
21 correct?

22 A Yes.

23 Q All right. And so when -- what did you mean when you said
24 predecess and/or predecessor, you didn't use the word
25 either, so that did you mean and/or?

1 A It says and/or which means that it could be and or it
2 could be or, in this case there is neither because FIA
3 Card Services is the original creditor.

4 Q All right. And how do you know that?

5 A It states it on the billing statements --

6 Q That FIA Card Services is the original creditor?

7 A Yes, it says it issued the account which means they are
8 the original creditor.

9 Q And how do you know that? That that means they are the
10 original creditor?

11 A It states it on the billing statement --

12 Q All right. Let's finish this and just show me where that
13 says that. I apologize.

14 A Take any billing statement and page 2.

15 Q All right. Thank you, hold on, let me get my glasses on.
16 It is miscellaneous?

17 A Yes.

18 Q All right. Let me get my glasses on, sorry. It says for
19 complete terms and conditions of your con -- your account,
20 consult your credit card agreement, is that correct?

21 A Yes.

22 Q Which you don't have. FIA Card Services is a trade name
23 of FAR (sic) Card Services, N.A., correct?

24 A It says FIA Card Services, N.A.

25 Q Thank you, sorry. Period. This amount is issued and

1 administered -- so, okay, if you could point to me who the
2 original creditor is, I'd appreciate it.

3 A It says this account is issued and administered by FIA
4 Card Services --

5 Q All right. The --

6 A -- that's the original creditor. The original creditor is
7 the creditor who issues the account --

8 Q So you're saying if someone issues something they are the
9 original creditor?

10 A Yes.

11 Q And based on what?

12 A If they're the ones that issued the whatever it is, they
13 are the orig -- the originating doctrine or the
14 originating person.

15 Q All right. They may have issued something; my point being
16 is the original contract will tell us who the original
17 creditor is, is that correct?

18 A It states it right on the --

19 Q Yes or no.

20 A -- it would state it in the contract, too, but it states
21 it right on the billing statement.

22 Q Okay. So you don't know for sure other than these billing
23 statements that don't say FIA is the original creditor,
24 correct?

25 A The billing statements say that the account is issued by

1 FIA Card Services --

2 Q Issued, all right. And in your own document you've
3 referred to a predecessor interest which is Bank of
4 America? Let's put it this way the way you've written it.
5 FIA Card Services and predecessor in interest would be
6 Bank of America, and then you've said, or Bank of America
7 predecessor in interest. Which one is it that you swore
8 is the truth?

9 A The card was charged off under FIA Card Services, it was
10 issued and --

11 Q Thank you, just answer my question.

12 A What was your question again?

13 Q You swore under oath the following, FIA Card Service
14 and/or it's predecessor -- precessor (sic) in interest.
15 Let's say it's Bank of America, so you're saying --

16 MS. HUNT: I'm going to object, your Honor,
17 that's speculation.

18 MR. PARKER: -- can I finish? Well --

19 MS. HUNT: He's adding in a creditor that
20 doesn't --

21 MR. PARKER: -- how is it speculation? She
22 wrote it.

23 MS. HUNT: She's explained the reason behind
24 the terminology and the language that was used.

25 MR. PARKER: All right. Let me ask another

1 question.

2 BY MR. PARKER:

3 Q Predecessor in interest. It's either and or or because
4 you wrote it, and you swore it's the truth, what were you
5 referring to?

6 A It's a standard language that's been approved by our
7 legal.

8 Q So you --

9 A That's our paragraph for --

10 Q -- said it was true even though it was --

11 A -- the credit card.

12 Q -- just standard language and you knew it may not be true,
13 is that correct?

14 A The original account or the original creditor is listed
15 there. The and/or its predecessor in interest is in cases
16 where there is another account that is purchased by --
17 well, for instance, Washington Mutual, the accounts are
18 with Washington Mutual charged off, Chase bought the
19 accounts so in this case this paragraph would allow for
20 both the Washington Mutual terms and conditions and the
21 Chase Bank terms and conditions.

22 Q But that's not the case here, so let's just --

23 A Right.

24 Q -- stick to what's going on here. You said I certify
25 under per -- penalty of perjury that the foregoing

1 statements are true and correct, not standard and
2 ambiguous --

3 THE COURT: That's it, you know, the horse is
4 getting bloody, okay?

5 MR. PARKER: All right, your Honor. Thank you.
6 I'm just trying to do my job, thank you. If you say
7 something -- swear something is the truth I want to find
8 out why you're saying something --

9 THE COURT: Thank you, ma'am --

10 MR. PARKER: -- because, your Honor,
11 credibility is an issue, and it appears that this affiant
12 has just signed something without even knowing if it's
13 true or not.

14 THE COURT: I don't agree -- I don't agree with
15 that, but go ahead. So, you're free to go.

16 MR. PARKER: Thank you very much.

17 THE WITNESS: Oh, thank you, sir.

18 THE COURT: Thank you.

19 (At 2:40 p.m., the witness left the stand)

20 MS. HUNT: Your Honor, at this time I have
21 no further witnesses. But at this time I would make a
22 motion for directed verdict. The -- the witness has
23 stated that she is senior legal specialist with Midland
24 Funding. She understands the procedures behind the
25 maintaining of records and sales of certain documents

1 between FIA Card Services through a side-by-side training
2 with FIA Card Services. She has -- her company has a
3 relationship with Asset Acceptance by which there is this
4 understanding of the maintaining of transfer of the
5 documents for purposes of sale.

6 It's clear in this matter that the -- based on
7 these documents that are provided, most specifically the
8 account statements, that this account was one that was
9 transferred by both the testimony of the witness and the
10 account statements that are listed -- or -- or provided.
11 Additionally, the reasoning behind the non-submission of
12 the entire sales file for -- by the Defendant -- or by the
13 witness for purposes of today, it's clear that her review
14 shows that there was, in fact, a transfer of this account.

15 The Plaintiff in this matter utilized all of
16 those documents that were received by them for purposes of
17 maintaining services -- servicing and suing on this file.
18 The account statements reflect that there was, in fact, a
19 contract that was in place, the statements reflect that
20 the FIA Card Services was the original creditor, that Mr.
21 Bassett utilized that credit card for a number of years,
22 over four years, made payments and purchases with that
23 credit card and ceased making payments.

24 Your Honor, it's clear that at this point after
25 his default this was an account that was sold to the

1 Plaintiff, and based on the information provided, your
2 Honor, I would request that there is a judgment ent --
3 entered for Plaintiff for the amount as stated on the
4 record by the witness.

5 THE COURT: All right. Well, I -- I have no
6 idea what the Defendant is going to say so --

7 MS. HUNT: Sure.

8 THE COURT: -- it would be premature for me to
9 grant any -- consider any kind of motion for -- all right,
10 so you may proceed.

11 MS. HUNT: Of course. Okay.

12 MR. PARKER: Your Honor, I'd like to move for
13 directed verdict, your Honor.

14 THE COURT: You may.

15 MR. PARKER: The most important thing that I
16 hope you listened to other than -- obviously you -- you've
17 justifiably grown sick of listening to me. But the most
18 important thing I hope you listen to, your Honor, is what
19 Ms. Hunt just said at the end. Based on the information
20 presented, and you have zero evidence that the debt passed
21 from FIA to Asset Acceptance. What's the proof that the
22 debt passed at the time that the sale occurred?

23 Ms. Walker has nothing to provide you. As you
24 and I are a little bit more sophisticated, we are not as
25 good at her -- as her job as she is, but hopefully we're a

1 little bit -- pretty good at our job, and you and I both
2 know you were fifteen years' a litigator, you're not
3 getting something in unless you can -- the Court can see
4 it. And she could not provide you with the very thing
5 that the document says support's the transfer of the
6 document. By the way, she said had no training in. And
7 that document was the pool of documents. She obviously
8 has the ability to separate the account of Mr. Bassett
9 when it deems fit for either her or Midland by placing the
10 account information in various documents, but she said as
11 the excuse for not producing it to you, sorry, I don't
12 want to breach anybody's privacy.

13 Well, her attorney could clearly just go to you
14 and said, your Honor, in camera we're going to show you
15 the information. None of that was done. Burden of proof
16 is on the Plaintiff, as you know. They have not proven
17 anything has passed. Does Mr. Bassett owe the debt? If
18 he does he owes it to Bank of America or FAA (sic), but
19 that is not the issue here. Whether they have a hundred
20 statements of his use of the card, as you say, well, now I
21 won't use your words, but that doesn't make anything
22 admissible, it just shows that he used the card and he
23 owes the debt to somebody. Who does he owe the debt to?

24 He probably owes it to FIA and Bank of America,
25 and I'm not saying that in any smart alecky way, what you

1 and I have to exist on is testimonial evidence and you
2 heard, and you yelled at me, stop asking her the same
3 question, we've heard she does not have any evidence that
4 the pool, which is identified as a loan sale pool, did not
5 pass. She has nothing. She brought you nothing --

6 THE COURT: No, I didn't -- I -- actually I
7 never said that she didn't have any evidence; I said that
8 I would agree you asked her six times whether Mr. -- your
9 -- your client's name was in the document and she said,
10 no, it wasn't.

11 MR. PARKER: That's right. And that document,
12 for the record, your Honor, is the purchase agreement, but
13 more specifically Bulk Asset Acceptance, LLC, sale file
14 1212 Final XISX. You and I both know to get the debt in
15 that Bassett owes Midland they have to show you that it
16 passed, that it transferred. There's no substitute to
17 that. If it wasn't mentioned in the document she's
18 bringing in, then what are we talking about? But it says
19 you need to look at this file, so I asked show us the
20 file, she can't.

21 Her information that she admits was accumulated
22 and collected two links down the road of the chain of
23 assignments, and Midland credit management, she doesn't
24 even work for Midland, accumulated a bunch of information,
25 nobody signed an affidavit, either Asset or Midland, that

1 the information they received from FA (sic) Card Services
2 was legitimate, trustworthy, in fact the document itself
3 says we're giving you this stuff without any express or
4 implied warranty, it's as is, it's yours, we're making no
5 representations, no -- I'll say without recourse and
6 without representation of warranty. So they have no link,
7 no sale pool documents in the bill of sale of assignment
8 of loans.

9 I'm assuming this was put together by an
10 attorney; I very much could be wrong, but an attorney
11 would say at the very least credit card debt, we learned
12 that Asset Acceptance buys consumer loans, it buys credit
13 card, but it -- it says nothing about credit cards in
14 here. This very well could be a mortgage loan, but it
15 better be right when you have the burden of proof. They
16 have the burden of proof to show that the debt passed with
17 this document and it didn't, and the two debts --
18 documents supporting it, the purchase agreement and the
19 loan proof, were not attached. I asked her if she'd
20 referenced -- if she'd read the purchase agreement,
21 because that would help, she had not read the purchase
22 agreement. She was not part of the transaction from FIA
23 to Asset. She could not produce any iota of evidence that
24 this desk -- the debt passed.

25 What she does have was created by Midland Credit

1 Management. Nothing more, she has nothing from the bill
2 of sale and assignment of loans, there's no docs -- no
3 debts there, nothing passed them, no proof; you've got to
4 have proof. A mere assertion that we had the documents is
5 not good enough in any court that I know, especially not
6 Washtenaw County. You have to show proof. A mere
7 assertion, which is the *Unifund* case, which is a Michigan
8 Court of Appeals case, it said you can't make a mere
9 assertion without proof. That's what's happened here. I
10 gave her some leeway as you've been very nice in giving us
11 leeway and said can you at least produce the sale file,
12 this -- and her hearsay reference to so many things that
13 she could have brought in to make your job easier, would
14 have been so much easier. We have to take her word on it,
15 but even her word is a mere assertion.

16 She doesn't even work for Midland, and she
17 certainly is biased, she's working for Midland right now,
18 so she has no credibility unless she brings in something
19 that shows the debt passed, which she didn't. so the link
20 is broken her. The chain is as strong as it's link.
21 Whether Bassett owes it is irrelevant. Whether Bassett
22 answered those letters of what they called verification,
23 under the FDCPA is irrelevant. You can't hold a person's
24 lack of dispute to prove the debt.

25 THE COURT: Thank you.

1 MR. PARKER: So, in this case, your Honor,
2 because there is an absence of proof, regardless of
3 whether Bassett owns this, they don't own the debt, he may
4 owe it, but he doesn't have any proof, you don't, I don't
5 and clearly they don't use their word, that there is any
6 ownership by Midland. You've gotta show it, you gotta
7 show it to the Judge to prove you own it, and you've done
8 none of that. So I'd ask that you make a directed verdict
9 on my behalf with prejudice. Thank you, your Honor.

10 THE COURT: Thank you. Brief response.

11 MS. HUNT: If I could very briefly, your Honor.
12 I think Mr. Parker's attempting to confuse quite a few
13 things here. Ms. -- Ms. Walker is a -- an employee of
14 Midland Credit Management. Midland Credit Management --
15 or Midland Funding Services the -- the accounts for
16 Midland Credit Management, they are a closely related
17 company, they work together, they are all under the same
18 umbrella of Encore Capital. She is an employee of the
19 Plaintiff in this matter so she has every ability to
20 discuss the issues and to discuss the evidence in this
21 matter.

22 Further, I think Defendant's attempting to
23 confuse the facts and the wording in this case with
24 regards to loan versus credit card. It's -- it's really
25 the same thing. The -- it's the extension of funds for

1 either purchase of -- or holding onto the money itself c
2 utilizing it for purposes of buying services, or products,
3 but it's the extension of funds or the ability to utilize
4 funds.

5 And just to clarify really quickly, your Honor,
6 the -- what Ms. Parker -- Ms. Walker stated with regards
7 to the inability to produce the full sales file versus the
8 field data report which was provided. The field data
9 report was information that was provided by Asset, which
10 was generated by Midland Funding. The full sales file, as
11 she indicated, contained way more information which was
12 unavailable for production based on that protection that
13 it must give with regards to the other thousands or tens
14 of thousands of consumers that's within that file.

15 So, again, your Honor, I would request based on
16 the evidence that was presented, that judgment is entered
17 in favor of my client.

18 THE COURT: Thank you. I --

19 MR. PARKER: She wants you to believe that they
20 can't disseminate from Bassett; that's ridiculous, your
21 Honor. This is a big corporation under the same umbrella
22 --

23 THE COURT: I'm ready to rule on the motion for
24 directed verdict.

25 MR. PARKER: Thank you.

1 THE COURT: As counsel knows, motions for
2 directed verdict must -- the motion must be taken in the
3 light most favorable to the non-moving party. Looking at
4 this particular issue raised by the Defendant, his motion
5 taken in the light most favorable to Plaintiff, there's
6 enough evidence on the record from which the trier of fact
7 could conclude that the debt was not only owed, but owned
8 by the Plaintiff. So, for those reasons, I will deny your
9 motion for directed verdict. Any evidence for the
10 Defendant?

11 MR. PARKER: None, your Honor.

12 THE COURT: All right. Argument.

13 MS. HUNT: I'm sorry, your Honor, can you
14 repeat really quickly your -- your last statement?

15 THE COURT: I said -- what -- which statement?
16 I said -- I asked if he had any evidence for the -- for
17 the Defendant and he said no, and I said argument.

18 MS. HUNT: Oh, okay.

19 THE COURT: Closing argument.

20 MS. HUNT: Oh, thank you. I apologize.

21 THE COURT: Yeah, closing argument.

22 MS. HUNT: I -- I thought he -- you were asking
23 him with regards to the motion.

24 THE COURT: No, no, no, closing argument.

25 MS. HUNT: Your Honor, it -- it was clear today

1 by the evidence that was provided by Ms. Parker -- Ms. --
2 Ms. Walker, I sincerely apologize, Ms. Walker and the
3 evidence presented with regards to the documents that
4 there was a transfer here.

5 There is a clear chain of title that there were
6 a pool of assets -- a pool of debts that were provided
7 from FIA Card Services to Asset Acceptance. Ms. Walker
8 indicated that she is familiar with the generation -- or
9 the maintaining of those documents. She had a training
10 with regards to how those documents are prepared for
11 transfer. She understands and was able to speak to that -
12 - that transfer as it was received by -- after it was sold
13 to Asset, received by Midland Funding. The documents that
14 she reviewed reflected that this was, in fact, an account
15 that was provided within those sales documents.

16 unfortunately those were documents that were not provided
17 to this Court; however the statement, the account
18 statements reflects that the -- this account was a part of
19 that sales pool, as it includes not only Mr. Bassett's
20 name and his address, but it also includes all of the
21 information that lines up with the -- with the rest of the
22 information provided within those two sales files.

23 Ms. Walker was clearly able to discuss the --
24 and inform the Court on the relationship between Asset and
25 Midland Funding with regards to their close ties in

1 obtaining -- obtaining accounts, the reasons why Midland
2 Funding is servicing the accounts that were purchased by
3 Asset Acceptance. And the understanding that these
4 documents that were within this -- this account and within
5 this sales file, are the same types of documents that
6 utilized by Midland Funding, (indiscernible) basis and
7 servicing their accounts, and more specifically, this
8 particular -- this particular set of documents for this
9 account was utilized in servicing this account. They
10 relied on the documents that were provided to them by both
11 FIA Card Services and Asset Management in servicing this
12 account.

13 Again, your Honor, the -- the account statements
14 make it quite clear that this was an account that was in
15 the name of Mr. Bassett. It was transferred along with
16 all of the state -- or -- I'm sorry, most -- many
17 statements reflecting use and obligation on this account.
18 This is a credit card -- breach of credit card case.
19 There's not a need for an agreement. Again, caselaw
20 states that for credit cards an application and an
21 agreement is not necessary.

22 The fact that the Defendant utilized the credit
23 card, he made purchase with the credit -- with the credit
24 card, there is the existence of this contract -- or that -
25 - of this agreement, and the fact that the credit card

1 statements, which he received, clearly states that FIA
2 Card Services was the issuer, the originator, and the
3 proof that this account was transferred from FIA Card
4 Services to Asset to Midland -- or to Midland Funding
5 makes it clear that this account was, in fact, one that
6 was transferred.

7 And, your Honor, based on the information that
8 was provided, the statements by Ms. Walker, the proof that
9 based on the statement of Ms. Walker and the statements
10 provided by Plaintiff in this case, is clear that the
11 Defendant is obligated to Midland Funding in the amount of
12 \$25,606, and I request judgment in my favor in that
13 amount.

14 THE COURT: Thank you.

15 MR. PARKER: Thank you, your Honor. Ms. Hunt
16 just told you that this isn't an account statement case,
17 it's a breach of contract case; therefore, any statements
18 -- account statements of Mr. Bassett would not be
19 applicable to this case. She's got to show the terms of
20 the contract. By her own words this is a contract case.
21 Have you seen a copy of the contract, your Honor? You
22 have not. Have you seen the terms of the contract because
23 this is now a breach of contract case? You have not.

24 There is no proof of any damages. I asked the -
25 - Ms. Walker for Midland Funding, tell me what the proof

1 of the damages is and she can't tell me. She can only
2 tell me amount. And let's be honest, she has access,
3 apparently, to a lot of information and yet every time I
4 asked her for that information she doesn't have it. She
5 has no proof that any money is owed by Bassett to Midland
6 Funding under the breach of contract context. There are
7 no terms, there's no mutuality of obligation, there is no
8 contract, so how can you make a ruling with no contract?
9 These statements are only good in an account stated
10 context.

11 Clearly there is no proof here that the debt
12 passed to Midland Funding. All the information they rely
13 upon are Midland Funding generated information. You have
14 to show that the debt passed, and they admitted they
15 weren't able to -- well, let me take that back -- they
16 have access to the information but they want to protect
17 somebody's breach of privacy, and as I said at the end of
18 the motion for directed verdict, they literally want you
19 to -- to -- to know that they can't just take Bassett's
20 information and present it to the Court. If you believe
21 that, then you also believe that Bassett owes Midland
22 Funding. You can't accept that as true, that they aren't
23 able to produce something to show just the information of
24 Bassett.

25 They can break down, supposedly, the information

1 they receive from FAA Card Services to produce a data
2 form, to produce proof that Mr. Bassett owes it to Midland
3 Funding, but then when you ask them to provide that same
4 information accompanying exhibit 2, no, we don't want to
5 breach his privacy. You cannot accept that kind of
6 nonsense in your courtroom. I asked them to produce
7 exhibit C, the exhibit -- excuse me, Schedule A, they've
8 literally handed you a piece of paper with a black mark
9 over it, and yet they tell you they can't produce the
10 information because they don't want to breach anybody's
11 privacy, but they're able to do just that with the same
12 information in their exhibit 5.

13 You can't accept that as true; there's no
14 credibility of someone that says she's looking at a file
15 and you just have to trust her. You can't trust anybody
16 in a court of law, unfortunately, you've got to follow the
17 rules, and the Rules of Evidence are quite clear, you
18 can't bring anything in unless you show what you're
19 bringing in and they've hidden it from you. Why hide it?
20 If what they have is true, why to go to such great lengths
21 not to produce it? They have not shown any ownership
22 chain from FAA Card Services to Midland. Bassett may owe
23 somebody, but under a breach of contract -- contract
24 context, he doesn't owe Midland. There are no terms,
25 there are no damages. There's no justification for ask

1 for anything here.

2 And I would ask, strongly, that you make a
3 decision and show me if you go against Mr. Bassett, what
4 debt you were looking at that passed from FAA to Asset
5 Acceptance. Because if they can't show you, how are you
6 going to show me? Creating information after the sale is
7 not the document passing from FAA to Asset Acceptance.
8 Creating information and then redacting it in what they
9 call a Schedule A, is not showing you the information that
10 shows the passing of the debt.

11 The mere fact that they have it is not evidence
12 that they got it from FIA, there's no evidence that it
13 passed down. The mere assertion that it's okay you can
14 trust us, the mere assertion that you have it is not good
15 enough, you have to provide identifying proof. So their
16 creation of something out of whole cloth three levels
17 down, and then when you ask them to prove at the first
18 level why the debt was passed and they won't, is not good
19 enough to say that Bassett owes the debt to someone that
20 won't show you why.

21 I've shown you as much as I can, I've repeated
22 myself repeatedly and you've let me know that. I -- I
23 just don't see the evidence here, and I only have to show
24 one link is missing, and there is no evidence from FAI
25 (sic) to Asset Acceptance that the debt came out of the

1 pool which they identified but wouldn't show you, which
2 they could con -- discern because you saw what they did at
3 Midland Funding, but they won't do it at that point
4 because they can't. The information doesn't exist or they
5 wouldn't have hid it by telling you we're worried about
6 his breach of privacy even though they create a document
7 with his information right in it, and they put it in a
8 court of law. That's nonsense. There's no proof that
9 this debt passed to Midland, zero.

10 So, I'd ask that you rule against them, who have
11 the burden of proof, your Honor, I don't have to prove
12 anything, and they proved me right. They showed nothing.
13 Having documents down the line, but then telling you and I
14 I'm not going to show you the stuff that we received,
15 because that's what they said, is not good enough. She
16 actually said, the witness actually said I've seen it,
17 you've got to basically -- I've seen it, it's there, I
18 said could you just produce it to the Court because he has
19 to make a decision, no, we can't do that. How long did
20 you have to know you were coming to this case, oh, a
21 couple of weeks, and you didn't produce the most important
22 document that the Court could see in-camera if it had to,
23 represented by an attorney so she was able to do that, and
24 you didn't hear anything about breach of privacy, your
25 Honor, until today when they realized that I'd be calling

1 them on that, on the fact that they haven't supplied the
2 debt.

3 So now what they've done for the first time is
4 stated, oh, we can't produce the documents, so they're
5 admitting they can't produce it or won't produce it
6 because of this breach of privacy fallacy, but down the
7 road when Midland Funding gets all this information,
8 supposedly, we're going to just breach everybody's
9 privacy, even put the four little numbers of -- of Mr.
10 Bassett's Social Security number. Doesn't sound like
11 they're real concerned about breach of privacy. Now, if
12 they're concerned about others' debts, then they have to
13 have you believe that they aren't able to separate those
14 debts, which they just did in exhibit 5. So how can they
15 not do in exhibit 2, which references that pool of debts,
16 that they managed to do in exhibit 5, and have you look at
17 them and go, sounds good to me. You can't accept
18 something like that.

19 You may not like me, you may not like Mr.
20 Bassett because he owes \$25,000 in your eyes, but he
21 doesn't owe it to Midland, and you can't hook him on a
22 mere assertion by someone that says they have the ability
23 to look at the stuff but not produce it to the real eyes
24 that count, and that's the guy in front of me, his
25 Honorable jurist here that has to make this decision. And

1 if you don't have the information and they won't give it
2 to you, I would ask that you not try to help them out and
3 make this decision, and just tell me if you have seen any
4 information from FAA to Asset Acceptance with the name,
5 number, Social Security number produced by FIA to Asset,
6 if you have that, fine, but they don't produce it to you
7 so you don't have it in front of you so you can't make a
8 decision that the debt passed.

9 I thank you very much for listening to me, and I
10 apologize if I bored you or I was on too much, but I'm
11 very passionate about --

12 THE COURT: No.

13 MR. PARKER: -- this. This is quite obvious to
14 me. Of -- just because someone owes a debt it doesn't
15 mean you owe the debt to someone that claims but won't
16 show. Thank you very much, your Honor, I'd ask you to
17 dismiss the case against my client.

18 THE COURT: Thank you. Thank you. Rebuttal?

19 MS. HUNT: Not at this time, your Honor.

20 THE COURT: The Plaintiff has presented a
21 series of documents, exhibits 1 through 8, and basically
22 also introduced those through the testimony of Ms. Walker.
23 She testified that she's a senior legal specialist with
24 Midland and that part of her job duties there are to
25 essentially do what she has done in this case, which is to

1 examine the files of not only her own company, but the
2 companies which may have -- be involved with various
3 transactions of purchasing debts from other credit card
4 companies and banks, etcetera.

5 She -- they presented -- first of all the
6 Defendant did not present any evidence that a debt was not
7 owed by the Defendant to someone; in fact, counsel
8 conceded essentially that he probably -- his client
9 probably owes a debt to either FIA or Asset Acceptance.
10 Instead the -- the Defense -- the Defendant argues that
11 the Plaintiff has not met her bur -- burden of proving
12 that it owns the debt at this time.

13 The burden of proof in a civil case is by a
14 preponderance of the evidence which means that the Court
15 must be satisfied, or the jury in a jury case, by -- that
16 it's more likely than not that the premise upon which the
17 Plaintiff brings their case has been proven. In this case
18 the Court finds sufficient evidence that Defendant's debt
19 was sold from FIA to Asset Acceptance -- Asset Acceptance,
20 then sold from them to Midland. This is proven by the
21 testimony of Ms. Walker and the documents 1 through 8 --
22 exhibits 1 through 8 -- 8 which were admitted. Defense
23 counsel says that the Court cannot rely the testimony but
24 must have the actual document or file in front of it; I
25 disagree with that.

1 Again, looking at it by a preponderance of the
2 evidence, the Court is convinced that Ms. Walker has seen
3 the documents, she has examined the files, the paper trail
4 is there, they all lead to the inescapable conclusion that
5 Mr. Bassett took out a credit card with AAA which was
6 originally owned by FIA. That was then sold, the debt on
7 that credit card, which he stopped paying on, apparently,
8 at some point, I forgot the exact date, I think it was
9 maybe 2009, I don't remember, but it was referred to -- we
10 have the -- in exhibit #7, we have the actual credit card
11 bills sent from AAA Financial Services, they show that
12 payments were being made for a period of time and then at
13 one point they stopped, the last payment having been made
14 of four hundred and some dollars -- and that was on --
15 \$492, which was 2009.

16 The Court is convinced by a preponderance of the
17 evidence that that debt was transferred a number of times
18 and is now owned -- owed to the Plaintiff, and will grant
19 judgment in the amount of 26 -- \$25,606.65.

20 MS. HUNT: Thank you, your Honor. I do have an
21 order of judgment for the damages requested, \$25,606.65,
22 plus court costs in the amount of \$342.40, for a total
23 judgment of \$25,949.05.

24 THE COURT: Show it to Mr. --

25 MS. HUNT: And I will say my order does state

1 that Plaintiff has the right to motion this Court for
2 actual attorney's fees; however, I will waive that at this
3 point.

4 THE COURT: Okay. Show it to Counsel. You may
5 present.

6 MS. HUNT: May I approach?

7 THE COURT: Yeah. I said you may present, um-
8 hmm.

9 MS. HUNT: Thank you, your Honor.

10 THE COURT: Umm-hmm.

11 MR. PARKER: Case is over, your Honor?

12 THE COURT: It is.

13 MR. PARKER: Oh, good. I want to say my father-
14 in-law said I had to say hello to you, Sheldon Miller.

15 THE COURT: Oh.

16 MR. PARKER: He -- he told me all about a case
17 in front of you twenty-years ago.

18 THE COURT: Well, his memory's a lot better
19 than mine because I can't --

20 MR. PARKER: Well, I said this --

21 (At 3:14 p.m., this bench trial was concluded)

22 * * * * *

STATE OF MICHIGAN)
COUNTY OF WASHTENAW)ss.

I certify that this transcript consisting of 230 pages is a true and accurate transcription to the best of my ability of the proceeding in this case before the Honorable David S. Swartz, as recorded by the clerk.

Proceedings were recorded and provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceeding or for the content of the recording provided.

Dated: July 30, 2017



Lisa H. Kuebler
Lisa H. Kuebler, CER #5986