

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CALIFORNIA

CASE NUMBER: C 13-2858

Bobbie Pacheco Dyer and Patricia Stallworth on
behalf of themselves and all others similarly
situated,

Plaintiffs,

versus

Wells Fargo Bank, NA,

Defendant.

VIDEOTAPED DEPOSITION OF WELLS FARGO
WITNESS DESIGNEE Todd Hauer PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 30(b)(6)

TAKEN: 15 January 2014 BY: Jacqueline McKone

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1 I N D E X

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1 P R O C E E D I N G S

2 The following is the 30(b)(6) videotaped
3 deposition of Wells Fargo witness designee Todd
4 Hauer taken at Lockridge Grindal Nauen, 100
5 Washington Avenue South in Minneapolis, Minnesota
6 noticed for 9 o'clock a.m. but commencing at 10:34
7 a.m. on 15 January 2014 pursuant to notice.

8 * * *

9 THE VIDEOGRAPHER: We're going on the
10 record at about 10:34 a.m. Today's date is
11 January 15th, 2014. My name is Steve Knutson, and
12 I am a legal videographer in association with
13 Merrill Legal Solutions. The court reporter today
14 is Jackie McKone. Here begins the videotaped
15 deposition of Todd Hauer as a corporate
16 representative for Wells Fargo Bank NA. It's
17 taken in the matter of Bobbie Pacheco Dyer and
18 Patricia Stallworth versus Wells Fargo Bank NA,
19 bearing case C 132858 filed in the US District
20 Court, Northern District of California.
21 Deposition is being held at Lockridge Grindal
22 Nauen in Minneapolis, Minnesota.

23 Will counsel please identify themselves for
24 the record and state whom you represent starting
25 with the noticing party.

1 MR. YANCHUNIS: John Yanchunis for the
2 plaintiffs.

3 MR. KAUFMAN: Thomas Kaufman for the Wells
4 Fargo.

5 THE VIDEOGRAPHER: Will the court reporter
6 please swear in the witness.

7 * * *

8 TODD HAUER

9 after having been first duly sworn deposes
10 and says under oath as follows:

11 * * *

12 EXAMINATION

13 BY MR. YANCHUNIS:

14 Q. Good morning.

15 A. Good morning.

16 Q. Will you please state your full name.

17 A. Sure. Todd, T-O-D-D, Hauer, H-A-U-E-R.

18 Q. Your address sir?

19 A. Home address?

20 Q. Work address would be fine.

21 A. Work address is -- we just recently moved. It's
22 Metropoint in Saint Louis Park, Minnesota, 300
23 Metropoint.

24 Q. Is that in the Minneapolis area?

25 A. Yes.

- 1 Q. Do you reside in Minnesota?
- 2 A. Yes.
- 3 Q. What is your present position with Wells Fargo
- 4 Bank?
- 5 A. Compensation consultant.
- 6 Q. And what department, or section, or division
- 7 within the bank do you work?
- 8 A. I'm part of human resources, and the department or
- 9 the division would be the consumer lending group
- 10 as part of Wells Fargo Home Mortgage.
- 11 Q. Is Wells Fargo Home Mortgage a division of Wells
- 12 Fargo Bank?
- 13 A. Yes.
- 14 Q. But your employer is Wells Fargo Bank?
- 15 A. Yes.
- 16 Q. In connection with your present position -- excuse
- 17 me. In connection with the human resources
- 18 department at Wells Fargo Bank, does it have
- 19 responsibilities for all human resource issues
- 20 throughout the country or by -- or for a
- 21 particular region of the country?
- 22 A. There is a corporate human resources group that's
- 23 based in San Francisco, and then there's -- in the
- 24 divisions like consumer lending group, there's
- 25 another human resources group that I would be part

1 of.

2 Q. The consumer lending group does that cover the
3 entire United States or just a geographical
4 region?

5 A. The entire United States.

6 Q. Okay. In my haste to jump into this deposition
7 since we're tardy, which is fine, I did not go
8 over with you some ground rules that sometimes
9 lawyers as I will now go through --

10 MR. KAUFMAN: And that's fine. He's been
11 deposed a billion times --

12 THE WITNESS: This is my ninth deposition.

13 MR. YANCHUNIS: This for me is very quick.
14 I've taken many myself.

15 BY MR. YANCHUNIS:

16 Q. So you've been deposed before?

17 A. Yes.

18 Q. And you understand that the court reporter to my
19 left cannot take down both of us talking at one
20 time so you need to wait for me to finish, and I
21 will wait for you to finish? And if I don't, I
22 apologize in advance.

23 A. Yes.

24 Q. Okay, and is it the case that you're not impaired
25 in any way by taking any kind of medication?

1 A. No.

2 Q. If at any time you need a break, just go ahead and
3 ask for it. If any time I ask I question you
4 don't understand and you want me to rephrase it,
5 will you so indicate what problem you're having
6 with my question?

7 A. Yes.

8 Q. Okay. Thank you, and I will apologize for this,
9 and you probably gave me the answer but I'll ask
10 it again. In connection with the consumer lending
11 group within human resources, does that office
12 here in Minnesota cover all issues relating to
13 human resources in that particular group
14 throughout the country or just one section of the
15 country?

16 A. It would be throughout the country. There is
17 multiple occasions where human resources is
18 located. The main office is in Des Moines Iowa,
19 but this group here covers the whole country too.

20 Q. What is your main job description or function?

21 A. Sure. It's the help and assisting the design of
22 the development of compensation plans specifically
23 for the consumer lending group in distributed
24 retail for the organization.

25 Q. And what type of employees are governed by the

1 compensation plans that you help design?

2 A. In the distributed retail group, HMCs, home
3 mortgage consultants, their managers, branch
4 managers, the area managers, the assistants within
5 the mortgage group.

6 Q. Let me show you a document which I'll mark for the
7 purposes of identification as Number 1.

8 (Whereupon the material was marked for
9 identification as Exhibit 1.)

10 BY MR. YANCHUNIS:

11 Q. I'm showing you a copy of a document marked
12 Exhibit 1. It's Plaintiffs' Second Amended Rule
13 30(b)(6) Notice of Taking Video Deposition of the
14 Corporate Representative of Defendant Wells Fargo
15 Bank. My first question to you would be: Have
16 you seen this document before?

17 A. I spoke with Tom. Yesterday he pulled it up on
18 his iPhone.

19 MR. KAUFMAN: Don't tell him about any
20 discussions. They are privileged.

21 THE WITNESS: Yes.

22 BY MR. YANCHUNIS:

23 Q. The question is yes. In connection -- if you go
24 to Page 6 of this document, which -- under the
25 heading Areas of Inquiry, and if you could just

1 look at the six enumerated paragraphs on Page 6
2 and 7 and tell me if you're able to testify about
3 the matters that are in those six paragraphs.

4 A. Yes.

5 Q. Okay. How long have you been a compensation
6 consultant employed by Wells Fargo?

7 A. 2003.

8 Q. Were you with Wells Fargo Bank prior to the time
9 you came to work for them?

10 A. I was part of a bank called Marquette Bank which
11 was acquired by Wells Fargo.

12 Q. Have your job duties and responsibilities been
13 essentially the same since 2003 when you became a
14 compensation consultant with Wells Fargo Bank?

15 A. Yes.

16 Q. Is the purpose of the compensation plans that
17 you've helped design and develop for use in
18 connection with home mortgage consultants and
19 branch managers who are producing been to provide
20 to those employees the -- a description of how
21 they are to be paid?

22 A. Yes.

23 Q. And you would agree with me that in connection
24 with compensation described within those
25 compensation plans it's the intent of Wells Fargo

1 to insure that those employees get that
2 compensation if they earn it in accordance with
3 the plans?

4 MR. KAUFMAN: Objection. Vague, and calls
5 for legal conclusion as to earn, but you can
6 answer.

7 THE WITNESS: The plan is designed to be
8 able to show the HMCs and the producing loan
9 officers how their compensation metrics would work
10 for their commission credits that they would
11 receive.

12 BY MR. YANCHUNIS:

13 Q. And you know it's the intent of Wells Fargo to
14 insure that with respect to those two
15 classification of employees that there is a
16 description of how they are to be paid?

17 A. Yes.

18 Q. Okay, and it is true is it not that Wells Fargo's
19 intent is to insure that if individuals earn
20 compensation in accordance with the plans that
21 they be paid that compensation?

22 MR. KAUFMAN: Objection. Again, calls for
23 legal conclusion, and vague as to earned, but you
24 can answer.

25 THE WITNESS: It's designed to be able to

1 give them the standard template for the plan to
2 know what their compensation would be. There are
3 times when that plan might be deviated because of
4 a new hire, or a guarantee, or if they have an
5 assistant or a junior working with them.

6 BY MR. YANCHUNIS:

7 Q. But in connection with those individuals covered
8 by those plans, other than those deviations that
9 you just mentioned, it's Wells Fargo's intent to
10 insure that if those employees earn that
11 compensation in accordance with those written
12 compensation plans is they be paid that
13 compensation; correct?

14 MR. KAUFMAN: Again, same objections, but
15 you can answer.

16 THE WITNESS: Yes.

17 BY MR. YANCHUNIS:

18 Q. And it is in the intent of Wells Fargo in
19 connection with these compensation plans is that
20 they be -- the employees covered by those plans
21 have a clear understanding based upon the written
22 terms of those plans as to how those employees
23 will be paid?

24 A. Not sure if I understand from a clear
25 understanding, but certainly it is the

1 responsibility that we have that our managers are
2 to be able to give to the HMCs the compensation
3 plan for them to be able to see and to understand
4 the mechanics and the provisions of the plan.

5 Q. And that's true even with respect to branch
6 managers who are producing?

7 A. Yes.

8 Q. How long have you been in human resources?

9 A. My whole career. It's almost 20 years now.

10 Q. Always within the banking industry?

11 A. No. I spent some time -- started in health care
12 as -- always in compensation.

13 Q. How long have you been in human resources in
14 connection with the compensation area for
15 financial institutions?

16 A. Fifteen years.

17 Q. In your career, have you drawn the conclusion that
18 people who work for companies want to know how
19 much they are paid for their labor?

20 MR. KAUFMAN: Objection. Calls for
21 speculation. You can answer.

22 THE WITNESS: I can't speak for all
23 employees, but I certainly like to know what I'm
24 being compensated for.

25 BY MR. YANCHUNIS:

1 Q. To the extent in human resources that you have
2 interaction with employees, people like to know
3 how much they are going to get paid; correct?

4 A. Yes.

5 Q. You never worked in human resources for any
6 employer where an employee didn't know what they
7 were going to get paid?

8 MR. KAUFMAN: Objection. Calls for
9 speculation.

10 THE WITNESS: Certainly hope not. No.
11 BY MR. YANCHUNIS:

12 Q. Let me show you a document which I'll mark for
13 purposes of identification as Exhibit Number 2.

14 (Whereupon the material was marked for
15 identification as Exhibit 2.)

16 BY MR. YANCHUNIS:

17 Q. This is a document entitled Wells Fargo Home
18 Mortgage, 2011 Incentive Compensation Plan for
19 Home Mortgage Consultants, and it bears a Bates
20 number -- and this is the last time I'll refer to
21 this in its entire. It bears the Bates number in
22 the lower right-hand corner as WF 000522 through
23 533, and Bates numbering system you probably know
24 is a way which lawyers stamp documents to identify
25 their source. Putting that aside, have you ever

1 seen Exhibit Number 2 before?

2 A. Yes.

3 Q. Did you have any involvement in its preparation,
4 drafting, design?

5 A. Yes.

6 Q. Okay, and what was that involvement?

7 A. Helping the design and the development with the
8 compensation team and helping within the drafting
9 of the document.

10 Q. What other members of the compensation team were
11 involved in the design and drafting of this
12 document?

13 A. The compensation team for the distributed retail
14 or for this group would consist of senior
15 managers, compensation, myself, human resources,
16 employee relations, finance, and legal and
17 compliance.

18 Q. So you named approximately seven different
19 employee groups or departments within the bank
20 that had involvement in the preparation of Number
21 2?

22 A. Yes.

23 Q. So it's fair to say a great number of people
24 within those or collectively were involved in the
25 preparation of this document?

1 A. Any given time the team is, you know, the
2 compensation team if you want to call it is made
3 up of 10 to 15 people.

4 Q. Okay, and was that true in connection with the
5 preparation of Exhibit Number 2?

6 A. Yes.

7 Q. Do you recall the names of those individuals?

8 A. It's varied from time to time. No.

9 Q. Did you have a -- was there a team leader of the
10 team that designed and drafted Exhibit Number 2?

11 A. The management is considered the team leader.
12 There's a project manager, but it's the management
13 of the -- the line manager would be in charge of
14 the overall direction.

15 Q. Who is that individual in connection with the
16 Number 2, Exhibit Number 2?

17 A. The organization is made up of five divisions.
18 It's one of the division managers led the design.

19 Q. Do you recall what his or her name was?

20 A. Cliff Frohn.

21 Q. How do you spell that last name?

22 A. F-R-O-H-N.

23 Q. His name is pronounced Frohn?

24 A. Frohn. Yes.

25 Q. Where does -- did Mr. Frohn work or reside at the

1 time he was working on Exhibit Number 2?

2 A. He's based out of Savannah, Georgia.

3 Q. That was true as of 2011?

4 A. Yes.

5 Q. In connection with your the compensation team's
6 work on Exhibit Number 2, were meetings held in
7 person, or were they by phone or videoconference?

8 A. Phone and in person.

9 Q. Who was responsible for coming up with the basic
10 draft that people began to work off of? Was there
11 one?

12 A. For many years, we've had a basic template for the
13 plan documents. From a compensation perspective,
14 myself would help to lead and be in the drafting,
15 but the editing review would take place with the
16 whole comp team.

17 Q. And would that be done through the use of either
18 telephone conferences or Internet or e-mail
19 exchanges?

20 A. Yes.

21 Q. Both?

22 A. Yes.

23 Q. So to make sure I have an understanding, Exhibit
24 Number 2 had a genesis from another iteration or
25 earlier version of an incentive compensation plan

1 for the home mortgage consultants?

2 A. Yes.

3 Q. In connection with the Exhibit Number 2, when this
4 was finally finalized in the form that we have it,
5 how was its contents made known to the individuals
6 covered by the plan; specifically the home
7 mortgage consultants?

8 A. Typically what will happen is there will be a
9 rollout type of leadership call that would start
10 with senior managers. Then that would cascade
11 down within the hierarchy of the different various
12 managers, division manager to region to area to
13 the branch manager, and then it was the
14 responsibility of the branch manager to give the
15 plan to the HMC.

16 Q. And in giving the home mortgage consultants that
17 plan, was that supervisor to give it to them in
18 paper form, or electronic form, or both?

19 A. Could be both.

20 Q. Was a copy of Exhibit Number 2 available to an
21 employee covered by it by any other means?

22 A. Yes. The plans themselves are housed within part
23 of finance in our bonus commission accounting
24 group which is the administrator of the plans
25 themselves from a payment perspective. It's

1 online, and the managers have access to the plans.
2 The individual HMCs do not. So we want to have
3 the managers have the responsibility to pull it
4 down when needed to give a copy to the HMCs.

5 Q. Make sure I understand it. An employee, a home
6 mortgage consultant, could go online and find a
7 copy of this plan online if they didn't have it in
8 their possession?

9 A. The HMC could not. It was down to the manager or
10 the sales supervisor level would have access.

11 Q. Okay. In connection with the preparation of the
12 incentive compensation plan for both the home
13 mortgage consultants -- let me ask you this. Was
14 the preparation of the incentive compensation plan
15 for 2011 for the branch managers producing in
16 essence the same as the home mortgage consultants
17 that we see in Number 2?

18 A. The process in terms of design would be the same
19 as -- concurrent as the HMC.

20 Q. In connection with the development of the 2001
21 (sic) incentive compensation plans for the home
22 mortgage consultants and the branch manager
23 producing, was a home mortgage consultants or
24 branch manager producing involved in the drafting
25 of their plans of these two plans?

1 MR. KAUFMAN: Objection. Vague. You can
2 answer.

3 THE WITNESS: No. They would not be
4 involved.

5 BY MR. YANCHUNIS:

6 Q. Okay. Did you understand my question?

7 A. If they participated in the design process I
8 believe; correct?

9 Q. Yes sir.

10 A. No. It would stay at a more senior management
11 level.

12 Q. Okay. So the wording of the words in both the
13 2001 (sic) incentive compensation plan for home
14 mortgage consultants and for the branch managers
15 producing came from the management at Wells Fargo?

16 MR. KAUFMAN: You meant '11. I think you
17 said 2001.

18 MR. YANCHUNIS: I'm sorry. 2011 and 2012.
19 Sorry. Start again.

20 BY MR. YANCHUNIS:

21 Q. Would it be correct that the words placed in the
22 2011 incentive compensation plans for home
23 mortgage consultants and for branch managers
24 producing came from the management team that
25 you've described earlier?

1 A. Yes.

2 Q. Now, you mentioned the bonus compensation
3 accounting group?

4 A. Bonus commission accounting.

5 Q. Okay. Bonus commission accounting. What was the
6 responsibilities of this particular group as it
7 related to the 2011 incentive compensation plan?

8 A. The bonus commission accounting group, or BCA as
9 it's called internally, is part of the division or
10 a part of the finance team, and they are a group
11 of account reps that help in the calculation of
12 the compensation plan on a monthly basis on a
13 internal mainframe that does the calculation.

14 Q. Can we use the answer acronym BCA to describe this
15 group?

16 A. Yes.

17 Q. Is that common within Wells Fargo?

18 A. Yes.

19 Q. During the periods of time from 2011 to the
20 present, where are the offices of BCA located?

21 A. Des Moines, Iowa.

22 Q. Have you ever worked within that group?

23 A. Not worked within the group, but worked closely
24 with them. The head of bonus commission
25 accounting is part of the compensation team.

1 Q. If an employee covered by the -- if a home
2 mortgage consultant or a branch manager producing
3 has a question about the incentive compensation
4 plans from 2011 and 2012, to whom would those
5 persons turn?

6 A. The guidance we have given is always start with
7 their first level manager for questions, and if
8 there are more technical questions that they can't
9 answer, it's usually turning next to bonus
10 commission accounting to help answer that.

11 Q. And to the extent that a home mortgage consultant
12 or branch manager producing have a question that
13 their direct supervisor could not answer, an
14 employee would contact BCA by either phone or
15 Internet access like e-mail?

16 A. Yes, and typically they wanted the manager to --
17 or the first line supervisor to ask the question.
18 There is interaction at the individual level at
19 the HMC, but it's usually managers that would
20 interact with bonus commission accounting.

21 Q. Let me show you a document that I'll mark for the
22 purposes of exhibit -- for the purposes of this
23 deposition as Exhibit 3.

24 (Whereupon the material was marked for
25 identification as Exhibit 3.)

1 BY MR. YANCHUNIS:

2 Q. I'll ask you if you're familiar with this
3 document.

4 A. Yes.

5 Q. And is this a true and correct copy of the
6 incentive compensation plan for home mortgage
7 consultants for Wells Fargo Home Mortgage?

8 A. Yes.

9 Q. Were you involved in the drafting and design of
10 this particular document?

11 A. Yes.

12 Q. Was its drafting and design similar to what you
13 described for Exhibit Number 2 for the period of
14 2011?

15 A. Yes.

16 MR. YANCHUNIS: Did I take your stickers?
17 I don't see them.

18 (Whereupon the material was marked for
19 identification as Exhibit 4.)

20 BY MR. YANCHUNIS:

21 Q. Let me show you a document which I marked for the
22 purposes of identification as Number 4. Ask if
23 you if you're familiar with this document.

24 A. Yes.

25 Q. Were you involved in the design and drafting of

1 Exhibit Number 4?

2 A. Yes.

3 Q. And was its design and drafting pretty much the
4 same as you described for Exhibit 2 and 3?

5 A. Yes.

6 Q. I don't have a copy of it, I don't know why, but
7 was there a 2011 incentive compensation plan for
8 the branch sales manager producing?

9 A. Yes.

10 Q. Are you familiar enough with the 2011 incentive
11 compensation plan for branch sales manager
12 producing to tell me if there were any differences
13 between the 2011 and the 2012 that we have here in
14 Exhibit 4?

15 MR. KAUFMAN: Objection. Overbroad, but
16 you can answer to the extent you remember.

17 THE WITNESS: To the extent I remember,
18 yes, it's similar. Yes.

19 BY MR. YANCHUNIS:

20 Q. For instance, there's a -- within the body of
21 Exhibit Number 4, there's a description beginning
22 on Page 3 and continuing on Page 4 that describes
23 the commission rates to be given to branch sales
24 managers producing for generating mortgages. Is
25 the compensation rates described on Pages 3 and 4

1 the same for the 2011 compensation plan as it is
2 for the 2012 compensation plan?

3 A. Yes.

4 Q. Let me show you a document which I've marked for
5 the purposes of identification as Exhibit Number 5
6 and a document a series of documents which we'll
7 mark as Exhibit Number 6 and ask you if you are
8 familiar with the type of documentation that you
9 see there in front of you in both Exhibit --

10 MR. KAUFMAN: Do you have 6 also? I only
11 have 5.

12 MR. YANCHUNIS: I'm sorry Tom. Here it is
13 (handing).

14 MR. KAUFMAN: Thank you.

15 (Whereupon the material was marked for
16 identification as Exhibit 5 and Exhibit 6.)

17 THE WITNESS: Yes.

18 BY MR. YANCHUNIS:

19 Q. And can you describe these two exhibits for me?

20 A. Exhibit 5 is a monthly commission report for a
21 team member showing the commission calculation for
22 a given month.

23 Q. Okay, and can you look through this document to at
24 least testify that these are a series of
25 commission reports for a series of months, the

1 first one beginning in 2010 and the last one in
2 2012, and I'm not asking you to say that there's
3 one for every monthly period, but at least there's
4 a range of them?

5 A. Yes.

6 Q. And can you see the same in Exhibit Number 6, that
7 these are a series of monthly commission reports
8 for that particular employee?

9 A. Yes.

10 Q. Okay, and that employee by the way her name is
11 Patricia Stallworth in Exhibit Number 6?

12 A. Yes.

13 Q. And would Exhibit Number 5 would that be Bobbie
14 Dyer?

15 A. Yes.

16 Q. And you testified earlier that BCA prepares these
17 commission reports on a monthly basis?

18 A. Yes.

19 Q. Once they are prepared with respect to a home
20 mortgage consultant or a branch sales manager
21 producing, are they then sent by BCA to those
22 particular employees?

23 A. They are sent to the manager, and then the HMC
24 would be able to have access, a view access to see
25 it with the manager on a monthly basis.

1 Q. And would the purpose of preparing those reports
2 and sending them to those two employees, at least
3 giving access by the HMCs, the home mortgage
4 consultants, to those reports is to publish to
5 those particular employees what compensation they
6 may be entitled to from the production of loans?

7 A. Yes.

8 Q. Okay, and would it be fair to say that in
9 connection with the administration of the
10 compensation plans that we've looked at here today
11 that it's Wells Fargo's intent to apply these
12 plans in a uniform manner to all employees covered
13 by those plans?

14 MR. KAUFMAN: Objection. Calls for legal
15 conclusion, lack of foundation, overbroad, but you
16 can answer.

17 THE WITNESS: Depending, again, if they are
18 following the terms of that standard template at
19 the time, if they don't have any support or
20 juniors or any type of guarantee, yes, it is
21 representing what is the terms of the compensation
22 plan.

23 BY MR. YANCHUNIS:

24 Q. Let's break this apart. So in connection with the
25 home mortgage consultants for both the 2011 and

1 2012 plans, it is Wells Fargo's intent that all
2 the home mortgage consultants, unless there are
3 those deviations that you mentioned, that these
4 two plans be applied the same way for home
5 mortgage consultants whether they live in
6 Melbourne, Florida or San Francisco, California?

7 A. Yes.

8 Q. And in connection with the branch sales managers
9 producing, it's the intent of Wells Fargo to
10 insure that branch sales managers producing
11 receive uniform treatment no matter where they
12 reside whether it's in Melbourne, California --
13 Melbourne, Florida or San Francisco, California;
14 correct?

15 A. Correct. Unless there's a specific geographic
16 provision in the plan, but yes.

17 Q. Do either one of these two plans or the three
18 plans that you have in front of you, we don't have
19 the 2011 incentive compensation plan for the
20 branch sales managers producing, are there any
21 geographical variances that you can see?

22 A. There would be very little. The one that would
23 come to mind is if there's a minimum commission
24 level. There are some different levels depending
25 on geography. California would be one example

1 that would have a different level, but majority
2 would follow a similar minimum amount.

3 Q. And by minimum amount, you're referring to an
4 employee generates a mortgage that they will at
5 least receive a minimum commission amount of a
6 certain dollar figure?

7 A. Yes.

8 Q. So for instance, in the Exhibit Number 4, the
9 incentive compensation plan for branch sales
10 managers producing the minimum commission credit
11 is what amount? Can you tell?

12 A. \$700.

13 Q. And you find that on Page 3 of 16?

14 A. Yes.

15 Q. Okay, and for the home mortgage consultants for
16 2012, is that found on Page 3 of 12?

17 A. Yes.

18 Q. And how much is it?

19 A. \$700.

20 Q. In Exhibit 2, the incentive compensation plan for
21 home mortgage consultants, is that found on Page 3
22 of 12?

23 A. Yes.

24 Q. And how much is it?

25 A. \$700.

1 Q. Were you involved in the design and drafting of
2 the incentive compensation plan for the home
3 mortgage consultants and the branch sales managers
4 producing for Wells Fargo?

5 A. Specific year?

6 Q. Yes; 2013?

7 A. Yes.

8 Q. Okay, and was the nature of your involvement
9 similar to that as you've described for the years
10 2011 and 2012 plans?

11 A. Yes.

12 Q. And was the 2013 plan and any amendments designed
13 and developed drafted as you've described for
14 Exhibits 2, 3, and 4?

15 A. Yes.

16 Q. Okay. Let me show you a document which I'll mark
17 for identification purposes as Exhibit Number 7.

18 (Whereupon the material was marked for
19 identification as Exhibit 7.)

20 BY MR. YANCHUNIS:

21 Q. And the top sheet of a multipage document which is
22 not Bates labeled says Wells Fargo Home Mortgage
23 2013 Amendment For Producing Sales Manager.

24 A. Yes.

25 Q. And then it's attached to beginning at Page 1 --

1 excuse me, Page 2 of the document there's a
2 16-page document which is entitled Wells Fargo
3 Home Mortgage 2013 Incentive Compensation Plan for
4 Branch Sales Manager Producing. Do you see that?

5 A. Yes.

6 Q. Does the 16 pages that follow the first page of
7 Exhibit Number 7 is that the incentive
8 compensation plan for the branch sales managers
9 producing for the year 2013?

10 A. Yes.

11 Q. Was there a similar plan for home mortgage
12 consultants for the year 2013?

13 A. Yes.

14 Q. In connection with the 2011 and 2012 plans for
15 both home mortgage consultants and branch managers
16 producing, would you agree with me that there was
17 a problem in connection with the compensation
18 form, a description of the compensation that could
19 be earned by those two types of employees?

20 MR. KAUFMAN: Objection. Vague as to
21 problem. You can answer.

22 THE WITNESS: I'm not sure in terms of what
23 you mean by problem.

24 BY MR. YANCHUNIS:

25 Q. Okay. Well, let's -- going back to Exhibit Number

1 2, 3, and 4, and turning to Pages 3 of each
2 document, you would agree with me that the
3 compensation formula for commissions remained
4 essentially the same?

5 MR. KAUFMAN: Objection. Documents --

6 BY MR. YANCHUNIS:

7 Q. For those two years?

8 MR. KAUFMAN: Objection. Documents speak
9 for themselves, but you can answer.

10 THE WITNESS: Yes.

11 BY MR. YANCHUNIS:

12 Q. And we see for instance in Exhibit Number 2 that
13 for the purposes of determining the purchasing of
14 refinance commission rate WF -- WFHM to WFHM
15 refinance loan commission rates are a flat 53
16 basis points --

17 MR. KAUFMAN: 43.

18 MR. YANCHUNIS: 43 basis points. Thank you
19 Tom.

20 THE WITNESS: Yes.

21 BY MR. YANCHUNIS:

22 Q. And that was true with respect to the 2011 and
23 2012 compensation plans for both home mortgage
24 consultants and branch sales managers producing;
25 correct?

1 A. Correct.

2 Q. Okay, and it is true is it not that there were
3 specialty refinance rates that contained a
4 different commission schedule?

5 A. Yes.

6 Q. For the two years?

7 A. Yes.

8 Q. And you would agree with me that a higher
9 commission rate could be earned beyond the 43
10 basis points depending upon the amount of loans or
11 volume of dollar amount of those loans that a home
12 mortgage consultant or branch sales managers
13 producing could produce earning them a higher
14 commission?

15 MR. KAUFMAN: Objection. Vague as to what
16 it says or how it was carried out, but I'll let
17 you answer.

18 THE WITNESS: Depending on -- Section 4 in
19 the special refinance rates section was referring
20 to types of loans. We're trying to specify the
21 opportunity for the commission rate on those type
22 of loans.

23 BY MR. YANCHUNIS:

24 Q. Okay. Well, let's look at for example Exhibit
25 Number 2. Specialty refinance rates. Do you see

1 that under Paragraph 4?

2 A. Yes.

3 Q. And you see a number of different types of loans
4 that are under or besides each bullet point?

5 A. Yes.

6 Q. Correct? Okay. Are you familiar with the HARP
7 three-step refinance loan commission credit rates?
8 It says -- excuse me, "HARP three-step refinance
9 loan commission credit rates are per the standard
10 commission schedule." Do you see that?

11 A. Yes.

12 Q. What standard commission schedule is that
13 referring to?

14 A. That's referring to the schedule that would be on
15 the bottom of Page 2.

16 Q. And can you tell me in connection with that chart
17 how this was to work?

18 MR. KAUFMAN: How what was to work?

19 BY MR. YANCHUNIS:

20 Q. How is it to work; that is, how much commissions
21 is to get based upon the incentive plans for both
22 2011 and 2012 for home mortgage consultants and
23 branch sales managers producing?

24 A. The commission rate is applied to essentially the
25 better of the units or the volume as generated

1 within the month.

2 Q. Units referring to loan numbers, the number of
3 loans?

4 A. Yes.

5 Q. And the volume referring to what?

6 A. The dollar volume of the loan amount.

7 Q. Okay. So if you had 10 loans at \$100,000 each,
8 that would be 10 units or \$1 million dollars?

9 A. Correct.

10 Q. So for instance, going to Exhibit Number 2, the
11 commission schedule on Exhibit Number 2, if there
12 were 10 to 12 loans, would that earn the home
13 mortgage consultants a higher commission rate?

14 A. Depending on the loan type. If it was in the 10
15 to 12 unit schedule, let's say the volume fell
16 from 1.4 to the 1.899 million, then the commission
17 rate is at the 58 basis point rate.

18 Q. Okay, and how is the 58 basis points calculated?
19 Based upon the total aggregate amount of all
20 loans?

21 A. It's based off of the volume level. So if it was
22 1.5 million, it would be the 58 basis points on
23 the 1.5 million.

24 Q. Okay. Now, what loans were covered in this plan
25 by this schedule that we have on Exhibit Number 2?

1 What kind of loans?

2 A. All loans would be covered to be able to move up
3 the tiers, but depending on the loan type, it
4 might not fall on the standard schedule. It could
5 be at the lower rate, Wells-to-Wells re-fi 43
6 basis point schedule.

7 Q. So what loans would earn a home mortgage
8 consultant or branch sales manager producing a
9 higher commission rate beyond the 43 basis points?

10 A. If it is a purchase loan, meaning a new loan to
11 Wells Fargo, a external re-fi loan, meaning it's
12 not within the Wells Fargo servicing portfolio,
13 it's being serviced from another lender, they come
14 refinance within Wells Fargo, that would then
15 count on the schedule at a rate higher than 43
16 basis points.

17 Q. Okay. Let's go to Page 3 of Exhibit Number 2.
18 This paragraph is entitled Specialty Refinance
19 Rates; correct?

20 A. Yes.

21 Q. Okay. Now, I see that four bullet points down you
22 see where it begins, "Traditional three-step
23 express refinance loan commission credit rates are
24 a flat 43 basis points."

25 A. Yes.

1 Q. Okay. That refers to those loans that are
2 traditional three-step express refinance loans
3 that the commission rate is a flat 43 basis
4 points; correct?

5 A. Correct.

6 Q. And if it's a traditional -- going to the next
7 bullet point, a traditional three-step rate term
8 refinance -- re-fi refinance loan that that type
9 of loan also gets paid to -- earns a commission of
10 a flat 43 basis points; correct?

11 A. Correct.

12 Q. And if it's a traditional three-step cashout re-fi
13 refinance loan, the commission is a flat 43 basis
14 points; correct?

15 A. Correct.

16 Q. Okay. Now, is it not correct that under this same
17 Paragraph Number 4 that HARP three-step refinance
18 loan commission credit rates are at the standard
19 commission schedule referenced in exhibit -- on
20 Page 2 or contained on Page 2?

21 MR. KAUFMAN: Objection. Document speaks
22 for itself, but you can answer.

23 THE WITNESS: It is saying that that type
24 of loan would be credited at the standard
25 commission schedule if it would be an external

1 re-fi to count under the standard schedule.

2 BY MR. YANCHUNIS:

3 Q. Does it say that, external?

4 A. No.

5 Q. Doesn't say anything about whether it's internal
6 or external; correct?

7 A. Correct.

8 Q. Now, going to the second bullet point, it is
9 correct is it not that a Wells Fargo home mortgage
10 loan of a Freddie Mac to a Freddie Mac relief
11 refinance mortgage refinance loan earns a
12 commission credit rate per the standard commission
13 schedule that we see on Page 2?

14 MR. KAUFMAN: Objection. Document speaks
15 for itself, but you can answer.

16 THE WITNESS: Yes.

17 BY MR. YANCHUNIS:

18 Q. Doesn't say anything whether or not that is an
19 external loan or an internal loan; correct?

20 A. Correct.

21 Q. Okay. In connection with the next bullet point,
22 WFHM, that refers to Wells Fargo Home Mortgage?

23 A. Yes.

24 Q. That says Wells Fargo Home Mortgage loan of a
25 Freddie Mac to Freddie Mac relief refinance

1 mortgage three-step express the refinance
2 commission loan credit is per the standard
3 commission schedule that we find on Page 2 of this
4 exhibit; is that correct?

5 MR. KAUFMAN: Objection. The document
6 speaks for itself, but you can answer.

7 THE WITNESS: Yes.

8 BY MR. YANCHUNIS:

9 Q. That doesn't say anything about whether the loan
10 is an external loan or internal loan either;
11 correct?

12 A. Correct.

13 Q. Now, going down to the seventh bullet point, the
14 Wells Fargo Home Mortgage loan of a Fannie Mae to
15 a Fannie Mae relief plus refinance loan, the
16 commission credit earned on that kind of loan also
17 is pursuant to the standard commission schedule we
18 find on Page 2?

19 MR. KAUFMAN: Objection. The document
20 speaks for itself, but you can answer.

21 THE WITNESS: Yes. That's correct.

22 BY MR. YANCHUNIS:

23 Q. That bullet point doesn't describe whether the
24 loan is external or internal; correct?

25 A. No.

1 Q. The next bullet point says Wells Fargo Home
2 Mortgage loan of a Fannie Mae to a Fannie Mae DU
3 re-fi plus refinance loan that the commission
4 credit is for the standard commission schedule we
5 have on Page 2 --

6 MR. KAUFMAN: Objection. The document --
7 BY MR. YANCHUNIS:

8 Q. -- is that correct?

9 MR. KAUFMAN: Objection. The document
10 speaks for itself, but you can answer.

11 THE WITNESS: Yes.

12 BY MR. YANCHUNIS:

13 Q. And that bullet point doesn't describe this loan
14 as being external or internal; correct?

15 A. Correct.

16 Q. The next bullet point says non-Wells Fargo Home
17 Mortgage loan of a Fannie Mae to a Freddie Mac DU
18 re-fi plus refinance loan that the commission
19 credit rate is per the standard commission
20 schedule that we have on Page 2?

21 MR. KAUFMAN: Objection. The document
22 speaks for itself.

23 THE WITNESS: Fannie Mae to Fannie Mae is
24 the terminology, but yes, that's what it states.

25 BY MR. YANCHUNIS:

1 Q. Okay. During the time that Wells Fargo had both
2 the 2011 and -- well, let me step back. During
3 the time that the 2011 plan was in effect, did
4 Wells Fargo in 2011 change the commission schedule
5 or the language at all contained on Page 2 of 12
6 and 3 of 12? Let me ask the question again.

7 Did the commissions described in Exhibits
8 2, 3, and 4 and the 2011 compensation plan for
9 branch sales managers producing change at any time
10 in 2011 or 2012 from what we have in these
11 exhibits?

12 A. No.

13 Q. So in connection with the commission rates that we
14 find in 2, 3, and 4, and also the incentive plan
15 for 2011 for branch sales managers producing,
16 those compensation plans remained in effect
17 unchanged for the entire two years that they were
18 in operation?

19 A. I can't say that the entire plan, but for that
20 section of the special refinance rates, Section 4,
21 they did not change.

22 Q. Okay. In 2011, did a home mortgage consultant
23 complain or raise an issue about the fact that
24 that home mortgage consultants did not receive a
25 commission based upon the standard commission

1 schedule that we find on Page 2?

2 A. There always is a lot of, you know, questions if
3 there is -- about the plan. I know going into 00
4 later into 2011 there was questions around the
5 interpretation of that section compared to the
6 Wells-to-Wells re-fi rate.

7 Q. Were those questions being raised by home mortgage
8 consultants and branch sales managers producing?

9 A. Yes.

10 Q. And were those questions or issues that were being
11 raised that those two classification of employees
12 where they raised it believed that they should be
13 getting paid the higher basis point set forth in
14 the standard commission schedules?

15 MR. KAUFMAN: Objection. Overbroad,
16 possible lack of foundation, but you can answer.

17 THE WITNESS: I can't say that every
18 question was saying they should be paid at the
19 higher rate, but there ws questions on the rate
20 for those type of loans. Yes.

21 BY MR. YANCHUNIS:

22 Q. Make sure the question is clear to you. At some
23 time in 2011, it is correct is it not that a home
24 mortgage consultant and a branch sales manager
25 producing raised the question that they should be

1 paid at the -- at a higher rate beyond the 43
2 basis points because they believed they had earned
3 a higher commission based on the standard
4 commission rates for the type of loans that we
5 reviewed just a moment ago?

6 A. Yes.

7 Q. Do you know when that was raised for the first
8 time in 201 by those two classifications of
9 employees?

10 A. I don't. There's 6000-plus HMCs and producing
11 branch managers so I can't tell specific dates.
12 Your mic just dropped.

13 Q. Thank you. You've answered the question for me.
14 During the time that the 2011 and 2012 incentive
15 compensation plans were in effect, is it correct
16 there were approximately 6000 home mortgage
17 consultants and branch sales managers producing
18 covered by those plans?

19 A. Approximately. Yes.

20 Q. Those 6000 were spread throughout the United
21 States?

22 A. Yes.

23 Q. But they were all governed by the same incentive
24 plans whether they were a home mortgage consultant
25 on the one hand or a branch sales manager

1 producing on the other?

2 A. Yes.

3 Q. When the -- at any time that -- in 2011 when a
4 home mortgage consultant and a branch sales
5 manager producing raised the issue that they
6 believed they should be paid under the higher
7 basis points provided in the standard commission
8 schedule, were they eventually paid the higher
9 commission rate --

10 MR. KAUFMAN: Objection --

11 BY MR. YANCHUNIS:

12 Q. -- if they pressed that issue?

13 MR. KAUFMAN: Objection. Overbroad, and
14 possibly lacks foundation, but you can answer.

15 THE WITNESS: I can't say in a general
16 statement that there would be adjustment for every
17 question that was raised, but I know there were
18 adjustments that would take place for some
19 commission rates.

20 BY MR. YANCHUNIS:

21 Q. Okay. Can you at least say that some home
22 mortgage consultants who raised the issue that
23 they believed that they should be paid based upon
24 the standard commission schedule higher than the
25 43 basis points for the loans that we reviewed in

1 Exhibit Number 2 that they in fact were paid at a
2 higher basis points in accordance with the
3 standard commission schedule?

4 A. They were paid at a higher rate. Yes.

5 Q. Okay, and is it true that sometime in 2011 that
6 some branch sales managers producing raised the
7 issue that they believed that they should be paid
8 at the higher commission schedule beyond the
9 standard commission rate of 43 basis points for
10 the types of loans that we reviewed a moment ago
11 that they too were paid at the higher commission
12 rate?

13 MR. KAUFMAN: Objection. Lack of
14 foundation, but you can answer.

15 THE WITNESS: Yes.

16 BY MR. YANCHUNIS:

17 Q. Okay. Back in 2011 when this issue was raised,
18 did Wells Fargo come to the realization that there
19 was an ambiguity or some conflict in the way the
20 commission language was spelled out in Exhibit 2,
21 3, and -- or in Exhibit 2? Excuse me.

22 A. I'd answer that that there's ambiguity in the plan
23 and some conflicting rules as how it's stated. It
24 wasn't one that felt that there needed to be a
25 change to the plan. Basic message saying that the

1 Wells-to-Wells re-fi rate essentially is the -- if
2 it's a Wells-to-Wells re-fi, that's the first role
3 in terms of the pay rate of 43 basis points.

4 Q. But you would agree in connection with the 2011
5 compensation plan we see in Exhibit 2 that there
6 is conflict between the way commission schedule is
7 spelled out for loans?

8 A. There's there are conflicting rules. Yes.

9 Q. And that was true with respect to the 2011
10 incentive compensation plan for branch sales
11 managers producing; correct?

12 A. Yes.

13 MR. KAUFMAN: Before you ask another
14 question, I want to ask you something. Can we go
15 off the record for two minutes?

16 MR. YANCHUNIS: Yes.

17 THE VIDEOGRAPHER: We're going off the
18 record about 11:32 a.m.

19 (Whereupon a short break was taken from
20 11:32 a.m. to 11:36 a.m.)

21 THE VIDEOGRAPHER: We're going back on the
22 record about 11:36 a.m.

23 BY MR. YANCHUNIS:

24 Q. When those home mortgage consultants and branch
25 sales manager producing, branch sales managers

1 producing in 2011 raised the issue of the
2 commission rates and they were paid at the higher
3 commission rate beyond 43 basis points, why didn't
4 Wells Fargo look at all home mortgage consultants
5 and all branch sales managers producing to see if
6 those two classification employees should be --
7 receive compensation at the higher commission
8 rates?

9 A. If they were paid at the higher rate, it would
10 have been just an exception that took place. The
11 main rule for the Wells-to-Wells rates is the 43
12 basis points, and that's the message that's in the
13 plan that we gave as a message for the HMC and the
14 producing branch managers. So if they went
15 through a process that they got it, you know, I
16 don't know how many that would really be, but
17 there could have been some exceptions that always
18 take place for any type of pay adjustment that
19 takes place.

20 Q. Well, would an exception be that they simply
21 pressed the issue and they got -- they convinced
22 somebody at Wells Fargo they should be paid at the
23 higher commission -- standard commission schedule
24 and not just the basis, 43 basis points?

25 MR. KAUFMAN: Objection. Lack of

1 foundation, but you can answer.

2 THE WITNESS: I wouldn't say that they
3 pressed the issue to get paid at the higher rate
4 specifically for that rule, but if there was, you
5 know, a question in terms of trying to represent
6 to do right for the employee, our pack of people
7 or competitive advantage try to represent that for
8 them. If they raised up and made enough noise, we
9 could maybe decide just to make the adjustment.

10 BY MR. YANCHUNIS:

11 Q. That's what Wells Fargo's intent has always been
12 is to make it right for their employees; correct?

13 A. Correct.

14 Q. But wouldn't it be fair that if one employee
15 pressed the issue and got paid at the higher
16 commission rate pursuant to the standard
17 commission schedule that all classification of
18 that employees get the same benefit?

19 MR. KAUFMAN: Objection. Calls for legal
20 conclusion. You can answer.

21 THE WITNESS: No because the rule we
22 intended to be was the 43 basis points, and that
23 was, you know, the basic premise that we have for
24 the internal re-fi rate for loans, for all types
25 of loan classifications, and if they press the

1 issue, it was one we felt to make the adjustment
2 the manager maybe signed off and say, okay, let's
3 just pay this at the higher rate and we'll move
4 on.

5 BY MR. YANCHUNIS:

6 Q. So by in essence greasing the squeaky wheel, you
7 caused a lack of uniformity in the way that those
8 two classification of employees, home mortgage
9 consultants and branch sales managers producing,
10 were paid?

11 A. Sometimes if you make enough noise, you might --
12 an adjustment could take place. In terms of how
13 we viewed the rule, it was that the 43 basis
14 points and that's how we positioned it.

15 Q. It is correct that continuing through 2012 if a
16 home mortgage consultant or branch sales manager
17 producing pressed the issue about getting paid at
18 the standard commission rate schedule in Exhibit
19 2, 3, and 4 that they got paid the higher
20 commission rate --

21 MR. KAUFMAN: Objection. Lack of --

22 BY MR. YANCHUNIS:

23 Q. -- instead of the standard 43 basis points?

24 MR. KAUFMAN: Objection. Lack of
25 foundation, but you can answer.

1 THE WITNESS: I can't say in every case it
2 would be. Some could have. Some maybe didn't.

3 BY MR. YANCHUNIS:

4 Q. What would be the circumstance that a person, a
5 home mortgage consultant or a branch sales manager
6 producing would get paid if they pressed the issue
7 and those who pressed the issue and did not?

8 A. Could have been the manager they are talking to
9 and deciding if they wanted to make an exception
10 to the plan.

11 Q. And that would be done at the managerial level?

12 A. Yes.

13 Q. Now, in 2013, was there an attempt to clean up the
14 ambiguity that existed in the earlier drafts or
15 the earlier compensation plans?

16 A. Yeah. It was trying to have a rule clarification.

17 Q. And going to Exhibit Number 7, can you point out
18 to me, beginning at with the page number of the
19 document as opposed to the page number of the
20 exhibit, where that clarification is contained?

21 A. On Page 3 of 16, I think there's even some arrows
22 that are highlighted here trying to point it out.
23 That first bullet point, "For determining purchase
24 and refinance commission rate Wells Fargo, Wells
25 Fargo refinance commission rates are 43," that

1 language supersedes any other opportunities
2 involved Wells Fargo Home Mortgage to Wells
3 Fargo's Home Mortgage refinance.

4 Q. And Section 4, 5, and 7 refer to those sections of
5 the 2011 and 2012 incentive compensation plans for
6 home mortgage consultants and branch sales
7 managers producing; correct?

8 A. It would have been for the 2013 plan itself trying
9 to represent Sections 4, 5 of that plan year.

10 Q. Okay. So the 2013 plan that we see in Exhibit
11 Number 7 was intended to supersede the incentive
12 plans for branch sales managers producing for the
13 years 2011 and 2012?

14 A. Yes.

15 Q. Okay, and was this the first amendment or
16 modification of the commission rates spelled out
17 in Exhibits 2, 3, and 4?

18 A. To my knowledge, yes, this is the first -- yes.

19 Q. And was there a similar -- the same wording change
20 in 2013 for the incentive compensation plan for
21 home mortgage consultants?

22 A. Yes.

23 Q. Do you know how many employees, how many home
24 mortgage consultants and branch sales managers
25 producing received higher commissions based upon

1 the standard commission schedule in 2011 and 2012
2 where they raised the conflict in the language?
3 A. I don't know.
4 Q. In the hundreds? Any approximation?
5 A. In 2011, you know, I'm unsure that it would be in
6 the hundreds. It would be less than that.
7 Q. How about in 2012?
8 A. It probably became more prominent that it was
9 being raised. So higher than 2011.
10 Q. Would it be under a thousand?
11 A. Yes.
12 Q. 500?
13 A. 500 less. Yes.
14 Q. And there would be records within Wells Fargo
15 which would reflect which employees received
16 commissions at the standard commission rate if
17 they raised the issue; correct?
18 A. Yes.
19 Q. Okay. In connection with the approximate 6000
20 home mortgage consultants and branch sales
21 managers producing, Wells Fargo would have a list
22 of the names of those two classifications of
23 employees during 2011 and 2012; correct?
24 A. Yes.
25 Q. It would have their last known address if not

1 current address; correct?

2 A. Yes.

3 Q. And it is also correct that for the branch sales
4 managers producing and the home mortgage
5 consultants that worked for Wells Fargo in 2011
6 and 2012 that Wells Fargo Bank would have
7 commission reports for all of those employees for
8 the months that they worked for Wells Fargo Bank?

9 A. Yes.

10 Q. And those commission reports would be of the type
11 that we see in Exhibits 5 and 6?

12 A. Yes.

13 Q. Okay. Going to Exhibit 5, are you familiar enough
14 with the report that you could help me understand
15 and -- that may be a difficult question to ask,
16 help me understand anything, but are you familiar
17 enough with the Exhibits Number 5 and 6 that you
18 could read or interpret what some of the acronyms
19 say on this document?

20 A. Yes.

21 Q. So for instance, let's go to Exhibit Number 5.
22 The first page of this document refers to Bobbie
23 Dyer?

24 A. Yes.

25 Q. To the left of that, there's a number. Is that a

1 special number assigned to Bobbie Dyer?

2 A. Yes.

3 Q. So every branch sales manager producing would have

4 a special identification number?

5 A. Yes.

6 Q. That would be true of home mortgage consultants in

7 2011 and 2012?

8 A. Yes.

9 Q. Okay, and this commission report does it not

10 indicate the title of Bobbie Dyer for the period

11 for which this report is prepared?

12 A. Yes.

13 Q. It contains the last four digits of her Social

14 Security?

15 A. Yes.

16 Q. And then further to the right, her hire date?

17 A. Yes.

18 Q. And the purpose of this commission report is to

19 reflect the production of loans by both number and

20 volume for the period for which this monthly

21 report is to capture?

22 A. Yes.

23 Q. Okay. So for instance, in the left-hand column

24 under the terms commission, can you go down the

25 line and tell me what each of those mean, each of

1 those lines mean? So under the ledger column
2 commission, can you read and tell me what that
3 means?

4 A. Yes. The first one is BOB underage, which is book
5 of business. So their own personal book of
6 business. Underage would state based off of what
7 a given price would be if on a given day the price
8 is -- 4 percent is the going market industry rate,
9 and the loan that they lock or with a customer is
10 at 3 and a half. So they took a discount on the
11 price. That would be considered underage. There
12 isn't anything that took place during this period,
13 for the period of January of 2010.

14 Q. Okay.

15 A. Second one is commission on underage. So the
16 actual commission adjustment that would take place
17 for any underage. So that 147.81 is a dollar
18 amount, and that's saying a negative adjustment
19 against the commission credit of the 147.81, and
20 then there's the commission and overage. The same
21 thing: If a loan is priced at 4 percent on a
22 given day and a rate is locked at 4 and a quarter,
23 based off the parameters of the customer need or
24 whatever else to close a loan, there's overage
25 that had ben generated, and that's the \$3352.

1 Then the commission on the origination fee
2 that essentially says what the standard rate would
3 be on the commission against, let's say, the 63
4 basis points. That is the commission amount
5 against the total volume that was generated in
6 that given month. That's that \$9300, and then the
7 other miscellaneous adjustments that's just
8 adjustments that might take place based off of any
9 uncollected fees or adjustment for having a sales
10 support or the junior that Bobbie Dyer would have
11 had, and then that totaled -- then that all adds
12 up to show the direct commission line, the 874626
13 for the commission for the month.

14 Q. So is that the amount of commissions that Bobbie
15 Dyer earned in accordance with this report for the
16 month of January of 2010?

17 A. Yes.

18 Q. Now, going to the next three ledger columns,
19 volume, amount, and units, can you tell me what
20 those mean and going down line by line?

21 A. What it's stating is -- so the volume amount, the
22 first one is pipeline. That is what is in their
23 book of business that is potentially eligible to
24 fund in future months. They may be working on
25 deals that are going to close in February or

1 March. So that's the amount. I think it's 4.8
2 million and 22 units so that's the number of
3 loans, 22 loans are in the pipeline.

4 Specialty would mean if it's a -- trying to
5 represent it as an FHA loan or another loan that's
6 being distinguished differently from just purchase
7 or re-fi, and then the purchase and re-fi lines
8 are showing the loans that actually closed in that
9 month for the amounts of purchase, the 669,000 at
10 the 4 units, and re-fi 965,000 and 4 units for the
11 total volume of the 1.6 million in the month for
12 the volume that closed.

13 Q. Okay, and purchase refers to what type of loan?

14 A. Purchase would be referring to new loan to Wells
15 Fargo. So new dollars. First-time home buyer.

16 Q. So a consumer has come into the bank, borrowed a
17 sum of money to buy a home; that would be a
18 purchase loan?

19 A. Yes.

20 Q. And a refinance loan is where a consumer has an
21 existing loan with another institution or with the
22 bank, Wells Fargo, and is refinancing it for some
23 reason?

24 A. Yes.

25 Q. So what is the next series of columns beginning

1 with the word tiers? What does that describe?

2 A. Sure. That's representing the -- on the
3 commission schedule itself, meaning the tiers of
4 the schedule, the 5-tiered schedule, where they
5 fall for the purchase volume and the units
6 accounted and then the re-fi tier, meaning the 43
7 basis point tier for the commission calculation.

8 Q. Now, going down below that, there's another
9 section of the report that seems to be very
10 similar in format for the pages that follow for
11 the month of January of 2010. Is that a
12 description of the actual loans themselves within
13 that period that closed?

14 A. Yes.

15 Q. And let's just look at for instance the loan to
16 the Roberts, last name Roberts.

17 A. Yes.

18 Q. Do you see that? Okay. To the starting from the
19 name, can you read across the column and tell me
20 what those mean?

21 A. The first one across is the loan number. So each
22 loan by customer is assigned a number. I'm not
23 sure what BC for that M stands for. The AU that's
24 the accounting unit or the unit that Bobbie Dyer
25 would have with worked in. So representing where

1 it's being -- what branch it's being booked to,
2 the loan.

3 Re-fi the indicator saying it's no so it's
4 most likely a purchase loan. It's not being
5 brokered out. That's the next one. That's a no.

6 FAM I think it's a family code meaning the
7 type of the loan, and I'm not sure what the G
8 stands for.

9 SEC finance I'm not sure what that is
10 either. Some of it is parameters of the loan
11 itself.

12 Q. Okay. Do you know what the next one means?

13 A. I think it's a payment down I believe. They are
14 putting a down payment, and then easy customer I
15 think if it's a -- that would be more if it was a
16 refinance that is -- more of a streamlined
17 refinance process.

18 MR. KAUFMAN: I think it's actually FLT
19 down, float down, not payment down.

20 THE WITNESS: Float down. Okay. Thank
21 you. Yeah. Float down. So if they -- what that
22 means is if the loan returned to float if the
23 customer wasn't able to close on a certain time
24 because they are selling a house and that hasn't
25 closed and if they re-lock into a new rate.

1 BY MR. YANCHUNIS:

2 Q. Okay. Going down to the next series of -- the

3 next line reading across from left to right?

4 A. The first one is I believe it's production ID. So

5 it says fixed 30. That would be the loan type.

6 So it's a 30-year fixed loan. If they took an

7 escrow, and it's yes. Employee loan. So employee

8 -- EMPL is meaning employee and if it's an

9 employee loan. So if it's a Wells Fargo Home

10 Mortgage or a Wells Fargo employee, and so it's

11 no. This is not a Wells Fargo team member. The

12 loan type I believe that's CV for conventional.

13 Q. Okay.

14 A. The next line is REG date is registration date.

15 So the date the loan was originally registered.

16 Then the funded date --

17 Q. What does that mean; originally registered?

18 A. When they originally went through the application

19 process.

20 Q. The day that the application process began?

21 A. Yes.

22 Q. Okay. Okay.

23 A. So that was in October of '09, and then the

24 funding then took place on the 21st.

25 Q. Is a commission earned by a home mortgage

1 consultant or sales manager producing earned on
2 the application registration date or funding date?

3 MR. KAUFMAN: Objection. Calls for legal
4 conclusion as to earning, but you can answer.

5 THE WITNESS: The traditional way the
6 commission credit would be calculated would be
7 based off of the funding date and the actual
8 dollars disbursed.

9 BY MR. YANCHUNIS:

10 Q. Let me say it a different way. The commission is
11 paid to the home mortgage consultant or sales
12 manager producing once the loan is funded;
13 correct?

14 A. Correct.

15 Q. Okay.

16 A. Unless there would be any type of startup option,
17 if they would have an advancement when a loan is
18 in application and then in other dollars when it's
19 funded, but traditionally it's on the funding
20 date.

21 Q. Okay. What's the next; cancellation date?

22 A. Cancellation date. If the loan actually was
23 registered but didn't fund and was canceled, that
24 would be shown there. The lock date is when the
25 actual date the loan rate was locked in. So they

1 registered the loan on 10-21. They locked the
2 loan, the rate at 10-23 two days later.

3 Q. Next one?

4 A. That is -- WIC is WIC. That is an old acronym
5 when there would be -- between the time the loan
6 was locked to when it funded if there was any
7 dollars that are earned in the secondary market of
8 how the loan is priced and when it's securitized
9 and sold. That wasn't in existence anymore in
10 2010. So it's just blank on the sheet.

11 Q. Next one?

12 A. SRP is standing for the -- kind of the spot rate.
13 That's internal what the term would mean, what
14 tier they would fall on from a commission rate
15 level be is 58 basis points or 63 basis points,
16 and then that's the dollar amount associated with
17 it.

18 Q. Dropping down to the next line, BORR?

19 A. That's borrower. LMI, and I can't remember what
20 LMI is right now, but it's indicating no in terms
21 of the type of customer, the parameter that they
22 have. The next one is PROP which should be
23 property LMI, and again, I'm not sure what that is
24 standing for, but it's no.

25 Q. You know no because of the word N or the --

1 A. Yes. DISC and O/U is discount, meaning discount
2 points, and O and U is for overage or underage.
3 This is showing that the loan was locked in at
4 101.5. Basically a par pricing rate is 101. So
5 there's a little bit of overage that has been
6 generated here in terms of what the loan is priced
7 at. Subsidy BPS, subsidy BPS. That's that stands
8 for basis points. That means if there was a
9 subsidy given on the price based off of a pricing
10 special that's being run or something that's being
11 done in a given geography or nationwide. It's
12 zero meaning there wasn't any subsidy given for
13 the loan for the pricing.

14 RTF, EXT. RTF is return to float. So if a
15 loan is priced and the customer wants to back out
16 of a rate because rates drop before they lock the
17 loan and it returns to float, essentially the rate
18 is floating until they re-lock the loan.

19 EXT is extension. That would be if they
20 asked for an extension because they planned to
21 close in January but they have to wait until
22 February now. There could be an extension charge
23 that is taken on the loan.

24 Q. What's the .375 refer to?

25 A. That refers to what the rate would be if there's

1 an extension that is granted. So it's a pricing
2 rate of 3.75 percent.

3 Q. Next line starting from the left going to the
4 right?

5 A. Add loan RC. I don't know what that is. EPO, EO,
6 APPL, ID. It's applied ID. I'm not sure what
7 that is either.

8 Q. Okay.

9 A. MIS revenue. That's miscellaneous revenue. If
10 there's any other revenue that's been generated
11 based on off of how they price the loan.

12 The threshold one that's representing what
13 is the threshold amount of the loan could be
14 priced at, if there would be any adjustment that
15 would take place to the commission credit on an
16 underage, and the group I think that's just,
17 again, where the group -- the loan is being
18 grouped at in terms of its pricing.

19 Q. Did the format, and the descriptions, terminology,
20 and the placement as you've just read and
21 described them remain the same for 2011 and 2012
22 for the incentive compensation or commission
23 reports for both sales managers producing as well
24 as home mortgage consultants?

25 A. Yes. I believe so. In terms of how the report

1 look and feel, yes.

2 Q. And you can see that by looking at for instance
3 Exhibit Number 6 then, the layout is the same?

4 A. Yes.

5 Q. Okay.

6 MR. KAUFMAN: Changes near the end
7 actually. The change is near the end, like, Bates
8 WF 000937.

9 BY MR. YANCHUNIS:

10 Q. Let's turn to that in Exhibit Number 7. Excuse
11 me. Exhibit Number 6. As Mr. Kaufman indicated,
12 you see the beginning in May of 2012 for home
13 mortgage consultants we see here that the format
14 changed?

15 A. Yes. The parameters of what was described before
16 are in here just in a more user friendly format.

17 Q. Okay. Going to Exhibit Number 2, Page 3,
18 specialty refinance rates, we have those multiple
19 bullet points under Paragraph Number 4. Do you
20 see that?

21 A. Yes.

22 Q. Do the commission reports that we see in 5 and 6
23 do they describe the loans by the types that we
24 see described in Paragraph 4 of Exhibit Number 2?

25 A. Yes. I'm not sure in every instance. Not being

1 specific with the commission department, but on
2 program code types it could be three-step or
3 called out.

4 Q. But it was the intent is it not of the commission
5 reports to capture the type of loans that are
6 being dealt with in the reports descriptive of
7 what we see on Paragraph Number 4 in Exhibit
8 Number 2?

9 A. Yes.

10 Q. So for instance, Wells Fargo Bank has the ability
11 of determining for each of its home mortgage
12 consultants and branch sales managers producing
13 for 2011 how many loans those employees generated
14 that are the HARP three-step refinanced loans;
15 correct?

16 A. Correct.

17 Q. And Wells Fargo also has the ability for the
18 periods of 2011 and 2012 for its home mortgage
19 consultants and branch sales managers producing to
20 determine how many loans each of those employees
21 closed that were F -- WFHM loan of a Fannie Mae to
22 Fannie Mae refinance plus refinance loan?

23 A. Yes.

24 MR. YANCHUNIS: Tom, could we do this? I
25 need to eat.

1 MR. KAUFMAN: That's all right. Quick half
2 hour lunch?

3 MR. YANCHUNIS: Could we do that everyone?
4 Thank you so much.

5 THE VIDEOGRAPHER: We're going off the
6 record about 12:07 p.m.

7 (Whereupon a lunch break was taken from
8 12:07 p.m. to 12:44.)

9 THE VIDEOGRAPHER: We are back on the
10 record. This is the continuing videotaped
11 deposition of Todd Hauer taken on January 15th,
12 2014. The time is about 12:44 p.m.

13 BY MR. YANCHUNIS:

14 Q. Were you personally involved in the process of
15 drafting the clarification contained in exhibit
16 number -- well, were you involved in the decision
17 to change the language in the incentive
18 compensation plans for branch sales managers and
19 home mortgage consultants for the year 2013?

20 A. Yes.

21 Q. Okay, and can you recall what individuals at Wells
22 Fargo Bank you spoke to and had conversations with
23 regarding the change in the language of the
24 specialty refinance rates and the refinance loan
25 commission rates that are contained in Exhibits 2,

1 3, and 4?

2 A. It was very similar to the compensation team. It
3 would be made up of senior management, HR,
4 compensation team, employee relations, legal and
5 compliance.

6 Q. Who is on the compensation team in 2012 or 2013
7 which came up with the Exhibit Number 7? Can you
8 tell me their names?

9 A. Well, the committee would change during that time,
10 but you know, like I mentioned before, Cliff Frohn
11 who headed the team from a management along with
12 Mark Faktor that I mentioned before from bonus
13 commission accounting.

14 Q. Was Mr. Faktor based in Iowa or located in Iowa?

15 A. Yes.

16 Q. Who else?

17 A. We have an HR manager Jay Biles.

18 Q. How do you spell his last name?

19 A. B-I-L-E-S.

20 MR. KAUFMAN: I think Faktor is with a K
21 not a C.

22 THE WITNESS: Faktor is with a K. Yes.

23 BY MR. YANCHUNIS:

24 Q. What department or section was Mr. Biles in?

25 A. Human resources manager.

1 Q. Where was he located? What office did he work out
2 of in Wells Fargo in 2012 or 2013?

3 A. Charlotte, North Carolina.

4 Q. Okay. Who else?

5 A. I would have Lorraine Centonie. She's an
6 attorney.

7 Q. Can you spell her name as best you can?

8 A. C-E-N-T-O-N-I-E.

9 Q. And Lorraine is spelled L-L -- or L-O-R?

10 A. L-O-R.

11 Q. A-I-N-E?

12 A. Yes.

13 Q. What department or branch or section of the bank
14 does she work in?

15 A. She's an attorney for the for consumer lending
16 group.

17 Q. So she worked within the legal department?

18 A. Yes.

19 Q. And where was her office based at the time of her
20 involvement in the drafting of -- well, let me ask
21 you this: Was she actually involved in the
22 drafting of the language for instance that we have
23 on Page 4?

24 A. Yes.

25 Q. And where was she located her office?

1 A. Houston, Texas.

2 Q. Who else?

3 A. That would be the core part of the team.

4 Q. In connection with the drafting of the exhibits 3,
5 4 -- excuse me, 2, 3, 4, the incentive
6 compensation plans for 2011 and 201 for home
7 mortgage consultants -- sorry, home mortgage
8 consultants and branch sales manager producing,
9 was there a lawyer or anyone from the legal
10 department who was on the team that came up with
11 those two plans?

12 A. There's involvement from an attorney on the plans.
13 Yes.

14 Q. On the team that you were a member of that you
15 described earlier as drafting the 2011 and 2012,
16 was there a lawyer who was on your team?

17 A. Yes.

18 Q. Who was that?

19 A. Lorraine Centonie.

20 MR. KAUFMAN: He hasn't asked for it yet,
21 but if he asks any questions about communications
22 where she was present or to her, those would be
23 privileged.

24 BY MR. YANCHUNIS:

25 Q. We talked earlier today about home mortgage

1 consultants and producing branch sales managers
2 who had received a higher commission based upon
3 the standard commission schedules where they
4 complained about it. Do you recall that
5 testimony?

6 A. Yes.

7 Q. Do you recall how much commission income for those
8 who complained for both 2011 and 2012 what that
9 added up to?

10 A. I don't.

11 Q. There would be records though that would he
12 reflect that would there not?

13 A. Yes.

14 Q. And did -- when those home mortgage consultants
15 and producing branch sales managers who got a
16 higher commission rate than the 43 basis points
17 for those loans described for instance on Page 2
18 of 12, what process did that all go through?

19 MR. KAUFMAN: Objection. Assumes facts not
20 in evidence. You can answer.

21 BY MR. YANCHUNIS:

22 Q. To get that higher commission?

23 A. In general, they would start by going to their
24 first level manager, their branch manager. They
25 would have a discussion with the branch manager to

1 determine if, no, this is the way the plan is
2 spelled out, no, we're not going to go any
3 further, or if they decided they wanted to take it
4 further, they would talk to bonus commission
5 accounting to get mor clarification on how that
6 payment work.

7 Q. Let's stop there. In connection with either the
8 producing branch sales managers or the home
9 mortgage consultants who spoke to their immediate
10 report or immediate supervisor, are you with me so
11 far?

12 A. Um-hm.

13 Q. Correct?

14 A. Yes. Could that direct supervisor make the
15 decision to give that employee, whether it be a
16 home mortgage consultant or producing branch sales
17 manager, the higher commission.

18 MR. KAUFMAN: Objection. Lack of
19 foundation.

20 BY MR. YANCHUNIS:

21 Q. Right?

22 MR. KAUFMAN: You can answer.

23 THE WITNESS: If there was going to be an
24 adjustment, they couldn't directly do that. They
25 would probably at least go two levels up to an

1 area regional manager that ultimately make that
2 decision.

3 BY MR. YANCHUNIS:

4 Q. If connection with any of the home mortgage
5 consultants or branch -- producing branch sales
6 managers who got a higher commission based upon
7 the standard commission schedule spelled out for
8 example on Page 2 of 12 in Exhibit 2, was there
9 any branch sales manager producing or home
10 mortgage consultants who got paid a higher
11 commission without going to BAC?

12 MR. KAUFMAN: Objection. Lack of
13 foundation, but you can answer.

14 THE WITNESS: No.

15 BY MR. YANCHUNIS:

16 Q. So BAC (sic) in every instance in 2011 and 2012
17 was involved in the decision-making process to
18 award a branch sales manager producing or home
19 mortgage consultant who complained a higher
20 commission rate?

21 A. Not necessarily decision-making process, but they
22 are the one that pushed the button to make the
23 payment. They have to make the payment.

24 Q. After going to their direct supervisor, whether
25 they be a home mortgage consultant or a producing

1 branch sales manager, what would be the next step
2 that they would have to take?

3 A. The next step they would send an e-mail or call in
4 to bonus commission accounting to determine are
5 they misinterpreting the rules, or you know,
6 what's the clarification, and you know, the
7 clarification would be that all internal
8 Wells-to-Wells re-fi are paid at the 43 basis
9 points could end right there. Say yup, this is
10 the rate that should be paid, you're being paid
11 correctly.

12 Q. And there were you testified earlier 2011-2012
13 branch sales managers producing and home mortgage
14 consultants who got a higher commission other than
15 the 43 basis points, correct, based upon the
16 schedule that we see on Page 2 of Exhibit Number
17 12 -- Exhibit Number 2?

18 A. Yes. Some were given an adjustment.

19 Q. So some -- are you saying on some occasions people
20 at BCA gave to branch sales managers producing or
21 home mortgage consultants the higher rate, or
22 sometimes they didn't?

23 A. Only if they were given -- by the time it got up
24 to regional manager to make that final
25 determination would that take place. They

1 wouldn't do it on their own.

2 Q. Again, it was the intent of Wells Fargo Bank to
3 apply the incentive compensation plan in a uniform
4 manner to all of its employees covered by those
5 plans; correct?

6 MR. KAUFMAN: Objection. (Inaudible)
7 testimony. You can answer.

8 THE WITNESS: It was the intent to follow
9 the rules that the Wells-to-Wells re-fi rate was
10 the first level that would be programmed that the
11 bonus commission accounting would pay out at, and
12 if there would be an adjustment, it could happen
13 from one HMC to another, but it was based off of
14 how that review would take place and if the
15 regional manager would allow the payment to
16 happen.

17 BY MR. YANCHUNIS:

18 Q. You're saying the decision had to be made at the
19 regional level?

20 A. At least at the regional level. Yes.

21 Q. But again, it's the intent of the incentive
22 compensation plan in Exhibits 2, 3, and 4 to apply
23 those plans evenly to all employees covered by
24 those plans; correct?

25 MR. KAUFMAN: Objection. Asked and

1 answered. You can answer.

2 THE WITNESS: In terms of the core
3 schedule, but if there are any amendments or
4 adjustments that's made on a regional basis or the
5 minimum commission amounts there, it could be
6 different. So it's not a uniform application for
7 every HMC.

8 BY MR. YANCHUNIS:

9 Q. Does it say that in these plans, that there could
10 be deviations based upon regional decision making?

11 A. No, but the plan reflects that subject to change
12 at any time at the discretion of the employer.

13 So, you know, we could make amendments like
14 Exhibit Number 7.

15 Q. Okay. So if the employer -- by employer, we're
16 talking about Wells Fargo Bank; correct?

17 A. Yes.

18 Q. And if the amendment was made, it would be made
19 for everyone covered by the incentive plan;
20 correct?

21 A. Potentially. Maybe not for everyone.

22 Q. That was the intent though of the statement that
23 Wells Fargo could make an amendment at any time;
24 correct?

25 MR. KAUFMAN: Objection. Asked and

1 answered. You can answer again.

2 THE WITNESS: Could be for a division, or
3 region, or specific group of HMCs.

4 BY MR. YANCHUNIS:

5 Q. During the periods of 2011 and 2012, were there
6 any amendments to these plans based upon a region
7 or division?

8 A. Yes.

9 Q. Okay. Can you tell me which ones were?

10 A. I can't tell you what specific regions, but there
11 could be some different policies on fee collection
12 that could be for specific region.

13 Q. In connection with standard commission schedule,
14 was there any change to this standard commission
15 schedule and the type of loans it could qualify
16 for it set forth on Page 3 by region in 2011 and
17 2012?

18 A. I can't recall that there would be any specific
19 change by region. No.

20 Q. Could you go -- who is the plan administrator
21 under the incentive compensation plans for 2011
22 and 2012 for home mortgage consultants and
23 producing branch sales managers?

24 A. Is there a specific page you're looking at?

25 Q. So you're not familiar with -- I'm looking at Page

1 10 for example of Exhibit 2.

2 A. So under Section C there, the plan administrator,

3 the EVP of human resources would be considered the

4 executive vice president of HR for the Wells Fargo

5 Home Mortgage group.

6 Q. Who was that in 2011?

7 A. In 2011, it was Dave Furman.

8 Q. How do you spell Mr. Furman's last name?

9 A. F-U-R-M-A-N.

10 Q. Where was he located within the company's

11 operations in terms of geography?

12 A. Des Moines, Iowa.

13 Q. For 2012, did he continue to be the EVP for human

14 resources for Wells Fargo Home Mortgage?

15 A. Yes.

16 Q. Is he still in that position today?

17 A. No.

18 Q. When did he change?

19 A. He retired in 2012.

20 Q. Do you remember in what month?

21 A. No.

22 Q. Who took over his position when he retired?

23 A. His name is John Cloutier.

24 Q. Spell his last name.

25 A. C-L-O-U-T-I-E-R.

1 Q. In connection with the home mortgage consultants
2 and producing branch sales managers who received
3 -- who complained about not getting a higher
4 commission beyond the 43 basis points and who were
5 paid it, did they all go through a dispute
6 resolution process described on Page 10 of 12?

7 MR. KAUFMAN: Objection. Lack of
8 foundation, but you can answer.

9 THE WITNESS: I don't know specifically,
10 but I would not think so.

11 BY MR. YANCHUNIS:

12 Q. Do you know what the percentage is of those
13 employees who complained, home mortgage
14 consultants or branch sales managers producing who
15 actually went through the dispute resolution
16 process as compared with those who did not and
17 were paid?

18 A. I do not.

19 Q. A low percentage who went through the process? If
20 any at all.

21 A. I know people would have gone through the process.
22 I can't put a percentage.

23 Q. Was it a low percentage compared with 100 percent?

24 MR. KAUFMAN: Clear -- what's the 100
25 percent? Everybody who ever complained?

1 BY MR. YANCHUNIS:

2 Q. Hundred percent who complained of -- hundred
3 percent of the branch sales managers producing and
4 home mortgage consultants who complained about
5 being paid a lower basis points in accordance with
6 the incentive compensation plans in 2011 and 2012
7 and who received a higher commission rate based
8 upon the schedule we have for instance on Page 2
9 of Exhibit 2?

10 A. I don't know specifically. I wouldn't say low in
11 terms of under 10 percent. I don't think it would
12 have been necessarily higher than 50 percent. The
13 resolution process is used, you know, for many
14 different things. It is used but not necessarily
15 in every case and specifically relating to the
16 specialty refinance.

17 Q. What would determine when the dispute resolution
18 process was used and when it was not?

19 A. How far it was formally escalated, and if a
20 employee relations consultant would get involved
21 in the process.

22 Q. Human relations consultant?

23 A. Employee relations consultant.

24 Q. Okay, and this employee human relations consultant
25 was a Wells Fargo employee?

1 A. Yes.

2 Q. What was the role of that individual in the
3 dispute resolution process?

4 A. They would be help in terms of administration of
5 talking with the employee, managers to
6 fact-finding to help determine what's happening in
7 the case.

8 Q. So they were an advocate, or investigator, or --

9 A. Investigator.

10 Q. Okay. So they were -- but again, they were paid
11 by Wells Fargo, they were an employee of Wells
12 Fargo; correct?

13 A. Yes.

14 Q. And the person who was involved in resolving the
15 dispute wasn't a non-Wells Fargo employee was it?

16 A. No.

17 Q. It was a Wells Fargo employee?

18 A. Yes.

19 Q. And the dispute resolution process that we find in
20 Paragraph E are there documentation which Wells
21 Fargo would have which show which employees,
22 branch sales managers producing or home mortgage
23 consultants, who got paid a higher commission
24 based upon the table in -- on Page 2 of Exhibit 2
25 went through that process and those who did not

1 and got paid?

2 A. Wouldn't be that granular. You know, in some
3 cases, it could have been documented. In others,
4 it maybe wasn't. It depended on the employee
5 relations consultant who was doing the review and
6 how formal they took notes or keep track of that.

7 Q. Are you aware of any instance in which an employee
8 did not make -- did not raise the issue that they
9 should be paid at a higher commission rate within
10 30 days where they were not paid a higher
11 commission rate because they had not raised the
12 issue within 30 days of getting a copy of their
13 commission report?

14 A. I don't know specific cases, but yes, in general,
15 that would happen if it wasn't raised within the
16 30-day time frame that was beyond the statute of
17 the limitations that we would use to look back to
18 determine if there would be an adjustment for
19 commission.

20 Q. But of how many people who complained, home
21 mortgage consultants or branch sales managers
22 producing who raised the issue, were successful in
23 getting beyond the 30-day limitation period as you
24 described it?

25 A. I don't know.

1 Q. Do you know if -- do you know how many who raised
2 the issue beyond the 30 days were barred or it was
3 decided they would not get paid the higher
4 commission because they didn't complain within the
5 30 days?

6 A. I don't know.

7 Q. You would agree with me that the purpose of the
8 intensive plan though was to provide people with
9 an understanding that if they did certain work
10 that they would get paid a certain amount?

11 MR. KAUFMAN: Objection. Asked and
12 answered. You can answer again.

13 THE WITNESS: Yes. I mean, based off of
14 the terms of the plan, that's what would be
15 followed.

16 BY MR. YANCHUNIS:

17 Q. It wasn't Wells Fargo's intent to keep any money
18 from people who had earned that money in
19 accordance with the incentive compensation plan;
20 correct?

21 MR. KAUFMAN: Objection. Calls for legal
22 conclusion as to what's earned, but you can
23 answer.

24 THE WITNESS: I mean, in terms of following
25 the commission credit opportunity, you know, the

1 plan would be administered and set up from a
2 payment perspective for bonus commission
3 accounting to pay in that manner.

4 BY MR. YANCHUNIS:

5 Q. Going back to Exhibit Number 7, Page 3 of 16, the
6 language which is in the arrows, the incentive --
7 the compensation team which you were a member made
8 a decision to clarify the language in the earlier
9 2011-2012 plans to make certain everybody
10 understood what the deal was; correct?

11 A. Yes.

12 Q. When did this 2013 compensation plan go into
13 effect in 2013?

14 A. Effective for any loans that funded on or after
15 January 31st of 2013.

16 (Whereupon material was marked for
17 identification as Exhibit 8.)

18 BY MR. YANCHUNIS:

19 Q. Showing you a document which I marked for the
20 purposes of identification as Exhibit 8, have you
21 ever seen this document before?

22 A. Not this specific document, but the content I'm
23 familiar with.

24 Q. And what do you understand -- well, tell me what
25 the contents mean.

1 A. So the first column is stating commission system.

2 So VCS --

3 Q. Go to the top.

4 A. I'm sorry. W-to-W specialty loan refinance
5 analysis. W-to-W is standing for Wells-to-Wells.

6 Q. Okay, and the specialty loan refinance refers to
7 what?

8 A. Would be referring to loans that would generally
9 fall under the -- or would fall under the
10 provision of the compensation plans for the
11 Section 4 of the 2011-2012 plan document.

12 Q. For both home mortgage consultants and producing
13 branch sales managers?

14 A. Yes.

15 Q. Okay. So continue with telling me what this
16 means.

17 A. So then the first piece there, commission system,
18 there's three types of commission systems that are
19 used where information is being accessed to be
20 able to calculate the commission payment. VCS is
21 variable commission system. PMB is -- stands for
22 private mortgage banker. PMB is another type of
23 agency that focuses high net worth clients. It's
24 just standing for the system where that
25 information is housed to be able to extract

1 commission payments, and LIS -- I don't know what
2 the LIS stands for, but it's a loan system that is
3 used to be able to extract information on loans to
4 be able to determine commission payments.

5 Q. And each of these three systems that you've
6 identified would capture different loans based
7 upon the type of origination; correct?

8 A. Correct.

9 Q. But all would be loans that were produced by
10 either home mortgage consultants or producing
11 branch sales managers?

12 A. Yes.

13 Q. So is it correct that the next ledger column under
14 loans indicates the number of loans that each of
15 those systems captured or contained for the period
16 of 2011-2012?

17 A. Yes.

18 MR. KAUFMAN: For the record, I assume this
19 captures private mortgage bankers who technically
20 are not HMCs, but I think we're treating them as
21 that for the purposes of this analysis. Okay.

22 MR. YANCHUNIS: Thank you Tom.

23 BY MR. YANCHUNIS:

24 Q. And then what's the next ledger column?

25 A. That's saying commission difference. If minimum

1 commission rate for W-to-W, Wells-to-Wells loan
2 not enforced. So that is the dollar amount of the
3 variance between the 43 basis points to the
4 standard schedule rate if that standard schedule
5 rate amount is higher than the minimum commission
6 amount of \$700.

7 Q. Okay. So in other words, if home mortgage
8 consultants and branch sales managers were
9 compensated at the standard commission schedule
10 for those specialty refinance rate loans that we
11 just looked at and described earlier as not having
12 the language flat 43 basis points by each of those
13 loans, that would be the amount of compensation or
14 commissions owed to home mortgage consultants and
15 producing branch sales managers?

16 A. I don't want to say owed, but in terms of the
17 variance, that delta, that is the dollar amount.
18 Yes.

19 MR. YANCHUNIS: I don't have any questions
20 I can think of. If you have some that you can ask
21 that you think are good questions that I didn't
22 ask, I would please ask you to help me.

23 MR. KAUFMAN: Yeah. I think we'll talk
24 more at the mediation. I think we're done though.

25 MR. YANCHUNIS: Thank you. I appreciate

1 your courtesy. I'm sure I'll think of a hundred
2 questions on the way back to Florida, but it will
3 be too late. Thank you sir.

4 THE WITNESS: Thank you.

5 MR. KAUFMAN: So he'll have 30 days to
6 review and -- 30 days to review and sign, the
7 usual process.

8 MR. YANCHUNIS: Yup.

9 MR. KAUFMAN: Okay. We're going off the
10 record?

11 THE VIDEOGRAPHER: We're going off the
12 record at about 1:14 p.m.

13 MR. KAUFMAN: We'll read and sign.

14 (Whereupon the deposition adjourned at 1:14
15 p.m.)
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