

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES - WEST DISTRICT

NIVIE SAMAAAN, AN INDIVIDUAL,  
PLAINTIFF,  
VS.  
CASE NO. SC 087400  
JOSEPH ZERNIK, AN INDIVIDUAL, AND  
DOES 1 THROUGH 20, INCLUSIVE,  
DEFENDANTS.  
AND ALL RELATED CROSS-ACTIONS.

DEPOSITION OF NIVIE SAMAAAN  
LOS ANGELES, CALIFORNIA  
MONDAY, JULY 10, 2006

REPORTED BY:  
PATRICIA E. NAKANO  
C.S.R. NO. 5624  
JOB NO. 547246

THE DEPOSITION OF NIVIE SAMAAAN, TAKEN ON BEHALF OF  
DEFENDANT AND CROSS-COMPLAINANT JOSEPH ZERNIK, AT 800 SOUTH  
FIGUEROA STREET, 12TH FLOOR, LOS ANGELES, CALIFORNIA, AT  
10:08 A.M., MONDAY, JULY 10, 2006, BEFORE PATRICIA E.  
NAKANO, C.S.R. NO. 5624, A SHORTHAND REPORTER FOR THE STATE  
OF CALIFORNIA, PURSUANT TO NOTICE.

\* \* \*

APPEARANCES OF COUNSEL:

FOR PLAINTIFF:

LAW OFFICES OF JAY R. STEIN  
BY: JAY R. STEIN, ESQ.  
1801 CENTURY PARK EAST  
SUITE 2400  
LOS ANGELES, CALIFORNIA 90067-2326

FOR DEFENDANT AND CROSS-COMPLAINANT JOSEPH ZERNIK:

SULLIVAN, WORKMAN & DEE, LLP  
BY: CHARLES D. CUMMINGS, ESQ.  
800 SOUTH FIGUEROA STREET  
12TH FLOOR  
LOS ANGELES, CALIFORNIA 90017

APPEARANCES OF COUNSEL: (CONT.)  
FOR CROSS-DEFENDANTS COLDWELL BANKER RESIDENTIAL  
BROKERAGE AND MICHAEL LIBOW:  
COLDWELL BANKER RESIDENTIAL BROKERAGE COMPANY  
THE LAW DEPARTMENT  
11611 SAN VICENTE BOULEVARD  
NINTH FLOOR  
LOS ANGELES, CALIFORNIA 90049-6510  
(NOT PRESENT)

ALSO PRESENT:  
JAE LLOYD  
JOSEPH ZERNIK. (PAGE 9 TO PAGE 57)

I N D E X

WITNESS:  
NIVIE SAMAAAN  
EXAMINATION BY: PAGE:  
MR. CUMMINGS 5  
E X H I B I T S  
DEFENDANT'S PAGE:  
1 - NOTICE OF DEPOSITION AND DOCUMENT PRODUCTION 18  
OF NIVIE SAMAAAN, SEVEN PAGES  
2 - VARIOUS DOCUMENTS, BATES STAMPED S0001 18  
THROUGH S0116, 116 PAGES  
3 - PHOTOCOPY OF CHECK NO. 1074, DATED 9/24/04, 59  
IN THE AMOUNT OF \$15,000, ONE PAGE  
4 - LETTER, DATED SEPTEMBER 30, 2004, ONE PAGE 91  
5 - LETTER, DATED SEPTEMBER 30, 2004, ONE PAGE 92  
6 - LETTER, DATED OCTOBER 6, 2004, ONE PAGE 92  
7 - LETTER, DATED SEPTEMBER 23, 2004, ONE PAGE 93  
8 - LETTER, DATED SEPTEMBER 23, 2004, ONE PAGE 94  
9 - LETTER, DATED OCTOBER 5, 2004, ONE PAGE 97  
10 - FAX COVER SHEET FROM MICHAEL J. LIBOW, 99  
10/15/04, WITH ATTACHED DOCUMENTS, SIX PAGES  
11 - DOCUMENT, DATED NOVEMBER 8, 2004, FROM GAIL 101  
HERSHOWITZ, ONE PAGE

1 LOS ANGELES, CALIFORNIA; MONDAY, JULY 10, 2006

2 10:08 A.M.

3 NIVIE SAMAAAN,

4 THE WITNESS HEREIN, HAVING BEEN FIRST  
5 DULY ADMINISTERED THE OATH, WAS EXAMINED  
6 AND TESTIFIED AS FOLLOWS:

7 EXAMINATION

8 BY MR. CUMMINGS:

9 Q. CAN YOU PLEASE STATE AND SPELL YOUR FULL NAME  
10 FOR THE RECORD.

11 A. NIVIE SAMAAAN, N-I-V-I-E S-A-M-A-A-N.

12 Q. I'M GOING TO GIVE YOU SOME INSTRUCTIONS NOW  
13 THAT WE TRY TO FOLLOW IN A DEPOSITION.

14 ONE OF THE MOST IMPORTANT THINGS IS THAT ONLY  
15 ONE OF US SPEAK AT A TIME; AND, THEREFORE, IF AT ANY  
16 TIME DURING THESE PROCEEDINGS I START A QUESTION BEFORE  
17 YOU'VE COMPLETED YOUR ANSWER, PLEASE TELL ME, AND I'LL  
18 LET YOU COMPLETE YOUR ANSWER.

19 IT'S IMPORTANT THAT ALL OF YOUR ANSWERS BE IN  
20 AUDIBLE WORDS IN THE ENGLISH LANGUAGE, RATHER THAN NODS  
21 OR SHAKES OF THE HEAD OR UTTERANCES SUCH AS "UH-HUH" OR  
22 "HUH-UH." THE REASON FOR THAT IS SO THAT WE HAVE A  
23 CLEAR RECORD.

NIVIE SAMAAAN 7/10/06

1 EVEN THOUGH THESE ARE INFORMAL PROCEEDINGS, AND  
2 THEY'RE IN MY OFFICE, THE OATH YOU'VE TAKEN IS THE SAME  
3 OATH THAT YOU WOULD TAKE IF YOU WERE IN COURT, AND  
4 YOU'RE SUBJECT TO THE SAME PENALTIES IF YOU DON'T TELL  
5 THE TRUTH AS IF YOU WERE IN COURT AND DIDN'T TELL THE  
6 TRUTH.

7 DO YOU UNDERSTAND THAT?

8 A. YES.

9 Q. IF YOU DON'T UNDERSTAND A QUESTION, I DON'T  
10 WANT YOU TO ANSWER THE QUESTION. I WANT YOU TO TELL ME  
11 YOU DON'T UNDERSTAND IT, WHY IT IS YOU DON'T UNDERSTAND  
12 IT. I'LL ATTEMPT TO REPHRASE IT SO THAT YOU DO  
13 UNDERSTAND IT.

14 IF MY VOICE DROPS AND YOU DON'T CLEARLY HEAR A  
15 QUESTION, LET ME KNOW. I'LL EITHER RESTATE THE QUESTION  
16 OR ASK THE REPORTER TO READ THE QUESTION BACK TO YOU.

17 IF YOU ANSWER A QUESTION, I'LL ASSUME THAT YOU  
18 HEARD THE QUESTION, YOU UNDERSTOOD THE QUESTION, YOU'RE  
19 ANSWERING THAT QUESTION, NOT SOME OTHER QUESTION.

20 IF, AS WE GO THROUGH THE PROCEEDINGS, YOU THINK  
21 OF SOMETHING THAT WOULD CLARIFY OR MODIFY A PRIOR ANSWER  
22 YOU'VE GIVEN TO A PRIOR QUESTION, YOU JUST TELL US, AND  
23 YOU CAN GO BACK AND MODIFY YOUR ANSWER.

24 IF YOU WANT TO GET WATER OR COFFEE OR USE THE  
25 RESTROOM, JUST TELL US, AND WE'LL TAKE A BREAK.

NIVIE SAMAAAN 7/10/06

1 ARE YOU AWARE OF ANY PHYSICAL OR MEDICAL  
2 CONDITION THAT YOU HAVE THAT WOULD PREVENT YOU FROM  
3 GIVING YOUR BEST TESTIMONY HERE TODAY?

4 A. NO.

5 Q. ARE YOU CURRENTLY TAKING ANY MEDICATIONS OF ANY  
6 KIND THAT WOULD AFFECT YOUR ABILITY TO RECALL AND  
7 RECOLLECT EVENTS?

8 A. NO.

9 Q. WHAT'S YOUR DATE OF BIRTH?

10 A. 11/6/66.

11 MR. STEIN: COUNSEL, BEFORE WE GO WITH SUBSTANTIVE  
12 QUESTIONS, CAN WE PUT ON THE RECORD THE STATUS OF  
13 MR. LIBOW'S REPRESENTATION OR LACK HEREOF AT THIS  
14 DEPOSITION? I'D LIKE IT ON THE RECORD THAT THEY CHOSE  
15 NOT TO APPEAR.

16 MR. CUMMINGS: SURE. I CALLED A FEW MINUTES AGO BY  
17 TELEPHONE MR. SHULKIN'S OFFICE. I SPOKE TO SOMEBODY,  
18 WHOSE NAME I DON'T REMEMBER, BUT WHO IDENTIFIED HERSELF,  
19 A WOMAN, WHO IS ONE OF HIS ASSISTANTS, WHO SAID HE WAS  
20 NOT IN. I ASKED IF HE WAS COMING TO THE DEPOSITION OF  
21 MS. SAMAAAN TODAY IN THE ZERNIK/SAMAAAN MATTER, AND I WAS  
22 INFORMED THAT NOBODY FROM THEIR OFFICE WAS COMING, AND  
23 THAT'S WHY WE COMMENCED WITH THE DEPOSITION.

24 MR. STEIN: AND JUST FOR THE RECORD, THEY DID  
25 RECEIVE NOTICE OF THE DEPOSITION IN ADVANCE PURSUANT TO

NIVIE SAMAAAN 7/10/06

1 THE DEPOSITION NOTICE THAT WE RECEIVED; IS THAT CORRECT?

2 MR. CUMMINGS: THAT IS CORRECT.

3 MR. STEIN: OKAY. THANK YOU.

4 BY MR. CUMMINGS:

5 Q. ALSO, AFTER THESE PROCEEDINGS ARE CONCLUDED,  
6 YOU'LL HAVE AN OPPORTUNITY TO REVIEW YOUR DEPOSITION,  
7 MAKE ANY CHANGES IN IT AND ANY CORRECTIONS THAT YOU WANT  
8 TO; SO TO THE EXTENT YOU DO SO, I'LL HAVE THE  
9 OPPORTUNITY TO COMMENT ON THOSE AT THE TRIAL OR OTHER  
10 PROCEEDINGS IN THIS ACTION. SO TRY TO GIVE YOUR BEST  
11 TESTIMONY.

12 WILL YOU PLEASE LOOK AT THE NOTICE OF  
13 DEPOSITION.

14 HAVE YOU HAD A CHANCE TO READ OVER THAT?

15 A. NO.

16 Q. WOULD YOU TAKE A CHANCE TO READ OVER THAT,  
17 PARTICULARLY IF YOU COULD LOOK AT WHAT IS REFERRED TO AS  
18 EXHIBIT A, AND IF YOU COULD TELL ME IF YOU HAVE BROUGHT  
19 WITH YOU ALL THE DOCUMENTS DESCRIBED ON EXHIBIT A, TO  
20 THE BEST OF YOUR KNOWLEDGE.

21 A. I HAVE DOCUMENTS WITH ME. I DON'T KNOW IF  
22 THOSE ARE THE DOCUMENTS OR NOT.

23 Q. MAYBE YOUR COUNSEL CAN.

24 MR. STEIN: FOR THE RECORD, WE ARE PRODUCING  
25 DOCUMENTS NOS. S001 THROUGH S0116, WHICH ARE RESPONSIVE

NIVIE SAMAAAN 7/10/06

1 TO THESE REQUESTS. IN ADDITION, THE PLAINTIFF HAS  
 2 ALREADY PRODUCED COPIES OF THE FILES OF COLDWELL BANKER  
 3 AND MARA ESCROW, WHICH ARE NOT INCLUDED WITHIN THIS  
 4 PRODUCTION. IF YOU WOULD LIKE, WE CAN MAKE THIS AN  
 5 EXHIBIT NUMBER. I DON'T KNOW. THAT'S UP TO YOU, AS YOU  
 6 SO PLEASE.

7 MR. CUMMINGS: THEY'RE BATES STAMPED. THAT'S FINE.

8 (MR. ZERNIK ENTERS THE DEPOSITION

9 ROOM.)

10 BY MR. CUMMINGS:

11 Q. MS. SAMAAAN, I'LL ASK YOU TO SIMPLY LOOK AT THIS  
 12 STACK OF DOCUMENTS THAT YOUR COUNSEL'S PRODUCED.

13 HAVE YOU LOOKED AT THE DOCUMENTS YOU BROUGHT  
 14 WITH YOU HERE TODAY?

15 A. YES.

16 Q. TO YOUR KNOWLEDGE, OTHER THAN THE DOCUMENTS  
 17 YOU'VE RECEIVED OR YOUR ATTORNEY'S RECEIVED IN THIS  
 18 ACTION FROM MARA ESCROW COMPANY AND FROM COLDWELL  
 19 BANKER, ARE YOU AWARE OF ANY OTHER DOCUMENTS THAT RELATE  
 20 TO THIS LAWSUIT, OTHER THAN COMMUNICATIONS WITH YOUR  
 21 ATTORNEY?

22 A. NO.

23 Q. NOW, HAVE YOU EVER BEING KNOWN BY ANY OTHER  
 24 NAME?

25 A. NO.

NIVIE SAMAAAN 7/10/06

1 Q. ARE YOU CURRENTLY MARRIED?

2 A. YES.

3 Q. WHAT'S THE DATE OF YOUR MARRIAGE?

4 A. SEPTEMBER 19, 2004.

5 Q. WHERE WERE YOU MARRIED?

6 A. HAWAII.

7 Q. WHAT'S THE NAME OF YOUR SPOUSE?

8 A. JAE R. LLOYD.

9 Q. WHERE DO YOU CURRENTLY RESIDE?

10 A. 133 SOUTH PECK DRIVE, NO. 104, BEVERLY HILLS,  
 11 90212.

12 Q. DO YOU OWN THAT PROPERTY?

13 A. NO.

14 Q. DO YOU RENT THAT PROPERTY?

15 A. YES.

16 Q. WHEN DID YOU MOVE INTO THAT PROPERTY?

17 A. ARE YOU ASKING WHEN I MOVED INTO THE PROPERTY?

18 Q. YES.

19 A. SEPTEMBER OF 2004.

20 Q. DID YOUR HUSBAND RENT THE PROPERTY BEFORE YOU  
 21 MOVED IN?

22 A. YES.

23 Q. IS THAT ADDRESS ON PECK THE LOCATION WHERE YOU  
 24 AND YOUR HUSBAND HAVE RESIDED SINCE YOU WERE MARRIED?

25 A. YES.

NIVIE SAMAAAN 7/10/06

1 Q. HAVE YOU EVER BEEN CONVICTED OF A FELONY?

2 A. NO.

3 Q. WHERE WERE YOU BORN?

4 A. CAIRO, EGYPT.

5 Q. WHEN DID YOU COME TO THE UNITED STATES?

6 A. 1969.

7 Q. DID YOU GRADUATE FROM HIGH SCHOOL?

8 A. YES.

9 Q. WHAT YEAR?

10 A. 1985.

11 Q. WHAT HIGH SCHOOL?

12 A. BYER HIGH SCHOOL IN MODESTO, CALIFORNIA.

13 Q. HOW DO YOU SPELL THAT?

14 A. B-Y-E-R.

15 Q. DID YOU ATTEND COLLEGE?

16 A. YES.

17 Q. WHAT'S THE FIRST COLLEGE YOU ATTENDED?

18 A. NATIONAL EDUCATION CENTER. IT'S A TRADE  
 19 SCHOOL.

20 Q. WHERE IS THAT?

21 A. CITY OF COMMERCE.

22 Q. WHAT COURSE OF STUDY CAN YOU TAKE THERE?

23 A. GENERAL, BUSINESS.

24 Q. DID YOU OBTAIN ANY CERTIFICATE?

25 A. AN A.A. DEGREE IN BUSINESS.

NIVIE SAMAAAN 7/10/06

1 Q. WHAT YEAR DID YOU ATTEND THERE OR OBTAIN THAT?

2 A. I BELIEVE IT WAS '88 TO '90.

3 Q. DID YOU TAKE ANY OTHER FORMAL EDUCATION AFTER  
 4 THAT?

5 A. I OBTAINED MY REAL ESTATE LICENSE.

6 Q. WHEN DID YOU DO THAT?

7 A. IN MARCH OF 2003.

8 Q. WHAT COURSE OF STUDY DID YOU TAKE TO OBTAIN  
 9 YOUR REAL ESTATE LICENSE?

10 A. I WENT THROUGH A REAL ESTATE COURSE THROUGH  
 11 CENTURY 21.

12 Q. HOW LONG DID YOU TAKE THOSE COURSES?

13 A. SIX MONTHS.

14 Q. DID YOU PASS THE TEST THE FIRST TIME YOU TOOK  
 15 IT?

16 A. YES.

17 Q. HAD YOU EVER WORKED IN THE REAL ESTATE BUSINESS  
 18 BEFORE YOU PASSED YOUR TEST FOR A REAL ESTATE AGENT'S  
 19 LICENSE?

20 A. NO.

21 Q. DESCRIBE YOUR WORK EXPERIENCE IN A

22 CHRONOLOGICAL ORDER AFTER YOU GRADUATED FROM YOUR

23 BUSINESS SCHOOL UNTIL YOU OBTAINED YOUR REAL ESTATE

24 LICENSE.

25 A. I WORKED IN AN INVESTMENT BANKING COMPANY AS AN

NIVIE SAMAAAN 7/10/06

1 ASSISTANT TO THE PRESIDENT. I WORKED IN THREE DOCTORS'  
2 OFFICES; ONE AS AN OFFICE MANAGER; ONE AS A BUILDING  
3 MANAGER; AND THE OTHER AS A RECEPTIONIST, VARIOUS OFFICE  
4 WORK, AND THEN I GOT INTO RETAIL AND COSMETICS.

5 Q. OKAY. AFTER YOU OBTAINED YOUR REAL ESTATE  
6 LICENSE, HAS YOUR LICENSE BEEN PLACED WITH ANY BROKER?

7 A. YES.

8 Q. HAS IT BEEN PLACED WITH MORE THAN ONE BROKER?

9 A. NO.

10 Q. WHAT BROKER HAS IT BEEN PLACED WITH?

11 A. GILLERAN GRIFFIN REALTORS.

12 Q. WHERE ARE THEY LOCATED?

13 A. WESTWOOD.

14 Q. WHAT'S THE ADDRESS?

15 A. 1575 WESTWOOD BOULEVARD, SUITE 300, LOS ANGELES  
16 90024.

17 Q. WHAT'S THE NAME OF THE RESPONSIBLE BROKER IN  
18 THE OFFICE?

19 A. THERE ARE TWO: THE OWNER IS T.J. GILLERAN; THE  
20 MANAGER OF THE OFFICE, WHICH IS ALSO A BROKER, IS RANDY  
21 SPAULDING.

22 Q. IS T.J. GILLERAN A MAN OR A WOMAN?

23 A. A MAN.

24 Q. AFTER YOU GOT YOUR REAL ESTATE LICENSE --  
25 EXCUSE ME -- WHEN WAS IT FIRST PLACED WITH GILLERAN

1 GRIFFIN?

2 A. I DON'T RECALL. I WOULD HAVE TO LOOK AT MY  
3 NOTES.

4 Q. CAN YOU GIVE ME YOUR BEST ESTIMATE?

5 A. EITHER APRIL OR MAY OF 2004 -- 2003.

6 Q. BETWEEN THE TIME THAT YOU FIRST WENT TO

7 GILLERAN GRIFFIN AND BEFORE YOU EVER DID ANYTHING

8 REGARDING PROPERTY INVOLVED IN THIS LAWSUIT, WERE YOU AN  
9 AGENT ON ANY TRANSACTIONS THAT CLOSED?

10 A. NO.

11 Q. DID YOU WORK ON ANY TRANSACTIONS?

12 A. NO.

13 Q. WHAT DID YOU DO DURING THAT TIME AS AN AGENT?

14 A. I DIDN'T DO ANYTHING.

15 Q. DID YOU CONTINUE TO WORK IN OTHER EMPLOYMENT?

16 A. YES.

17 Q. WHAT OTHER EMPLOYMENT?

18 A. BARNEY'S NEW YORK.

19 Q. WHAT IS THAT?

20 A. A RETAIL ESTABLISHMENT.

21 Q. WHERE IS IT LOCATED?

22 A. 9575 WILSHIRE BOULEVARD, BEVERLY HILLS, 90212.

23 Q. WHAT KIND OF RETAIL ESTABLISHMENT IS IT?

24 A. IT'S A DEPARTMENT STORE.

25 Q. AND WHAT IS YOUR POSITION THERE?

1 A. I WAS IN COSMETICS AS A SALESPERSON.

2 Q. ARE YOU STILL THERE?

3 A. NO.

4 Q. WHEN DID YOU CEASE THAT EMPLOYMENT?

5 A. AUGUST OF 2004.

6 Q. AND WHEN DID YOU COMMENCE YOUR EMPLOYMENT WITH  
7 BARNEY'S?

8 A. WHEN DID I BEGIN MY EMPLOYMENT WITH BARNEY'S?

9 Q. CORRECT.

10 A. FIVE YEARS PRIOR TO THAT.

11 Q. IN CONNECTION WITH YOUR EDUCATION, THE COURSE  
12 OF STUDY THAT YOU TOOK TO OBTAIN YOUR REAL ESTATE  
13 LICENSE, DID YOU TAKE ANY COURSES THAT DEALT WITH  
14 CONTRACTS?

15 A. CAN YOU REPEAT THAT?

16 Q. IN CONNECTION WITH YOUR REAL ESTATE COURSES  
17 THAT YOU TOOK, DID ANY OF THOSE COURSES INVOLVE  
18 CONTRACTS FOR THE PURCHASE OR SALE OF PROPERTY?

19 A. THEY MADE US FAMILIAR WITH THE PURCHASE  
20 AGREEMENT CONTRACT.

21 Q. STANDARD CALIFORNIA ASSOCIATION REALTOR FORMS?

22 A. YES.

23 Q. IN CONNECTION WITH THAT COURSE OF STUDY, DID  
24 YOU LEARN THAT IN ORDER TO HAVE A CONTRACT FOR SALE OF  
25 PROPERTY, THAT IT HAS TO BE IN WRITING SIGNED BY THE

1 BUYER AND THE SELLER?

2 A. YES.

3 Q. AND DID YOU LEARN THAT ANY CHANGES TO THE  
4 CONTRACT HAVE TO BE IN WRITING SIGNED BY THE BUYER AND  
5 THE SELLER?

6 A. YES.

7 Q. AND DID YOU LEARN THAT IF YOU WERE GOING TO BE  
8 A REAL ESTATE AGENT FOR A PARTY TO A CONTRACT -- STRIKE  
9 THAT -- IF YOU'RE GOING TO BE A REAL ESTATE AGENT TO A  
10 SELLER TO A CONTRACT, YOU HAD TO HAVE AN AGREEMENT IN  
11 WRITING?

12 A. YES.

13 Q. AND DID YOU UNDERSTAND THAT AN AGENT'S  
14 AUTHORITY TO ACT FOR THE SELLER TO MODIFY ANY TERMS OF  
15 AN AGREEMENT ENTERED INTO FOR THE PURCHASE OR SALE OF  
16 PROPERTY HAD TO BE IN WRITING?

17 MR. STEIN: I'M GOING TO OBJECT TO THAT BECAUSE IT  
18 CALLS FOR LEGAL CONCLUSION TO BE RENDERED BY HER. ON  
19 THE OTHER HAND, IF SHE CAN RESPOND, SHE SHALL.

20 BY MR. CUMMINGS:

21 Q. GO AHEAD.

22 A. CAN YOU REPEAT THAT.

23 Q. SURE. WHAT I WANT TO KNOW IS IN CONNECTION  
24 WITH YOUR COURSE OF STUDY, DID YOU LEARN THAT FOR THE  
25 AGENT TO BE AUTHORIZED TO MODIFY ANY CHANGES IN A

1 CONTRACT THAT HAD BEEN ENTERED INTO BY A SELLER, THE  
 2 SELLER HAD TO GIVE THE AGENT THAT AUTHORITY IN WRITING?  
 3 MR. STEIN: SAME OBJECTION.  
 4 THE WITNESS: I DON'T RECALL IF THAT WAS SOMETHING  
 5 THAT I LEARNED OR NOT.  
 6 BY MR. CUMMINGS:  
 7 Q. DID YOU ACT AS YOUR OWN AGENT IN THIS  
 8 TRANSACTION?  
 9 A. YES.  
 10 Q. WAS THERE ANYBODY IN YOUR OFFICE THAT YOU  
 11 CONSULTED WITH REGARDING THIS TRANSACTION?  
 12 A. IF I HAD QUESTIONS, I WOULD CALL MY MANAGING  
 13 BROKER AND ASK HIM.  
 14 Q. AND THAT PERSON'S NAME?  
 15 A. RANDY SPAULDING.  
 16 I ALSO WANT TO NOTE FOR THE RECORD THAT I AM  
 17 ALSO A CERTIFIED NOTARY; SO I HAVE TAKEN COURSES IN THAT  
 18 AS WELL.  
 19 Q. HOW LONG HAVE YOU BEEN A NOTARY?  
 20 A. FOR ABOUT A YEAR NOW.  
 21 Q. SO SOMETIME IN 2005 YOU GOT YOUR LICENSE?  
 22 A. EITHER 2005 OR TOWARDS THE END OF -- YES, 2005.  
 23 Q. THANK YOU.  
 24 I WILL MARK AS EXHIBIT 2 --  
 25 MR. STEIN: COUNSEL, IS EXHIBIT 1 THE NOTICE OF

NIVIE SAMAAN 7/10/06

1 DEPOSITION?  
 2 MR. CUMMINGS: EXHIBIT 1 IS THE NOTICE OF  
 3 DEPOSITION. I'LL MARK AS EXHIBIT 2 THE DOCUMENTS THAT  
 4 WERE PRODUCED BY THE DEPONENT AND HAVE BEEN MARKED S0001  
 5 THROUGH S0116.  
 6 MR. STEIN: THAT WILL BE THE COURT REPORTER'S COPY,  
 7 AND I HAVE A COPY FOR HER RIGHT HERE.  
 8 MR. CUMMINGS: ALL RIGHT. FINE. THANK YOU.  
 9 (WHEREUPON THE AFOREMENTIONED DOCUMENTS  
 10 WERE SUBSEQUENTLY MARKED BY THE REPORTER AS  
 11 DEFENDANT'S EXHIBITS 1 AND 2 FOR  
 12 IDENTIFICATION AND ARE HERETO ATTACHED.)  
 13 BY MR. CUMMINGS:  
 14 Q. WHERE DID YOU LEARN ABOUT THE PROPERTY AT 320  
 15 SOUTH PECK DRIVE IN BEVERLY HILLS BEING AVAILABLE, BEING  
 16 LISTED FOR SALE?  
 17 A. THROUGH MY HUSBAND.  
 18 Q. WHAT DID HE TELL YOU WHEN HE FIRST TALKED TO  
 19 YOU ABOUT IT?  
 20 A. HE JUST SAID HE WAS TAKING A WALK, AND HE  
 21 NOTICED THERE WAS A SIGN FOR A HOME FOR SALE ON OUR  
 22 STREET, AND WE SHOULD TAKE A LOOK AT IT.  
 23 Q. WHEN WAS THAT?  
 24 A. I DON'T RECALL.  
 25 Q. WHAT DID YOU DO IN ORDER TO TAKE A LOOK AT THE

NIVIE SAMAAN 7/10/06

1 PROPERTY?  
 2 A. I CHECKED IT OUT ON THE MLS TO SEE HOW MUCH IT  
 3 WAS BEING SOLD FOR AND LOOKED AT SOME OF THE SPECIFICS  
 4 ON THE PROPERTY, AND THEN WE WENT TO AN OPEN HOUSE.  
 5 Q. AT THE OPEN HOUSE, WAS THE OWNER OF THE  
 6 PROPERTY THERE?  
 7 A. NO.  
 8 Q. WAS A BROKER THERE?  
 9 A. I DON'T BELIEVE IT WAS THE BROKER. I BELIEVE  
 10 IT MAY HAVE BEEN HIS ASSISTANT.  
 11 Q. DO YOU RECALL WHO WAS THERE FOR THE SELLER'S  
 12 REP?  
 13 A. I BELIEVE IT WAS AN ASSISTANT.  
 14 Q. DO YOU RECALL THE NAME?  
 15 A. NO.  
 16 Q. WAS IT A MAN OR A WOMAN?  
 17 A. I BELIEVE IT WAS A WOMAN.  
 18 Q. WHAT WAS TO BE THE SOURCE OF INCOME FOR THE  
 19 DOWN PAYMENT FOR THE PROPERTY?  
 20 A. MONEY FROM OUR ACCOUNT.  
 21 Q. WHAT ACCOUNT?  
 22 A. OUR BANKING ACCOUNT.  
 23 Q. WITH WHAT BANK?  
 24 A. WELLS FARGO.  
 25 Q. AND HOW MUCH MONEY DID YOU HAVE IN THAT

NIVIE SAMAAN 7/10/06

1 ACCOUNT?  
 2 A. I DON'T RECALL EXACTLY HOW MUCH I HAD IN THE  
 3 ACCOUNT.  
 4 Q. DO YOU HAVE RECORDS THAT SHOW THOSE AMOUNTS?  
 5 A. YES, I BELIEVE SO.  
 6 MR. CUMMINGS: I DON'T BELIEVE THOSE WERE PRODUCED.  
 7 I THINK THEY WERE REQUESTED.  
 8 MR. STEIN: AT THE BACK, IN THE LATTER PORTION THERE  
 9 WERE TWO BANK ACCOUNTS LISTED.  
 10 MR. CUMMINGS: THEN I STAND CORRECTED.  
 11 Q. CAN YOU LOOK AT THE DOCUMENTS THAT ARE MARKED  
 12 AS PART OF THE EXHIBIT 2, S0112 THROUGH S0116.  
 13 ARE THOSE THE TWO ACCOUNTS, THE WASHINGTON  
 14 MUTUAL ACCOUNT THAT'S IDENTIFIED ON THE S0112 AND THE  
 15 WELLS FARGO ACCOUNT THAT'S IDENTIFIED ON S0113 THROUGH  
 16 S0116 FROM WHAT YOU WERE GOING TO HAVE THE SOURCE OF THE  
 17 DOWN PAYMENT?  
 18 A. YES.  
 19 Q. ANY OTHER ACCOUNTS?  
 20 A. MY HUSBAND'S -- MY HUSBAND'S ACCOUNT WAS ALSO  
 21 AVAILABLE FOR FUNDS.  
 22 Q. WHERE WAS THAT ACCOUNT?  
 23 A. WASHINGTON MUTUAL.  
 24 MR. STEIN: JUST FOR THE RECORD, COUNSEL, THE  
 25 DOCUMENTS S0114 THROUGH 116 REFLECT TWO DIFFERENT BANK

NIVIE SAMAAN 7/10/06

1 ACCOUNTS.

2 MR. CUMMINGS: I DON'T HAVE AN S0114.

3 MR. STEIN: SORRY.

4 THE WITNESS: I DON'T EITHER.

5 MR. STEIN: IS EVERYBODY MISSING IT?

6 THE WITNESS: YES.

7 MR. CUMMINGS: WHY DON'T YOU JUST GIVE IT TO ME, AND

8 I'LL GO COPY IT.

9 MR. STEIN: YES. HERE. COPY THIS TOO.

10 IS THAT THE ONLY PAGE MISSING?

11 MR. CUMMINGS: I BELIEVE SO.

12 (BRIEF RECESS.)

13 BY MR. CUMMINGS:

14 Q. WE CAN LOOK AT S0113. THAT'S A -- I'M SORRY.

15 LET'S GO BACK TO S0112. THAT'S A WASHINGTON MUTUAL

16 ACCOUNT.

17 IS THAT JUST A REGULAR SAVINGS ACCOUNT?

18 A. I DON'T KNOW. MY HUSBAND HANDLES THE FINANCES.

19 Q. WELL, THIS WAS YOUR ACCOUNT, THOUGH, BEFORE YOU

20 GOT MARRIED.

21 A. I BELIEVE THIS IS MY CHECKING ACCOUNT.

22 Q. OKAY. AND LOOKING AT EXHIBIT -- BATES STAMPED

23 NUMBERS S0113 AND S0114, WHAT ACCOUNT IS THAT?

24 A. THIS IS MINE AND MY MOTHER'S ACCOUNT.

25 Q. YOURS AND WHOSE?

NIVIE SAMAAAN 7/10/06

1 A. MY MOTHER.

2 Q. AND WHAT INTEREST DOES YOUR MOTHER HAVE IN IT,

3 AND WHAT INTEREST DO YOU HAVE IN IT?

4 A. WE HAVE DIFFERENT BUSINESS TRANSACTIONS

5 TOGETHER; SO WE BOTH HAVE MONEY IN IT. I DON'T RECALL

6 THE AMOUNTS OF EACH.

7 Q. WHAT BUSINESS ARE YOU IN WITH YOUR MOTHER?

8 A. IT'S NOT A BUSINESS. IT'S JUST DIFFERENT --

9 DIFFERENT THINGS THAT WE DO TOGETHER. IT'S JUST AN

10 ACCOUNT WITH BOTH OF OUR NAMES.

11 Q. ACCORDING TO S0113, THERE WAS A BALANCE OF

12 APPROXIMATELY \$181,000.

13 HOW MUCH OF THAT WAS YOURS, AND HOW MUCH WAS

14 YOUR MOTHER'S?

15 A. I DON'T KNOW. I DON'T RECALL.

16 Q. DO YOU HAVE ANY ESTIMATE AT ALL?

17 A. NO.

18 Q. WAS IT ALL YOUR MOTHER'S?

19 A. NO.

20 Q. WAS IT ALL YOURS?

21 A. NO.

22 Q. ARE THERE ANY RECORDS THAT REFLECT HOW MUCH WAS

23 YOURS AND HOW MUCH WAS YOUR MOTHER'S?

24 A. NO.

25 Q. HOW WOULD YOU DETERMINE THAT?

NIVIE SAMAAAN 7/10/06

1 A. WE WOULDN'T. IF ANYTHING WERE TO HAPPEN TO ME,

2 THE MONEY WOULD GO TO MY MOTHER; VICE VERSA.

3 Q. OUT OF THAT ACCOUNT, HOW MUCH IN SEPTEMBER AND

4 OCTOBER OF 2004 DID YOU HAVE THE RIGHT TO USE?

5 A. AS MUCH AS I NEEDED.

6 Q. ALL OF IT?

7 A. IF SO NEEDED, YES.

8 Q. DO YOU HAVE ANY AGREEMENT WITH YOUR MOTHER IN

9 WRITING TO THAT EFFECT?

10 A. NO.

11 Q. WHERE DOES YOUR MOTHER LIVE?

12 A. MODESTO, CALIFORNIA.

13 Q. AND HER NAME IS MARGARET SAMAAAN?

14 A. YES.

15 Q. WHAT'S HER ADDRESS?

16 A. 3208 JONATHAN LANE, MODESTO, CALIFORNIA 90 --

17 95355.

18 Q. IS YOUR MOTHER RETIRED, OR DOES SHE WORK?

19 A. SHE NEVER WORKED.

20 Q. THE ADDRESS YOU GAVE ME IS THE PROPERTY THAT

21 SHE OWNS?

22 A. YES.

23 Q. LOOKING AT THE ACCOUNT FOR S0115 AND S0116,

24 WHOSE ACCOUNT IS THAT?

25 A. THIS IS MY ACCOUNT.

NIVIE SAMAAAN 7/10/06

1 Q. AND YOU STATED THERE WAS ALSO AN ACCOUNT THAT

2 YOUR HUSBAND HAD AT WASHINGTON MUTUAL THAT WAS

3 AVAILABLE?

4 A. YES.

5 MR. CUMMINGS: I WANT TO SEE THOSE RECORDS, COUNSEL.

6 MR. STEIN: I DON'T HAVE THEM HERE TODAY. I'LL

7 PROVIDE THEM TO YOU, THOUGH.

8 MR. CUMMINGS: WE HAVE AN AGREEMENT THAT YOU'LL

9 PROVIDE THEM WITHIN A WEEK?

10 MR. STEIN: SURE.

11 MR. CUMMINGS: THANK YOU.

12 Q. WHOSE NAME WAS ON THAT ACCOUNT IN THE TIME

13 PERIOD SEPTEMBER, OCTOBER OF 2004?

14 A. ON WHICH ACCOUNT?

15 Q. THE ONE THAT YOU JUST REFERRED TO AS YOUR

16 HUSBAND'S ACCOUNT.

17 A. I BELIEVE HIS NAME WAS ON IT. I'M NOT SURE.

18 Q. WHEN YOU FIRST MADE AN OFFER ON THE PROPERTY --

19 I'M JUST GOING TO REFER TO IT AS THE PECK DRIVE

20 PROPERTY, THE PROPERTY AT 320 SOUTH PECK DRIVE. WHEN

21 YOU FIRST MADE AN OFFER ON THAT PROPERTY, DID YOU MAKE

22 THAT OFFER IN YOUR NAME ALONE OR ALSO IN THE NAME OF

23 YOUR HUSBAND?

24 A. IN MY NAME.

25 Q. DID YOU EVER MAKE AN OFFER THAT WAS JOINTLY IN

NIVIE SAMAAAN 7/10/06

1 YOUR NAME AND YOUR HUSBAND'S NAME?  
 2 A. NO.  
 3 Q. IS THERE ANY REASON FOR THAT?  
 4 A. NO.  
 5 Q. DID YOU INTEND THE PROPERTY TO BE YOUR SEPARATE  
 6 PROPERTY?  
 7 A. WE WERE BOTH GOING TO LIVE IN IT TOGETHER.  
 8 Q. DID YOU INTEND TO TAKE TITLE TO IT IN YOUR NAME  
 9 ALONE?  
 10 A. I DON'T KNOW.  
 11 Q. DID YOUR HUSBAND EVER FILL OUT A LOAN  
 12 APPLICATION IN CONNECTION WITH THE ACQUISITION OF THAT  
 13 PROPERTY?  
 14 A. WHAT DO YOU MEAN?  
 15 Q. DID HE EVER SIGN A LOAN APP FOR THE PECK DRIVE  
 16 PROPERTY?  
 17 A. I DON'T BELIEVE SO.  
 18 Q. NOW, THE DOCUMENTS THAT WE HAVE MARKED AS  
 19 EXHIBIT 2, THIS STACK OF DOCUMENTS THAT COUNSEL  
 20 PROVIDED, DID THESE COME FROM YOU? WERE THEY YOUR  
 21 PERSONAL FILE ON THE MATTER?  
 22 A. NO.  
 23 Q. WHERE DID THEY COME FROM?  
 24 A. MY ATTORNEY.  
 25 Q. DID YOU PROVIDE THEM TO YOUR ATTORNEY?

NIVIE SAMAAAN 7/10/06

1 A. SOME OF THEM, I BELIEVE.  
 2 Q. DO YOU HAVE ANY DOCUMENTS RELATING TO THIS  
 3 MATTER THAT YOU HAVEN'T PROVIDED TO YOUR ATTORNEY?  
 4 A. I DON'T BELIEVE SO.  
 5 Q. WHAT I WANT TO DO, JUST SO THERE'S NO SURPRISES  
 6 OR ANYTHING, I WANT TO GO THROUGH THE TRANSACTION  
 7 CHRONOLOGICALLY FROM THE BEGINNING TO THE END. I'M JUST  
 8 GOING TO, BASICALLY, BE ASKING YOU A SERIES OF QUESTIONS  
 9 THAT SAY WHAT'S THE NEXT THING THAT OCCURRED, AND WE'LL  
 10 GO THROUGH THE DOCUMENTS. I WANT TO GO THROUGH  
 11 CONVERSATIONS YOU HAD WITH PEOPLE. I'M NOT ASKING YOU  
 12 FOR CONVERSATIONS YOU HAD WITH YOUR ATTORNEY ON  
 13 ANYTHING -- OKAY? -- OR ANY WRITTEN COMMUNICATIONS  
 14 BETWEEN YOU AND YOUR ATTORNEY; SO WE'LL AGREE THAT THOSE  
 15 ARE NOT BEING CALLED FOR BY ANY OF MY QUESTIONS. OKAY?  
 16 A. (THE WITNESS NODS HEAD UP AND DOWN.)  
 17 Q. DO YOU UNDERSTAND THAT?  
 18 A. YES.  
 19 Q. OKAY. NOW, YOU WENT TO THE OPEN HOUSE, AND WAS  
 20 IT ON A SUNDAY OR SATURDAY?  
 21 A. I DON'T KNOW WHAT DATE THAT WAS.  
 22 Q. WAS ON IT A WEEKEND, THOUGH?  
 23 A. IT MAY HAVE BEEN.  
 24 Q. YOU WENT TO THE OPEN HOUSE.  
 25 DID YOU PICK UP A FLIER ON THE PROPERTY?

NIVIE SAMAAAN 7/10/06

1 A. I BELIEVE I ALREADY HAD A FLIER. I HAD PRINTED  
 2 IT OUT FROM THE MLS.  
 3 Q. DID YOU SPEAK TO THE PERSON WHO -- MR. LIBOW'S  
 4 ASSISTANT THAT WAS AT THE OPEN HOUSE?  
 5 A. WE MAY HAVE SPOKEN.  
 6 Q. DO YOU RECALL WHAT WAS SAID, IF ANYTHING?  
 7 A. NO. I BELIEVE SHE JUST ASKED IF WE HAD ANY  
 8 QUESTIONS, OR SHE JUST EXPLAINED SOME OF THE PROPERTY TO  
 9 US, AND THAT WAS IT.  
 10 Q. DID YOU WALK THROUGH THE ENTIRE PROPERTY?  
 11 A. YES.  
 12 Q. AT THAT TIME DID YOU DECIDE TO MAKE AN OFFER?  
 13 A. NO.  
 14 Q. WHEN DID YOU DECIDE TO MAKE AN OFFER?  
 15 A. I DON'T KNOW. I DON'T RECALL.  
 16 Q. DID YOU AND YOUR HUSBAND BOTH WALK THROUGH IT?  
 17 A. YES.  
 18 Q. DID ANYBODY ELSE ACCOMPANY YOU?  
 19 A. NO.  
 20 Q. AFTER YOU WALKED THROUGH AND BEFORE SUBMITTING  
 21 THE OFFER, DID YOU DISCUSS SUBMITTING AN OFFER TO  
 22 ANYBODY ELSE --  
 23 A. NO.  
 24 Q. -- WITH ANYBODY ELSE?  
 25 A. NO.

NIVIE SAMAAAN 7/10/06

1 Q. DID YOU PREPARE THE OFFER?  
 2 A. YES.  
 3 Q. DID YOU DO IT AT YOUR OFFICE?  
 4 A. NO.  
 5 Q. WHERE DID YOU DO IT?  
 6 A. AT MY HOME.  
 7 Q. DID YOU HAVE THE FORM AT HOME?  
 8 A. YES.  
 9 Q. WAS ON IT YOUR COMPUTER, OR WAS IT A HARD COPY?  
 10 A. COMPUTER.  
 11 Q. OKAY. AND TAKE A LOOK AT PAGES S0002 THROUGH  
 12 009. WOULD YOU LOOK AT ALL OF THOSE.  
 13 WERE THOSE THE DOCUMENTS THAT COMPOSE YOUR  
 14 OFFER?  
 15 A. YES.  
 16 Q. YOUR OFFER REQUESTED THAT THE SELLER CARRY BACK  
 17 10 PERCENT OF THE PURCHASE PRICE?  
 18 A. AT WHAT POINT ARE YOU REFERRING TO ON THE  
 19 DOCUMENT?  
 20 Q. PARAGRAPH 2-D ON PAGE 2, 0002.  
 21 OR WERE YOU GOING TO GET A SECOND DEED OF TRUST  
 22 FROM A THIRD PARTY?  
 23 A. YES.  
 24 Q. SO YOU WERE GOING TO GET A FIRST TRUST DEED FOR  
 25 1,336,000 AND A SECOND TRUST DEED FOR 167,000; CORRECT?

NIVIE SAMAAAN 7/10/06

1 A. I BELIEVE SO.  
 2 Q. AND YOU WERE GOING TO DEPOSIT \$167,000  
 3 ALTOGETHER; CORRECT?  
 4 A. YES.  
 5 Q. YOU SUBMITTED THAT OFFER ACTING AS YOUR OWN  
 6 AGENT; CORRECT?  
 7 A. YES.  
 8 Q. WOULD IT BE CORRECT THAT YOU UNDERSTOOD THAT IN  
 9 THIS TRANSACTION, MICHAEL LIBOW AND COLDWELL BANKER WERE  
 10 NOT YOUR AGENTS OR BROKERS?  
 11 A. YES.  
 12 Q. AND PAGE S0010 AND S0011, DID YOU PREPARE THAT  
 13 BUYER'S INSPECTION ADVISORY?  
 14 A. YES.  
 15 Q. DID YOU SUBMIT THAT AT THE TIME YOU SUBMITTED  
 16 YOUR OFFER?  
 17 A. YES.  
 18 Q. NOW, DID YOU SUBMIT THAT OFFER IN PERSON TO  
 19 MR. LIBOW?  
 20 A. NO. IT WAS BY FAX.  
 21 Q. ALL RIGHT. DID YOU CALL MR. LIBOW UP BEFORE  
 22 YOU SUBMITTED IT?  
 23 A. I DON'T RECALL IF I CALLED HIM BEFORE OR AFTER.  
 24 Q. DID YOU KNOW MR. LIBOW BEFORE THIS TRANSACTION?  
 25 A. NO.

NIVIE SAMAAN 7/10/06

1 Q. DID YOU KNOW THE PERSON WHO WAS HIS ASSISTANT  
 2 AT THE OPEN HOUSE BEFORE THIS TRANSACTION?  
 3 A. NO.  
 4 (MR. ZERNIK LEFT THE DEPOSITION ROOM.)  
 5 BY MR. CUMMINGS:  
 6 Q. IF YOU CAN LOOK AT PAGES S0013 THROUGH S0015.  
 7 DO YOU SEE THOSE PAGES?  
 8 A. YES.  
 9 Q. NOW, IS THAT SOMETHING THAT YOU RECEIVED BACK  
 10 FROM MR. LIBOW?  
 11 A. YES.  
 12 Q. OKAY. FIRST OF ALL, DID YOU SUBMIT YOUR OFFER  
 13 ON SEPTEMBER 4, 2004?  
 14 MR. STEIN: YOU'RE REFERRING TO S002 THROUGH 9?  
 15 MR. CUMMINGS: YES.  
 16 THE WITNESS: YES.  
 17 BY MR. CUMMINGS:  
 18 Q. THEN YOU'VE GOT A RESPONSE BACK ON SEPTEMBER 10  
 19 BY FAX; IS THAT CORRECT?  
 20 A. YES.  
 21 Q. WAS THAT FAXED TO YOUR OFFICE OR YOUR HOME?  
 22 A. TO MY HOME.  
 23 Q. TO YOUR RECOLLECTION, WERE THERE ANY FAXES FROM  
 24 MR. LIBOW TO YOUR OFFICE IN CONNECTION WITH THIS MATTER,  
 25 OR DID THEY ALL GO TO YOUR HOME?

NIVIE SAMAAN 7/10/06

1 A. I BELIEVE THEY ALL WENT TO MY HOME, WHICH IS MY  
 2 OFFICE.  
 3 Q. WELL, IT'S NOT THE GILLERAN GRIFFIN OFFICE?  
 4 A. NO, IT'S NOT, BUT IT IS WHERE I WORK OUT OF.  
 5 Q. YOU WORK OUT OF THERE FOR YOUR COSMETIC WORK?  
 6 A. NO.  
 7 Q. FOR WHAT KIND OF WORK?  
 8 A. FOR MY REAL ESTATE WORK, IF I DID ANY  
 9 TRANSACTION, BECAUSE EVERYTHING WAS ON MY COMPUTER AT  
 10 HOME.  
 11 Q. OKAY. NOW --  
 12 A. BUT I WOULD ALSO DO COSMETIC WORK OUTSIDE OF  
 13 BARNEY'S OF NEW YORK; SO I DID COSMETIC WORK, I GUESS  
 14 YOU WOULD SAY, OUT OF MY HOME.  
 15 Q. NOW, YOUR OFFER WAS FOR 1,670,000; CORRECT?  
 16 A. YES.  
 17 Q. THEN YOU RECEIVED A COUNTER OFFER, WHICH IS  
 18 ENTITLED "COUNTER OFFER NO. 1."  
 19 THAT'S PAGES S0014 AND -- S0014; CORRECT?  
 20 A. YES.  
 21 Q. WHAT DOES THAT DO AS FAR AS OF THE PURCHASE  
 22 PRICE?  
 23 A. IT INCREASES IT.  
 24 Q. TO WHAT AMOUNT?  
 25 A. 1,718,000.

NIVIE SAMAAN 7/10/06

1 Q. WHAT DOES IT DO AS FAR AS THE DEPOSIT?  
 2 A. THEY WANTED TO INCREASE THE DEPOSIT.  
 3 Q. WHAT DOES IT DO AS FAR AS THE LOAN TERMS?  
 4 A. READING WHAT IT SAYS, IT SAYS "LOAN TO BE  
 5 OBTAINED AT MARKET RATES AND TERMS."  
 6 Q. NOW, DID YOU ACCEPT THAT COUNTER?  
 7 A. NO.  
 8 Q. DID YOU ALSO RECEIVE FROM MR. LIBOW AN ADDENDUM  
 9 TO REAL ESTATE PURCHASE AGREEMENT THAT HAD CERTAIN  
 10 DISCLOSURES?  
 11 A. YES.  
 12 Q. AND YOU RECEIVED THAT ON SEPTEMBER 10, 2004;  
 13 CORRECT?  
 14 A. YES.  
 15 Q. THEN BETWEEN SUBMITTING THE OFFER TO MR. LIBOW  
 16 ON SEPTEMBER 4 AND RECEIVING THE RESPONSE BACK FROM HIM  
 17 ON SEPTEMBER 10, DID YOU SPEAK TO MR. LIBOW?  
 18 A. I DON'T RECALL. I MAY HAVE.  
 19 Q. WOULD IT BE CORRECT THAT IF YOU DID SPEAK TO  
 20 HIM DURING THAT TIME, YOU DON'T RECALL ANYTHING ABOUT  
 21 THAT CONVERSATION?  
 22 A. YES.  
 23 Q. NOW, AS WE GO THROUGH THE DEPOSITION, I MAY ASK  
 24 YOU FOR ESTIMATES ON TIME OR OTHER ISSUES.  
 25 DO YOU UNDERSTAND THE DIFFERENCE BETWEEN AN

NIVIE SAMAAN 7/10/06

1 ESTIMATE AND A GUESS?

2 A. NO.

3 Q. LET ME GIVE YOU AN EXAMPLE. IF I ASKED YOU HOW  
4 MUCH MONEY WAS IN YOUR WALLET, YOU MIGHT HAVE AN  
5 ESTIMATE. IF I ASKED YOU HOW MUCH MONEY WAS IN YOUR  
6 ATTORNEY'S WALLET, I WOULD PRESUME THAT WOULD BE A  
7 GUESS.

8 WOULD THAT BE A FAIR STATEMENT?

9 A. YES.

10 Q. OKAY. AND IF I ASKED YOU HOW LONG THIS TABLE  
11 WAS, YOU COULD PROBABLY GIVE ME AN ESTIMATE, BUT IF I  
12 ASKED YOU HOW LONG THE TABLE WAS IN THE CONFERENCE ROOM  
13 ON THE OTHER SIDE OF THE OFFICE THAT YOU'VE NEVER BEEN  
14 IN, THAT WOULD BE A GUESS; CORRECT?

15 A. YES.

16 Q. YOU'RE ENTITLED, IF YOU DON'T RECALL SOMETHING  
17 SPECIFICALLY, TO STATE YOUR RESPONSE IN TERMS OF AN  
18 ESTIMATE, BUT I AM ENTITLED TO AN ESTIMATE, IF YOU HAVE  
19 AN ESTIMATE. IF YOU DON'T HAVE AN ESTIMATE AND IT WOULD  
20 JUST BE A TOTAL GUESS, I DON'T WANT THAT, AND I'M NOT  
21 REQUESTING YOU TO EVER GUESS. OKAY? BUT I WILL BE  
22 REQUESTING YOU TO GIVE ME YOUR BEST ESTIMATE BECAUSE  
23 PEOPLE DO NOT RECALL THINGS WITH 100 PERCENT CERTAINTY,  
24 AT LEAST MOST PEOPLE DON'T; AND, THEREFORE, IT IS NORMAL  
25 FOR PEOPLE TO GIVE ESTIMATES.

NIVIE SAMAAAN 7/10/06

1 NOW, S0016, WHAT IS THAT DOCUMENT?

2 A. IT SAYS "COUNTER OFFER NO. 1."

3 Q. DID YOU SIMPLY SIGN THE ONE THAT MR. LIBOW HAD  
4 SENT YOU AND SEND IT BACK?

5 A. I SIGNED IT, AND I MARKED WITH AN "X," SUBJECT  
6 TO THE ATTACHED COUNTER OFFER. I SENT A COUNTER OFFER  
7 ALONG WITH IT.

8 Q. AND THE ATTACHED COUNTER OFFER IS S0017?

9 A. YES.

10 Q. THE ONLY SUBSTANTIVE CHANGE WAS THE CHANGE IN  
11 THE AMOUNT OF THE DEPOSIT AND WHEN THE DEPOSIT WOULD BE  
12 MADE?

13 A. YES.

14 Q. AND THE INITIAL DEPOSIT, DID YOU UNDERSTAND  
15 THAT TO BE THE DEPOSIT AT THE TIME THAT YOU SUBMIT THE  
16 OFFER?

17 A. I'M SORRY. I DON'T UNDERSTAND THE QUESTION.

18 Q. I'M LOOKING AT S0017. UNDER ITEM C, IT SAYS,  
19 "ITEM 2. INITIAL DEPOSIT TO BE 15,000 WITH INCREASED  
20 DEPOSIT OF AN ADDITIONAL 15,000 WITHIN 14 DAYS FROM  
21 ACCEPTANCE."

22 WHEN DID YOU UNDERSTAND THE INITIAL DEPOSIT TO  
23 BE DUE? IS THAT WITH THE ACCEPTANCE?

24 A. YES, THAT WAS MY UNDERSTANDING.

25 Q. AND THEN 15,000 ADDITIONAL DEPOSIT WOULD BE DUE

NIVIE SAMAAAN 7/10/06

1 14 DAYS AFTER THE ACCEPTANCE; CORRECT?

2 A. YES.

3 (MR. ZERNIK ENTERED THE DEPOSITION  
4 ROOM.)

5 BY MR. CUMMINGS:

6 Q. DID YOU SEND YOUR COUNTER OFFER NO. 1 TO  
7 MR. LIBOW WITH YOUR FAX THAT CONTAINED THE PAGES S0018  
8 THROUGH S0021?

9 A. ARE YOU ASKING IF I ATTACHED HIS COUNTER OFFER  
10 AS WELL? I HAVE S19 THROUGH S21.

11 Q. THAT'S EXACTLY WHAT I'M ASKING. THEY'RE ALL  
12 STAPLED TOGETHER, AND I DIDN'T STAPLE THEM.

13 A. OKAY.

14 Q. SO I'M JUST WONDERING --

15 MR. STEIN: I'M THE ONE THAT STAPLED THEM.

16 THE WITNESS: YES, HE STAPLED THEM.

17 BY MR. CUMMINGS:

18 Q. I'M JUST WONDERING IF THIS WENT AS A PACKAGE  
19 BECAUSE IT SAYS FOUR PAGES ON THE COVER SHEET, AND THEN  
20 THERE'S THREE PAGES ATTACHED TO IT. AND I'M WONDERING  
21 IF THIS PACKAGE FROM S0018 THROUGH S0021 WENT BACK TO  
22 MR. LIBOW.

23 A. YES, I BELIEVE SO.

24 Q. OKAY. AND YOU MENTIONED THERE, "I'M  
25 LIQUIDATING STOCK FOR THE DOWN PAYMENT."

NIVIE SAMAAAN 7/10/06

1 WHAT STOCK WERE YOU LIQUIDATING?

2 A. I DON'T KNOW. MY HUSBAND WAS DEALING WITH  
3 THAT.

4 Q. WAS THAT STOCK THAT WAS IN ANY ACCOUNT THAT  
5 WE'VE REFERENCED BEFORE?

6 A. I DON'T KNOW.

7 Q. WAS THAT STOCK THAT WAS OWNED BY YOU?

8 A. NO, I DON'T BELIEVE SO.

9 Q. DID YOU SPEAK TO MR. LIBOW BETWEEN THE TIME

10 THAT YOU RECEIVED THE COUNTER OFFER NO. 1 FROM

11 DR. ZERNIK ON SEPTEMBER 10 UNTIL YOU SENT YOUR COUNTER  
12 OFFER NO. 1 -- OR COUNTER OFFER NO. 2 BACK TO MR. LIBOW?

13 A. I MAY HAVE. I DON'T RECALL.

14 Q. WOULD IT BE CORRECT THAT IF YOU DID SPEAK TO  
15 HIM, THAT YOU DON'T RECALL THAT --

16 A. YES.

17 Q. -- RECALL ANYTHING THAT WAS SAID ABOUT IT?

18 A. YES.

19 Q. NOW, ON PAGE -- YOUR COVER SHEET, ON S0018, ON  
20 YOUR FAX, IT'S DATED SEPTEMBER 10, BUT I NOTE THAT ON  
21 PAGE S0020, WHICH HAS YOUR NAME ON IT, IT'S DATED  
22 SEPTEMBER 11, 2004, AT 6:00 P.M.; CORRECT?

23 A. YES.

24 Q. SO DID YOU SEND THIS BACK? DID YOU SEND PAGES  
25 S0018 THROUGH S0021 BACK TO MR. LIBOW ON SEPTEMBER 11,

NIVIE SAMAAAN 7/10/06

1 2004?

2 A. PROBABLY SO.

3 Q. THAT WOULD BE YOUR BEST ESTIMATE?

4 A. YES.

5 Q. TURNING NOW TO PAGE S0022, DID YOU SEND THAT TO

6 MR. LIBOW ON SEPTEMBER 13?

7 A. YES.

8 Q. AND YOU'RE GIVING A DEADLINE FOR THE ACCEPTANCE

9 OF YOUR OFFER; CORRECT?

10 A. YES.

11 Q. THAT DEADLINE BEING 12:00 P.M. ON SEPTEMBER 14,

12 2004; CORRECT?

13 A. YES.

14 Q. THEN DID YOU HAVE UP TO THIS PERIOD OF TIME

15 WHEN YOU SENT THE FAX OF SEPTEMBER 13, 2004 -- DID YOU

16 HAVE ANY CONVERSATION WITH MR. LIBOW?

17 A. I'M SURE I DID.

18 Q. DO YOU RECALL WHAT WAS SAID?

19 A. NOT EXACTLY, BUT I'M ESTIMATING THAT I TOLD HIM

20 THAT I DIDN'T WANT TO BE DEALING WITH THIS WHEN I LEFT

21 OUT OF TOWN TO GET MARRIED; SO WE DID NEED TO TAKE CARE

22 OF THIS AS SOON AS POSSIBLE.

23 Q. WAS THAT ON THE PHONE?

24 A. YES.

25 Q. UP TO THIS DATE -- POINT IN TIME, SEPTEMBER 13,

NIVIE SAMAAN 7/10/06

1 2004, HAD YOU EVER MET MICHAEL LIBOW?

2 A. UP TO THIS DATE IN TIME?

3 Q. YES.

4 A. I DON'T BELIEVE SO.

5 Q. SO WOULD IT BE CORRECT THAT ALL YOUR

6 COMMUNICATIONS WITH MR. LIBOW HAD EITHER BEEN IN WRITING

7 OR ON THE PHONE?

8 A. YES.

9 Q. HAVE YOU TOLD ME EVERYTHING YOU RECALL ABOUT

10 ANY TELEPHONE CONVERSATION WITH MR. LIBOW UP THROUGH AND

11 INCLUDING SEPTEMBER 13, 2004?

12 A. I'M SORRY. REPEAT THAT.

13 Q. YOU MENTIONED THAT YOU HAD TOLD MR. LIBOW THAT

14 YOU WOULD BE LEAVING THE COUNTRY TO GET MARRIED, AND

15 YOU WANTED TO GET THIS FINALIZED BEFORE YOU LEFT.

16 A. YES.

17 Q. HAD YOU TOLD HIM ANYTHING ELSE?

18 A. NO, I DON'T BELIEVE SO.

19 Q. HAD HE TOLD YOU ANYTHING ELSE?

20 A. I BELIEVE HE HAD TOLD ME THAT THEY HAD ANOTHER

21 CLIENT THAT WAS INTERESTED IN THE PROPERTY, AND THEY

22 WERE TRYING TO DECIDE BETWEEN US, THAT THEY HAD ANOTHER

23 COUNTER OFFER OR SOMETHING.

24 Q. DO YOU RECALL ANYTHING ELSE THAT MR. LIBOW HAD

25 TOLD YOU OR YOU HAD TOLD MR. LIBOW UP THROUGH AND

NIVIE SAMAAN 7/10/06

1 INCLUDING SEPTEMBER 13, 2004?

2 A. NO.

3 Q. HAD YOU SPOKEN TO ANYBODY IN YOUR OFFICE --

4 YOUR OFFICE MEANING THE GILLERAN GRIFFIN OFFICE --

5 REGARDING THIS TRANSACTION UP THROUGH THE TIME PERIOD OF

6 SEPTEMBER 13, 2004?

7 A. ONLY IF I WOULD HAVE HAD QUESTIONS ON WORDING

8 AND HOW TO DO A COUNTER OFFER AND THINGS OF THAT NATURE

9 BECAUSE I HAD NEVER WRITTEN UP AN OFFER BEFORE; SO I

10 WOULD ASK MY BROKER ABOUT --

11 Q. DO YOU RECALL DOING THAT?

12 A. YES.

13 Q. SO YOU RECALL SPEAKING TO RANDY SPAULDING ABOUT

14 HOW TO DO A COUNTER OFFER?

15 A. UH-HUH.

16 Q. IS THAT "YES"?

17 A. YES.

18 Q. AND DO YOU RECALL TALKING TO HIM ABOUT ANY

19 OTHER ASPECTS OF THE TRANSACTION UP THROUGH AND

20 INCLUDING SEPTEMBER 13, 2004?

21 A. NO, I DON'T BELIEVE SO.

22 Q. NOW, HAD YOU SPOKEN TO ANYBODY ABOUT OBTAINING

23 A LOAN FOR THE PROPERTY UP THROUGH AND INCLUDING

24 SEPTEMBER 13, 2004?

25 A. MY HUSBAND WAS DEALING WITH THE LOAN PROCESS.

NIVIE SAMAAN 7/10/06

1 Q. DO YOU KNOW WHO YOUR HUSBAND WAS DEALING WITH?

2 A. VICTOR PARKS.

3 Q. WHO IS VICTOR PARKS?

4 A. THE LOAN OFFICER.

5 Q. WHO DOES HE WORK WITH?

6 A. I DON'T KNOW. I BELIEVE HE WORKS FOR HIMSELF.

7 Q. HAD YOU EVER DEALT WITH VICTOR PARKS ON ANY

8 MATTER PRIOR TO THIS TRANSACTION?

9 A. HE'S RELATED TO MY HUSBAND.

10 Q. WHAT'S HIS RELATIONSHIP TO YOUR HUSBAND?

11 A. THEY ARE COUSINS.

12 Q. WHAT BUSINESS IS YOUR HUSBAND IN?

13 A. HE'S A MORTGAGE BROKER.

14 Q. DOES HE AND VICTOR PARK WORK IN THE SAME

15 OFFICE?

16 A. THEY WORK ON THE SAME NETWORK.

17 Q. WHAT NETWORK IS THAT?

18 A. A COMPUTER NETWORK.

19 Q. I MEAN DO THEY HAVE A JOINT BUSINESS?

20 A. I BELIEVE SO, YES.

21 Q. WHAT'S THE NAME OF IT?

22 A. DELTA PACIFIC.

23 Q. IS DELTA PACIFIC A MORTGAGE LOAN BROKER?

24 A. YES.

25 Q. IS IT A CORPORATION?

NIVIE SAMAAN 7/10/06

1 A. I BELIEVE SO.  
 2 Q. WHO ARE THE OWNERS?  
 3 A. I DON'T KNOW.  
 4 Q. IS YOUR HUSBAND AN OWNER?  
 5 A. I DON'T BELIEVE SO.  
 6 Q. IS MR. PARKS AN OWNER?  
 7 A. I DON'T KNOW.  
 8 Q. DO YOU KNOW WHO RUNS THE COMPANY?  
 9 A. I DON'T KNOW.  
 10 Q. OTHER THAN YOUR HUSBAND AND VICTOR PARKS, HAVE  
 11 YOU EVER SPOKEN TO ANYONE ELSE WHO HAS ANY CONNECTION  
 12 WITH DELTA PACIFIC?  
 13 A. NO.  
 14 Q. WHERE ARE THE OFFICES OF DELTA PACIFIC?  
 15 A. I DON'T KNOW WHERE THE OFFICES ARE.  
 16 Q. HAVE YOU EVER BEEN TO THEIR OFFICES?  
 17 A. NO.  
 18 Q. DID YOU SPEAK TO VICTOR PARKS REGARDING THIS  
 19 TRANSACTION?  
 20 A. NO.  
 21 Q. ALL THAT WAS HANDLED BY YOUR HUSBAND?  
 22 A. YES.  
 23 Q. LOOKING AT PAGE S0023 AND S0024, IS THAT  
 24 SOMETHING THAT YOU SENT TO MR. LIBOW ON SEPTEMBER 16?  
 25 A. YES.

NIVIE SAMAAAN 7/10/06

1 Q. DID YOU HAVE A CONVERSATION WITH MR. LIBOW  
 2 BEFORE SENDING THE FAX THAT'S DATED SEPTEMBER 16, 2004,  
 3 AND IS MARKED AS DOCUMENT NO. S0023 REGARDING THE  
 4 SUBSTANCE OF THAT TRANSMITTAL?  
 5 A. YOU'RE ASKING IF I SPOKE TO HIM BEFORE THIS?  
 6 Q. YES.  
 7 A. YES.  
 8 Q. SO WAS THAT BETWEEN SEPTEMBER 13, 2004, AND  
 9 SEPTEMBER 16, 2004?  
 10 A. I WOULD ASSUME IT IS.  
 11 Q. WAS THAT ONE CONVERSATION OR MORE THAN ONE  
 12 CONVERSATION?  
 13 A. I DON'T RECALL.  
 14 Q. WAS IT IN PERSON OR ON THE PHONE?  
 15 A. ON THE PHONE.  
 16 Q. DO YOU RECALL THE SUBSTANCE OF THE  
 17 CONVERSATION?  
 18 A. I CAN ESTIMATE WHAT WE SAID, WHICH WOULD BE  
 19 THAT WHEN I MADE AN OFFER FOR THIS PROPERTY, I HAD TOLD  
 20 HIM THAT I WAS GOING TO BE LEAVING THE STATE TO BE  
 21 MARRIED, AND THAT I WOULD NEED THE ACCEPTANCE DATE TO BE  
 22 PUSHED FORWARD ONE WEEK BECAUSE I WOULD NOT BE ABLE TO  
 23 FULFILL MY OBLIGATIONS, IF NOT.  
 24 Q. OKAY. SO WOULD IT BE CORRECT THAT AS OF  
 25 SEPTEMBER 16, 2004, YOU KNEW THAT YOU COULDN'T MEET YOUR

NIVIE SAMAAAN 7/10/06

1 OBLIGATIONS UNDER THE COUNTER OFFER THAT YOU HAD SENT  
 2 BACK TO DR. ZERNIK UNLESS DR. ZERNIK AGREED TO AMEND THE  
 3 ACCEPTANCE DATE TO SEPTEMBER 23, 2004?  
 4 A. YES.  
 5 Q. DID YOU PREPARE THE AMENDMENT THAT WAS SENT  
 6 ON -- THAT'S PAGE S0024 AND DATED SEPTEMBER 16, 2004?  
 7 A. DID I PREPARE IT?  
 8 Q. YES.  
 9 A. YES.  
 10 Q. DID YOU EVER RECEIVE A SIGNED COPY OF THAT FROM  
 11 DR. ZERNIK?  
 12 A. NO.  
 13 Q. DID MR. LIBOW TELL YOU DR. ZERNIK HAD SIGNED  
 14 IT?  
 15 A. NO.  
 16 Q. DID YOU EVER ASK MR. LIBOW IF DR. ZERNIK HAD  
 17 SIGNED IT?  
 18 A. NO, BECAUSE HE STATED THAT HE WOULD AGREE TO  
 19 IT.  
 20 Q. WHO STATED HE WOULD AGREE TO IT?  
 21 A. MICHAEL LIBOW.  
 22 Q. DID MICHAEL LIBOW TELL YOU HE HAD WRITTEN  
 23 AUTHORIZATION FROM DR. ZERNIK TO AGREE TO THAT?  
 24 A. NO. HE NEVER TALKED ABOUT WRITTEN  
 25 AUTHORIZATION.

NIVIE SAMAAAN 7/10/06

1 Q. YOU SAY THAT MR. LIBOW TOLD YOU THAT DR. ZERNIK  
 2 WOULD AGREE TO AMEND THE ACCEPTANCE DATE TO  
 3 SEPTEMBER 23, 2004?  
 4 A. YES. WHEN I -- WHEN MICHAEL LIBOW -- LET'S  
 5 JUST GO BACK FOR A MINUTE.  
 6 WHEN I HAD SENT THE CANCELED -- THE  
 7 CANCELLATION OF MY OFFER, CANCELLATION OF IT --  
 8 Q. YOU'RE REFERRING TO DOCUMENT S0022?  
 9 A. YES, YES.  
 10 I TOLD HIM I WOULD NOT BE ABLE TO MEET MY  
 11 OBLIGATIONS. I WAS CONTACTED BY LIBOW, STATING THAT  
 12 THEY HAD MULTIPLE OFFERS, AND HE WOULD BE GETTING BACK  
 13 TO ME THE NEXT DAY, AND I TOLD HIM I WASN'T SURE IF I  
 14 WOULD ACCEPT, IF I WOULD BE ABLE TO MEET MY OBLIGATIONS  
 15 BECAUSE I WAS LEAVING FOR A WEEK, AND I DIDN'T WANT TO  
 16 BE DEALING WITH THIS WHILE I WAS AWAY ON MY HONEYMOON.  
 17 SO WHEN HE CALLED ME ON THE 15TH, I STATED TO  
 18 HIM THAT I WOULD NEED THE ACCEPTANCE DATE TO BE AMENDED  
 19 FOR ONE WEEK. AFTER I RETURNED -- YES, ONE WEEK. I WAS  
 20 RETURNING ON THE 23RD; SO I NEEDED THE ACCEPTANCE TO  
 21 START ON THAT DATE BECAUSE I WOULD NOT BE ABLE TO MEET  
 22 MY OBLIGATIONS. AND I TOLD HIM THAT, YOU KNOW, I WAS  
 23 GOING TO SEND HIM A WRITTEN AGREEMENT THAT I WANTED TO  
 24 BE SIGNED, AND HE SAID A WRITTEN AGREEMENT IS NOT  
 25 NECESSARY, BUT I FAXED IT ANYWAY.

NIVIE SAMAAAN 7/10/06

1 THEN ON THE -- ON THE 16TH -- SO THIS WAS THE  
2 MORNING BECAUSE HE FAXED TO ME THE ACCEPTANCE ON THE  
3 EVENING OF SEPTEMBER 15TH, WHICH IS BEFORE THE MORNING  
4 THAT WE WERE LEAVING. WE LEFT ON SEPTEMBER 16TH, IN THE  
5 MORNING, TO LEAVE FOR HAWAII.

6 Q. WHERE IS THAT ACCEPTANCE?

7 A. EXCUSE ME?

8 Q. WHERE IS THAT ACCEPTANCE?

9 A. WHAT ACCEPTANCE ARE YOU REFERRING TO?

10 Q. THE ONE THAT YOU JUST REFERRED TO.

11 A. NO, NO. THE ACCEPTANCE OF THE OFFER -- OF THE  
12 OFFER OF THE PURCHASE OF THE PROPERTY, THAT THEY,  
13 BASICALLY, SAID THEY WERE ACCEPTING MY OFFER, AND THAT  
14 WE WERE --

15 Q. WHAT DOCUMENT ARE YOU REFERRING TO?

16 A. THE PURCHASE AGREEMENT.

17 Q. CAN YOU SHOW ME WHERE THEY FAXED YOU A DOCUMENT  
18 THAT YOU UNDERSTOOD TO BE DR. ZERNIK'S ACCEPTANCE OF  
19 YOUR COUNTER OFFER.

20 A. I DON'T UNDERSTAND WHAT YOU'RE SAYING.

21 Q. WELL, YOU --

22 MR. STEIN: THIS DOCUMENT HERE. THIS IS WHAT HE'S  
23 ASKING ABOUT.

24 THE WITNESS: COUNTER OFFER 2.

25 //

NIVIE SAMAAAN 7/10/06

1 BY MR. CUMMINGS:

2 Q. DOES THAT HAVE DR. ZERNIK'S SIGNATURE ON IT?

3 A. YES.

4 Q. 9/15/04?

5 A. YES.

6 Q. NOW, YOU HAVE A FAX HERE. FIRST OF ALL, THE  
7 PAGE YOU'RE REFERRING TO IS S0026; CORRECT?

8 A. YES.

9 Q. YOU HAVE A COVER SHEET FROM THE FAIRMONT IN KEA  
10 LANI --

11 A. YES.

12 Q. -- MAUI.

13 THAT'S PAGE S0025?

14 A. YES.

15 Q. DID YOU THEN INITIAL "N.S.," THE CONFIRMATION  
16 OF ACCEPTANCE?

17 A. YES.

18 Q. AND YOU SENT THAT BACK ON SEPTEMBER 16, 2004,  
19 TO MR. LIBOW?

20 A. YES, ONLY AFTER THE AGREEMENT VERBALLY ON THE  
21 PHONE WITH MR. LIBOW THAT THE ACCEPTANCE DATE WOULD BE  
22 PUSHED BACK ONE WEEK.

23 Q. IS IT CORRECT THAT YOU DIDN'T RECEIVE ANY

24 WRITTEN CONFIRMATION AS OF SEPTEMBER 16, 2004, THAT

25 DR. ZERNIK HAD, IN FACT, AGREED TO PUSH THE ACCEPTANCE

NIVIE SAMAAAN 7/10/06

1 DATE BACK ONE WEEK?

2 A. YES, ONLY BECAUSE I WAS TOLD BY MICHAEL LIBOW,  
3 WHICH IS MR. ZERNIK'S AGENT, THAT IT WOULD NOT BE A  
4 PROBLEM IF I NEEDED THE DATE PUSHED BACK, THAT HIS  
5 CLIENT WOULD AGREE AND ACCOMMODATE THAT.

6 Q. CAN YOU LOOK AT PAGES S0027 THROUGH S0038.  
7 TELL ME WHAT THOSE ARE. GENERALLY DESCRIBE WHAT THOSE  
8 ARE.

9 A. CORRESPONDENCE FROM VICTOR PARKS TO MICHAEL  
10 LIBOW.

11 Q. DID YOU RECEIVE COPIES OF EACH OF THESE -- ARE  
12 THESE ALL E-MAILS?

13 A. YES, I BELIEVE SO.

14 Q. DID YOU RECEIVE COPIES OF THESE E-MAILS?

15 MR. STEIN: VAGUE AND AMBIGUOUS AS TO WHEN YOU'RE  
16 REFERRING.  
17 BY MR. CUMMINGS:

18 Q. CONTEMPORANEOUSLY WITH THE E-MAILS BEING SENT.  
19 IS IT YOUR UNDERSTANDING YOU WERE RECEIVING  
20 COPIES OF THESE E-MAILS?

21 A. I WAS MADE AWARE OF THE E-MAILS. I DON'T  
22 RECALL IF I RECEIVED A COPY OF EACH OF THE E-MAILS.

23 Q. THIS STAPLED PACKAGE, S0027 THROUGH S0038, ARE  
24 THESE ALL THE E-MAILS THAT YOU'RE AWARE OF BETWEEN  
25 VICTOR PARKS AND MR. LIBOW?

NIVIE SAMAAAN 7/10/06

1 MR. STEIN: I'M GOING TO OBJECT BECAUSE IT MISSTATES  
2 OR MISCHARACTERIZES THE PRODUCTION THAT SHE'S PROVIDED.

3 MR. CUMMINGS: I'LL WITHDRAW THE QUESTION.

4 Q. LET'S GO THROUGH THEM ONE BY ONE. NOW, IT SAYS  
5 HERE ON THE ONE THAT'S SEPTEMBER 28, 2004, THAT THEY  
6 ESTIMATE FINAL LOAN APPROVAL IN TEN BUSINESS DAYS.

7 DO YOU SEE THAT?

8 A. YES.

9 Q. WERE YOU AWARE OF THAT E-MAIL ON OR ABOUT  
10 SEPTEMBER 28, 2004?

11 A. I'M SURE I WAS MADE AWARE OF THAT.

12 Q. DID VICTOR PARKS JUST GIVE COPIES OF THESE  
13 E-MAILS TO YOUR HUSBAND? IS THAT HOW YOU WERE MADE  
14 AWARE OF IT?

15 A. MY HUSBAND WAS ASSISTING WITH THE LOAN; SO THAT  
16 IS HOW I WAS MADE AWARE OF THIS.

17 Q. SO WOULD IT BE CORRECT THAT YOUR DEALINGS ON  
18 THE LOAN WERE THROUGH YOUR HUSBAND?

19 A. YES.

20 Q. AND HE AND MR. PARKS WORKED TOGETHER, AND THEY  
21 WERE DOING WHATEVER THEY DO TO OBTAIN A LOAN COMMITMENT;  
22 CORRECT?

23 A. YES.

24 Q. AND YOU UNDERSTOOD YOU HAD TO OBTAIN A LOAN  
25 COMMITMENT THAT WOULD BE FOR AN 80 PERCENT LOAN FOR THE

NIVIE SAMAAAN 7/10/06

1 FIRST DEED OF TRUST AND A 10 PERCENT LOAN FOR THE SECOND  
 2 DEED OF TRUST; CORRECT?  
 3 A. IF THAT'S WHAT IT SAYS. I'M NOT A LOAN  
 4 OFFICER. I DON'T KNOW MUCH ABOUT THAT.  
 5 Q. THE COUNTER OFFER WAS FOR 1,718,000; CORRECT?  
 6 A. IF THAT'S WHAT IT STATES.  
 7 Q. LET'S MAKE SURE. LOOKING AT PAGE S0014 --  
 8 A. YES.  
 9 Q. -- IT'S 1,718,000; CORRECT?  
 10 A. YES.  
 11 Q. AND YOUR ORIGINAL OFFER WAS FOR A 10 PERCENT  
 12 DOWN PAYMENT WITH AN 80 PERCENT FIRST TRUST DEED LOAN  
 13 AND A 10 PERCENT SECOND TRUST DEED LOAN; CORRECT?  
 14 A. YES.  
 15 Q. AND DID YOU UNDERSTAND THAT EVEN THOUGH THE  
 16 PURCHASE PRICE WAS BEING INCREASED TO 1,718,000, THAT  
 17 YOU WOULD STILL PUT DOWN 10 PERCENT DOWN, HAVE AN  
 18 80 PERCENT FIRST TRUST DEED LOAN AND A 10 PERCENT SECOND  
 19 TRUST DEED LOAN?  
 20 A. I BELIEVE SO.  
 21 Q. I JUST WANT TO MAKE SURE.  
 22 THAT WAS YOUR UNDERSTANDING OF THE TRANSACTION;  
 23 CORRECT?  
 24 A. I DON'T REALLY UNDERSTAND THE TRANSACTION AS  
 25 FAR AS MONEY IS CONCERNED.

NIVIE SAMAAAN 7/10/06

1 Q. WELL, WHAT I'M SAYING IS DID YOU UNDERSTAND  
 2 THAT YOU WERE GOING TO INCREASE THE AMOUNT OF THE DOWN  
 3 PAYMENT; INSTEAD OF PUTTING 10 PERCENT DOWN, THAT YOU  
 4 WERE GOING TO BE PUTTING DOWN MORE MONEY TO INCREASE THE  
 5 PURCHASE PRICE TO 1,718,000?  
 6 A. YES.  
 7 Q. SO THE AMOUNT OF THE FIRST TRUST DEED LOAN WAS  
 8 GOING TO REMAIN AT 1,336,000; IS THAT CORRECT?  
 9 A. YES.  
 10 Q. AND THE AMOUNT OF THE SECOND TRUST DEED LOAN  
 11 WAS GOING TO REMAIN AT 167,000; CORRECT?  
 12 A. YES.  
 13 Q. BUT THE DOWN PAYMENT WAS GOING TO INCREASE TO  
 14 COVER THE ADDITIONAL MONEY FROM -- ADDITIONAL \$48,000;  
 15 CORRECT? THE DIFFERENCE BETWEEN THE PURCHASE PRICE OF  
 16 1,670,000 AND 1,718,000?  
 17 A. RIGHT. WELL, IT WAS GOING TO INCREASE -- THE  
 18 PURCHASE PRICE INCREASED TO COVER OUR CLOSING COST OF  
 19 \$30,000. THAT'S WHAT WE HAD REQUESTED.  
 20 I DON'T KNOW IF THAT ANSWERS YOUR QUESTION, BUT  
 21 THAT'S ALL I KNOW.  
 22 Q. WHAT I WANT TO KNOW IS I WANT TO KNOW YOUR  
 23 UNDERSTANDING AS TO HOW MUCH MONEY WAS GOING TO BE THE  
 24 DOWN PAYMENT.  
 25 A. I BELIEVE ALL TOGETHER IT WAS GOING TO BE

NIVIE SAMAAAN 7/10/06

1 30,000. WELL, THE INITIAL DEPOSIT.  
 2 Q. I DON'T MEAN THE INITIAL DEPOSIT. I MEAN THE  
 3 TOTAL CASH, THE AMOUNT OF MONEY THAT YOU WEREN'T  
 4 BORROWING. I WANT TO KNOW THE AMOUNT OF MONEY YOU WERE  
 5 NOT BORROWING. IF YOU WANT TO USE A PIECE OF PAPER TO  
 6 CALCULATE IT, THAT'S FINE.  
 7 A. I CAN'T CALCULATE IT BECAUSE I DON'T KNOW HOW  
 8 TO DO THAT; SO I WOULD NEED TO ASK MY HUSBAND OR ASK MY  
 9 ATTORNEY.  
 10 Q. WELL, WAS THE FIRST TRUST DEED LOAN GOING TO BE  
 11 MORE THAN 1,336,000?  
 12 A. THAT'S WHAT IT SAYS. I GUESS NOT.  
 13 Q. LET'S BACK UP. I'M ASKING FOR YOUR  
 14 UNDERSTANDING.  
 15 A. AND I'M TELLING YOU I DON'T UNDERSTAND.  
 16 MR. STEIN: I'M ONLY GOING TO OBJECT BECAUSE OF WHAT  
 17 SHE HAS PERSONAL KNOWLEDGE OF -- THAT HE'S ASKING YOU TO  
 18 RESPOND TO. SO TO WHAT YOU HAVE, YOU'RE TO RESPOND TO.  
 19 IF YOU DON'T HAVE PERSONAL KNOWLEDGE, THEN --  
 20 THE WITNESS: ALL I HAVE PERSONAL KNOWLEDGE OF IS  
 21 WHAT I'M LOOKING AT.  
 22 MR. STEIN: I DON'T WANT YOU GUESSING.  
 23 BY MR. CUMMINGS:  
 24 Q. IS IT YOUR UNDERSTANDING THAT THE PURCHASE  
 25 PRICE WAS GOING TO BE 1,718,000?

NIVIE SAMAAAN 7/10/06

1 A. YES.  
 2 Q. WHAT'S YOUR UNDERSTANDING AS TO THE AMOUNT OF  
 3 FIRST TRUST DEED LOAN? WAS IT GOING TO BE 80 PERCENT OF  
 4 THAT AMOUNT OR SOME OTHER AMOUNT?  
 5 A. I BELIEVE 80 PERCENT.  
 6 Q. WHAT WAS YOUR UNDERSTANDING AS TO THE SECOND  
 7 TRUST DEED LOAN? WAS IT GOING TO BE 10 PERCENT OF  
 8 1,718,000?  
 9 A. I DON'T KNOW.  
 10 Q. WHAT'S YOUR UNDERSTANDING AS TO THE AMOUNT OF  
 11 CASH THAT WAS GOING TO BE PAID BY YOU THROUGH ESCROW  
 12 THAT WAS NOT BEING OBTAINED FROM EITHER THE FIRST OR  
 13 SECOND TRUST DEED LOAN?  
 14 A. YOU'RE ASKING FOR THE AMOUNT, OR DID I KNOW HOW  
 15 IT WAS GOING TO BE --  
 16 Q. YES, THE AMOUNT.  
 17 A. OH, I DON'T KNOW WHAT THE AMOUNT WAS GOING TO  
 18 BE.  
 19 Q. DO YOU KNOW HOW IT WAS GOING TO BE CALCULATED?  
 20 A. NO.  
 21 Q. HOW DID YOU KNOW HOW MUCH MONEY YOU WERE GOING  
 22 TO NEED TO CLOSE ESCROW?  
 23 A. MY HUSBAND WAS TO -- HANDLING THAT.  
 24 Q. DID YOU EVER TELL MR. LIBOW THAT YOU DIDN'T  
 25 KNOW HOW MUCH CASH YOU WOULD BE PUTTING THROUGH ESCROW

NIVIE SAMAAAN 7/10/06

1 TO CLOSE THE MATTER?

2 A. I DIDN'T DEAL WITH MR. LIBOW ON ANY FINANCES.

3 Q. DID YOU EVER PUT ANYTHING IN WRITING TO  
4 MR. LIBOW INDICATING YOU DIDN'T KNOW HOW MUCH MONEY  
5 WOULD BE REQUIRED TO BE DEPOSITED IN CASH FROM YOU TO  
6 CLOSE ESCROW?

7 A. I DON'T BELIEVE SO.

8 Q. DID YOU EVER NOTIFY DR. ZERNIK THAT YOU DIDN'T  
9 KNOW HOW MUCH CASH YOU WOULD NEED IN ORDER TO CLOSE  
10 ESCROW?

11 A. NO.

12 Q. TO YOUR KNOWLEDGE, DID YOUR HUSBAND EVER SPEAK  
13 TO MR. LIBOW?

14 A. I DON'T KNOW.

15 Q. DID YOU TELL MR. LIBOW THAT YOUR FIANCE OR YOUR  
16 HUSBAND WAS WORKING WITH VICTOR PARKS?

17 A. I DON'T RECALL.

18 Q. DID YOU EVER NOTIFY JOSEPH ZERNIK THAT YOUR  
19 HUSBAND WAS WORKING WITH VICTOR PARKS TO OBTAIN THE LOAN  
20 ON THE PROPERTY?

21 A. I HAD NEVER SPOKEN OR NOTIFIED MR. ZERNIK  
22 PERSONALLY.

23 Q. NOW, YOU SEE THE SECOND PAGE, PAGE S0028. WERE  
24 YOU AWARE OF THAT -- OF THOSE E-MAILS IN OR ABOUT  
25 SEPTEMBER 28, 2004?

NIVIE SAMAAAN 7/10/06

1 A. I HAD KNOWLEDGE OF WHAT WAS GOING ON WITH THE  
2 TRANSACTION.

3 Q. NOW, WHEN IT SAYS HERE, "WE WERE TOLD THE  
4 CONTINGENCY STARTS FROM THE 23RD," AS OF SEPTEMBER 28,  
5 2004, IS IT CORRECT THAT YOU HAD NEVER RECEIVED WRITTEN  
6 CONFIRMATION?

7 MR. STEIN: EXCUSE ME. MR. CUMMINGS, I DIDN'T  
8 LOOK -- THANK YOU. ASK IT AGAIN. I GOT LOST. I'M  
9 SAYING WHERE IN THE HELL IS THE 23RD.

10 MR. CUMMINGS: OKAY.

11 Q. DO YOU SEE PAGE S0028? DO YOU SEE THAT?

12 A. YES.

13 Q. OKAY. NOW, IT SAYS, "HELLO, MICHAEL. WE WERE  
14 TOLD THE CONTINGENCY STARTS FROM THE 23RD."

15 DO YOU SEE THAT?

16 A. YES.

17 Q. DID YOU RECEIVE A COPY OF THIS E-MAIL ON OR  
18 ABOUT SEPTEMBER 28, 2004?

19 A. NO. I PROBABLY JUST SAW IT. I DON'T KNOW IF I  
20 RECEIVED A COPY OF IT OR NOT.

21 Q. WHEN YOU SAY YOU SAW IT, WHAT DO YOU MEAN? DID  
22 YOUR HUSBAND BRING HOME COPIES?

23 A. MY HUSBAND WAS HANDLING THE TRANSACTION; SO HE  
24 HAD A COPY.

25 Q. DID HE BRING THEM HOME?

NIVIE SAMAAAN 7/10/06

1 A. I DON'T KNOW IF HE BROUGHT THEM HOME OR NOT.

2 Q. DO YOU RECALL? THAT'S WHAT I'M SAYING. DO YOU  
3 RECALL HIM BRINGING THEM HOME AND YOU LOOKING AT THEM?

4 A. YES. MY HUSBAND WORKS OUT OF THE HOUSE AT  
5 TIMES; SO THEY WERE PROBABLY AT HOME.

6 Q. OKAY. SO WOULD IT BE CORRECT TO SAY THAT YOU  
7 HAD ACCESS TO THE E-MAILS THAT WERE MARKED S0027 AND  
8 S0028?

9 A. YES.

10 Q. YOU SAY YOU HAVE AN OFFICE, AND THIS IS IN THE  
11 APARTMENT WHERE YOU AND YOUR HUSBAND LIVE; CORRECT?

12 A. YES.

13 Q. AND DOES YOUR HUSBAND USE THE SAME OFFICE, OR  
14 DO YOU HAVE TWO OFFICES?

15 A. YES. HE ALSO HAS AN OFFICE AT HIS COMPANY.

16 Q. DOES HE USE AN OFFICE IN THE HOME?

17 A. YES.

18 Q. DO YOU BOTH USE THE SAME OFFICE?

19 A. YES.

20 Q. DO YOU BOTH USE THE SAME COMPUTER OR SEPARATE  
21 COMPUTERS?

22 A. SEPARATE.

23 Q. AND YOUR COMPUTER IS NETWORKED WITH GILLERAN  
24 GRIFFIN?

25 A. NO.

NIVIE SAMAAAN 7/10/06

1 Q. ARE YOU ABLE TO ACCESS GILLERAN GRIFFIN THROUGH  
2 YOUR NETWORK?

3 A. YES.

4 Q. THROUGH YOUR COMPUTER AT HOME?

5 A. YES.

6 Q. IS YOUR HUSBAND ABLE TO ACCESS PACIFIC MORTGAGE  
7 CONSULTANTS' COMPUTERS THROUGH HIS COMPUTER IN YOUR  
8 APARTMENT?

9 A. YES.

10 Q. SO IS IT CORRECT THAT IT'S YOUR UNDERSTANDING,  
11 BASED UPON WHAT MR. LIBOW TOLD YOU, THAT ALL THE  
12 CONTINGENCIES WERE TO START FROM SEPTEMBER 23, 2004?

13 A. YES.

14 Q. AND THAT'S WHAT YOU HAD AGREED TO; CORRECT?

15 A. SEPTEMBER 23, 2004, YES.

16 Q. DO YOU SEE THE E-MAIL OF OCTOBER 5, 2004,  
17 S0029?

18 A. YES.

19 Q. DO YOU SEE THAT?

20 NOW, HAD YOU HAD ANY DIRECT CONTACT WITH  
21 ESCROW?

22 A. YES.

23 Q. WHEN WAS THE FIRST TIME YOU HAD ANY DIRECT  
24 CONTACT WITH ESCROW?

25 A. I DON'T RECALL THE DATE.

NIVIE SAMAAAN 7/10/06

1 Q. WAS IT BEFORE YOU WENT TO HAWAII?

2 A. I DON'T BELIEVE SO.

3 Q. WHO DID YOU SPEAK TO AT MARA ESCROW?

4 A. GAIL HERSHOWITZ.

5 Q. ANYBODY ELSE?

6 A. I MAY HAVE SPOKEN TO ANOTHER LADY AT ONE POINT.

7 I DON'T RECALL THE NAME.

8 Q. AND DID YOU SPEAK TO GAIL HERSHOWITZ BEFORE YOU

9 RETURNED FROM HAWAII?

10 A. NO.

11 Q. WHEN YOU GOT BACK FROM HAWAII, WHEN IS THE

12 FIRST TIME YOU SPOKE TO GAIL HERSHOWITZ? YOU RETURNED

13 FROM HAWAII ON SEPTEMBER 23; IS THAT CORRECT?

14 (MR. ZERNIK LEFT THE DEPOSITION ROOM.)

15 THE WITNESS: YES, IN THE LATE EVENING.

16 BY MR. CUMMINGS:

17 Q. WHEN IS THE FIRST TIME YOU SPOKE TO

18 MS. HERSHOWITZ?

19 A. I BELIEVE IT WAS THE 24TH.

20 Q. WHAT DID YOU SAY TO MS. HERSHOWITZ, AND WHAT

21 DID SHE SAY TO YOU?

22 A. WELL, LET ME BACK UP. I HAD A VOICE MAIL

23 MESSAGE ON MY CELL PHONE FROM MICHAEL LIBOW THE EVENING

24 THAT I RETURNED, WHICH WAS THE 23RD, AND HE STATED THAT

25 THEY NEEDED TO HAVE THE INITIAL DEPOSIT OF \$15,000 AT

NIVIE SAMAAN 7/10/06

1 THE ESCROW OFFICE BY THE NEXT DAY, WHICH WAS THE 24TH.

2 SO I DID NOT SPEAK TO HIM UNTIL THE NEXT DAY OF THE 24TH

3 AND TOLD HIM THAT I COULD HAVE THE CHECK AT ESCROW BUT

4 THAT THERE WOULD BE A HOLD ON THE FUNDS BECAUSE I WAS

5 TRANSFERRING IT FROM ANOTHER ACCOUNT, AND SO I COULD

6 GIVE THEM THE CHECK, BUT THEY WERE TO HOLD IT FOR A

7 COUPLE OF DAYS BEFORE DEPOSITING IT.

8 AND THEN AT THAT TIME I SPOKE TO -- I ALSO

9 CALLED GAIL HERSHOWITZ TO LET HER KNOW THAT EXACT THING.

10 SO HE HAD TOLD ME JUST TAKE THE CHECK IN THERE, AND WHEN

11 I SPOKE TO GAIL, I -- I TOLD HER THAT THAT WAS GOING TO

12 BE THE CASE AND THAT THE CHECK COULD NOT BE DEPOSITED

13 BECAUSE THE FUNDS WOULD NOT BE AVAILABLE IF SHE DID, AND

14 SHE SAID, "THAT'S NOT A PROBLEM, EVEN IF WE DID" -- IF

15 IT DID -- IF IT DID BOUNCE, THEY JUST REDEPOSIT, BUT I

16 TOLD HER I DID NOT WANT THAT TO HAPPEN; SO SHE SAID SHE

17 WOULD HOLD ON TO IT.

18 Q. WAS THIS CONVERSATION ON THE PHONE OR IN

19 PERSON?

20 A. ON THE PHONE.

21 Q. DID YOU DELIVER THE CHECK THE NEXT -- ON THE

22 24TH TO MARA ESCROW?

23 A. NO. WHAT HAPPENED WAS MICHAEL LIBOW WAS

24 ADAMANT THAT THE CHECK BE GIVEN TO HIS ASSISTANT AND

25 TAKEN TO HIS ASSISTANT'S HOME. SO WE DID THAT ON THE

NIVIE SAMAAN 7/10/06

1 EVENING OF THE 24TH.

2 Q. WHOSE HOME WAS IT TAKEN TO?

3 A. HIS ASSISTANT. I HAVE NO IDEA WHOSE NAME -- I

4 DID NOT TAKE THE CHECK. MY HUSBAND TOOK THE CHECK.

5 Q. YOU DON'T REMEMBER THE ADDRESS?

6 A. NO. I WAS NEVER THERE.

7 MR. CUMMINGS: IS THAT CHECK IN HERE?

8 MR. STEIN: YES. I THINK, ACTUALLY, IT'S NOT IN

9 HERE. IT'S IN THE MARA ESCROW DOCUMENTS THAT THEY

10 PRODUCED.

11 THE WITNESS: I'M GOING TO USE THE RESTROOM.

12 (BRIEF RECESS.)

13 MR. CUMMINGS: LET ME MARK AS EXHIBIT 3 A COPY OF A

14 CHECK, DATED SEPTEMBER 24, 2004.

15 THE WITNESS: MAY I SEE THAT?

16 MR. STEIN: YOU'RE GOING TO GET A COPY.

17 FRONT AND BACK. THERE'S WRITING ON THE BACK

18 ALSO.

19 (WHEREUPON THE AFOREMENTIONED DOCUMENT

20 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS

21 DEFENDANT'S EXHIBIT 3 FOR IDENTIFICATION AND

22 IS HERETO ATTACHED.)

23 BY MR. CUMMINGS:

24 Q. NOW, IS THAT THE COPY OF THE CHECK THAT YOU

25 GAVE --

NIVIE SAMAAN 7/10/06

1 MR. STEIN: CAN WE GET ONE MORE COPY, PLEASE? THANK

2 YOU.

3 BY MR. CUMMINGS:

4 Q. IS THAT A COPY OF THE CHECK THAT YOU GAVE TO

5 MARA ESCROW?

6 A. IT WASN'T GIVEN TO MARA ESCROW. IT WAS GIVEN

7 TO MICHAEL LIBOW'S ASSISTANT.

8 Q. AND IS IT CORRECT THAT AT THE TIME YOU WROTE

9 THE CHECK, YOU KNEW THAT IF IT WAS DEPOSITED ON

10 SEPTEMBER 24, 2004, OR SEPTEMBER 25, 2004, THAT IT WOULD

11 NOT CLEAR?

12 A. YES, AND I MADE THAT CLEAR.

13 Q. ON SEPTEMBER 24, 2004, WOULD IT HAVE BEEN

14 POSSIBLE FOR YOU TO GET A CASHIER'S CHECK OR CERTIFIED

15 CHECK FOR \$15,000 AND DELIVER IT TO MR. LIBOW'S

16 ASSISTANT?

17 A. NO.

18 Q. AND WHY IS THAT?

19 A. BECAUSE IT WAS TOO LATE IN THE EVENING.

20 Q. WHY WEREN'T YOU ABLE TO DO IT DURING THE DAY OF

21 SEPTEMBER 24?

22 A. BECAUSE I ALREADY SAID THAT THE FUNDS WERE NOT

23 AVAILABLE; SO I COULD NOT GET A CASHIER'S CHECK.

24 Q. YOU COULDN'T GET IT FROM ANY OF YOUR ACCOUNTS,

25 YOUR HUSBAND'S ACCOUNTS?

NIVIE SAMAAN 7/10/06

1 A. NO. I WAS TRANSFERRING MONEY INTO THIS ACCOUNT  
2 THAT I WANTED TO USE. THE FUNDS WOULD NOT CLEAR. THERE  
3 WAS A HOLD ON THE FUNDS.

4 Q. NOW, WHEN YOU WENT TO HAWAII, IS IT CORRECT  
5 THAT YOU UNDERSTOOD THAT \$15,000 WAS DUE AT ACCEPTANCE?

6 A. THE ACCEPTANCE OF THE 23RD.

7 Q. SO YOU UNDERSTOOD \$10,000 WAS DUE ON  
8 SEPTEMBER 23 --

9 A. NO, NOT THE 23RD. WE WERE BACK ON THE 23RD.  
10 I DID NOT KNOW THAT IT WAS GOING TO BE DUE THE  
11 SECOND WE GOT BACK INTO TOWN. I WAS NOT MADE AWARE OF  
12 THAT BY MICHAEL LIBOW, EXCEPT FOR HIS FRANTIC MESSAGE  
13 THAT HE LEFT ME THAT EVENING.

14 Q. YOU KNEW THAT IT WAS DUE UPON ACCEPTANCE;  
15 CORRECT?

16 A. NO, NOT NECESSARILY.

17 Q. LOOK AT S0026.

18 A. YES.

19 Q. IT SAYS, "INITIAL DEPOSIT TO BE \$15,000 WITH  
20 INCREASED DEPOSIT OF ADDITIONAL 15,000 WITHIN 14 DAYS  
21 FROM ACCEPTANCE."

22 A. YES.

23 Q. IS THAT CORRECT?

24 A. YES.

25 Q. ISN'T IT CORRECT THAT THE INITIAL DEPOSIT IS

1 GIVEN AT THE TIME THE OFFER IS ACCEPTED?

2 A. YES, THAT THERE ARE --

3 Q. ISN'T THAT THE STANDARD IN THE REAL ESTATE  
4 INDUSTRY? DIDN'T YOU UNDERSTAND THAT?

5 A. YES, IT IS THE STANDARD, BUT IT'S ALSO THE  
6 STANDARD THAT IF YOU GIVE A DEPOSIT AND YOU'RE ASKED TO  
7 HOLD IT FOR A COUPLE OF DAYS, THAT THAT IS GRANTED, AS  
8 LONG AS THEY HAVE THE DEPOSIT.

9 Q. CAN YOU LOOK AT S0044 THROUGH S0066.

10 A. YES.

11 Q. LET'S TAKE OFF THE LAST -- S0066. LET'S  
12 SEPARATE THAT FROM THIS OTHER PACKAGE. I WANT TO TALK  
13 TO YOU ABOUT THE ESCROW INSTRUCTIONS, WHICH --

14 MR. STEIN: SO YOU'RE MAKING INQUIRY ABOUT 44  
15 THROUGH 65; IS THAT CORRECT?

16 MR. CUMMINGS: WE'LL GO 44 THROUGH 48. LET'S LOOK  
17 AT THOSE FIRST.

18 MR. STEIN: OKAY.

19 BY MR. CUMMINGS:

20 Q. THOSE ARE DATED SEPTEMBER 22, 2004; CORRECT?

21 A. YES.

22 Q. YOU GOT BACK INTO TOWN THE NIGHT OF THE 23RD OF  
23 SEPTEMBER; CORRECT?

24 A. YES.

25 Q. SO ON THE 24TH, DID YOU GO TO ESCROW?

1 A. NO, I DID NOT GO TO ESCROW.

2 Q. DID YOU CONTACT ESCROW TO SEE IF THE ESCROW  
3 INSTRUCTIONS HAD BEEN PREPARED?

4 A. I DON'T KNOW IF I DID IT THAT DAY OR IN THE  
5 NEXT COUPLE OF DAYS AFTER THAT.

6 Q. DID YOU LEARN THAT ESCROW INSTRUCTIONS HAD BEEN  
7 PREPARED AND WERE READY FOR YOU TO SIGN?

8 A. I DON'T RECALL.

9 Q. WHEN DID YOU RECEIVE S0044 THROUGH S0048?

10 A. WELL, WE DEFINITELY DIDN'T RECEIVE THEM ON  
11 SEPTEMBER 22. I BELIEVE IT WAS AROUND OCTOBER 4, WHICH  
12 STATES ON THE FAX DATE AT THE TOP OF THE SHEET IS WHEN  
13 THIS WAS RECEIVED.

14 Q. WHEN DID YOU SIGN AND RETURN THEM?

15 A. I DON'T KNOW. I DON'T RECALL.

16 Q. DID YOU DO IT RIGHT AWAY?

17 A. OH, I PROBABLY DID IT ON THE SAME DAY.

18 Q. SO IT'S YOUR BEST ESTIMATE THAT YOU SIGNED AND  
19 RETURNED THE ESCROW INSTRUCTIONS TO MARA ESCROW ON  
20 OCTOBER 6, 2004?

21 A. YES.

22 Q. AND ON OCTOBER 4, 2004, DID YOU ALSO DELIVER  
23 \$15,000 THROUGH A CASHIER'S CHECK TO MARA ESCROW?

24 A. WHAT ARE YOU REFERRING -- OCTOBER 4?

25 Q. YES, S0049.

1 A. YES. THAT WAS NOT GIVEN TO MARA ESCROW. THAT  
2 WAS GIVEN DIRECTLY TO MICHAEL LIBOW.

3 Q. ON WHAT DATE?

4 A. OCTOBER 4.

5 Q. AND DID YOU ALSO GET THE PRELIMINARY TITLE  
6 REPORT -- THAT'S S0050 TO S0065 -- ON OCTOBER 4, 2004?

7 A. IT'S OCTOBER 6, 2004.

8 Q. OCTOBER --

9 A. I DON'T KNOW. I WAS NOT DEALING WITH THAT. MY  
10 HUSBAND WAS -- AND VICTOR PARKS.

11 Q. DID YOU EVER REVIEW THE PRELIMINARY TITLE  
12 REPORT?

13 A. NO, I DID NOT.

14 Q. LOOKING AT S0030, DO YOU SEE THAT?

15 A. I THINK THERE NEEDS TO BE A CORRECTION MADE.

16 YOU WERE STATING THAT WE RECEIVED THE ESCROW

17 INSTRUCTIONS ON OCTOBER 4. IT'S OCTOBER 6.

18 Q. I THINK YOU SAID THAT.

19 A. OKAY.

20 YES, I'M LOOKING AT IT.

21 Q. NOW --

22 MR. STEIN: S0030?

23 BY MR. CUMMINGS:

24 Q. WAIT. CAN YOU LOOK AT S0074 AND S0075.

25 A. YES.

1 Q. NOW, DID YOU RECEIVE S0074 AND S0075 ON  
2 OCTOBER 18, 2004?  
3 A. YES.  
4 Q. AND DID YOU UNDERSTAND THAT DR. ZERNIK WAS  
5 GIVING YOU A NOTICE TO PERFORM AS FAR AS REMOVAL OF THE  
6 LOAN AND APPRAISAL CONTINGENCIES WITHIN 24 HOURS OR HE  
7 MAY ELECT TO CANCEL THE AGREEMENT?  
8 A. YES.  
9 Q. AND YOU UNDERSTOOD THAT ON OCTOBER 18, 2004;  
10 CORRECT?  
11 A. YES.  
12 Q. LOOK AT EXHIBIT S0077 THROUGH S0080.  
13 DID YOU SEND THOSE FOUR PAGES, 77 THROUGH 80,  
14 TO MR. LIBOW BY FAX ON OCTOBER 20, 2004?  
15 A. YES.  
16 Q. AND ARE PAGES 78 AND 79 A COPY OF A LETTER THAT  
17 YOU FAXED TO MR. LIBOW ON OCTOBER 20?  
18 A. YES.  
19 Q. NOW, LET'S GO THROUGH THIS LETTER. YOUR LETTER  
20 ACKNOWLEDGES THAT YOU GOT THE -- THE FIRST PARAGRAPH ON  
21 OCTOBER 18, 2004, YOU RECEIVED THE NOTICE TO BUYER TO  
22 PERFORM; CORRECT?  
23 A. YES.  
24 Q. THE THIRD PARAGRAPH SAYS, "YOU WILL NOT REMOVE  
25 THE APPRAISAL CONTINGENCY UNTIL I HAVE RECEIVED THE

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1 LENDER'S NOTIFICATION THAT THE VALUE OF THE HOME IS  
2 JUSTIFIED."  
3 A. YES.  
4 Q. AND IS IT CORRECT THAT YOU KNEW AT THAT TIME  
5 THAT BY FAILING TO REMOVE THE APPRAISAL CONTINGENCY,  
6 THAT THE SELLER MAY ELECT TO CANCEL THE AGREEMENT?  
7 A. YES.  
8 Q. THEN I WANT TO GO TO THE NEXT PARAGRAPH,  
9 PARAGRAPH 4.  
10 IS IT YOUR TESTIMONY THAT GAIL HERSHOWITZ TOLD  
11 YOU THAT SHE HAD NOT PREPARED ESCROW INSTRUCTIONS ON  
12 SEPTEMBER 24, SEPTEMBER 29, AND OCTOBER 6, 2004?  
13 A. YES.  
14 Q. YOU'RE SURE OF THAT?  
15 A. EITHER SHE HADN'T PREPARED THEM OR SHE WOULDN'T  
16 GIVE TO IT US. THOSE ARE THE ONLY TWO THINGS THAT --  
17 Q. WELL, IN YOUR LETTER, YOU'RE SAYING SHE TOLD  
18 YOU THAT SHE WAS WAITING TO HEAR FROM YOU. "YOU"  
19 MEANING MR. LIBOW --  
20 A. EXACTLY.  
21 Q. -- BEFORE SHE COULD PREPARE IT.  
22 A. EXACTLY.  
23 Q. NOW, DID GAIL HERSHOWITZ TELL YOU THAT SHE WAS  
24 WAITING FOR MICHAEL LIBOW BEFORE SHE COULD PREPARE THE  
25 ESCROW INSTRUCTIONS?

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1 A. YES.  
2 Q. DID SHE TELL YOU THAT ON SEPTEMBER 24?  
3 A. SHE TOLD ME THAT ON ALL THREE DAYS THERE.  
4 Q. SEPTEMBER 24, SEPTEMBER 29, AND OCTOBER 6;  
5 CORRECT?  
6 A. YES.  
7 Q. AND IS IT CORRECT THAT ON OCTOBER 20, 2004, YOU  
8 FAXED TO MR. LIBOW THE CONTINGENCY REMOVAL NO. 2 FOR THE  
9 LOAN AND TITLE, BUT YOU DID NOT REMOVE THE APPRAISAL  
10 CONTINGENCY ON THAT DATE?  
11 A. YES.  
12 Q. NOW, LOOK AT S0042 AND S0043.  
13 ARE THOSE DOCUMENTS WHERE YOU NOTIFIED  
14 MR. LIBOW OF THE CONTINGENCY REMOVAL FOR REPORTS AND  
15 DISCLOSURES IN YOUR INVESTIGATION OF THE PROPERTY?  
16 A. YES.  
17 Q. CAN YOU LOOK AT S0083.  
18 IS THAT A VOICE MAIL OR E-MAIL, OR WHAT IS  
19 THAT? FAX? CAN YOU TELL ME WHAT THAT IS? IS THAT A  
20 COPY OF AN E-MAIL?  
21 A. I THINK THAT WAS AN E-MAIL. YES, E-MAIL.  
22 Q. E-MAIL THAT YOU SENT TO MICHAEL LIBOW?  
23 A. YES.  
24 Q. DID YOU EVER SEE THE E-MAIL THAT'S MARKED  
25 S0084?

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1 A. YES.  
2 Q. S0085 AND S0086, IS THAT SOMETHING YOU RECEIVED  
3 FROM MR. LIBOW?  
4 A. YES.  
5 Q. THEN THERE'S SOMETHING HANDWRITTEN THERE ON THE  
6 SECOND PAGE, S0086.  
7 IS THAT YOUR HANDWRITING --  
8 A. NO.  
9 Q. -- "MICHAEL, PLEASE SEND COPIES TO BETH STYNE  
10 IN ESCROW"?  
11 A. NO. THAT IS NOT MY SIGNATURE. THAT IS NOT MY  
12 HANDWRITING.  
13 Q. NOW, IS IT CORRECT THAT YOU RECEIVED S0086, A  
14 LETTER FROM DR. ZERNIK ADDRESSED TO YOU -- TO MICHAEL  
15 LIBOW -- TO YOU AND MICHAEL LIBOW, STATING THAT HE WAS  
16 CANCELING THE ESCROW?  
17 MR. STEIN: MISSTATES WHAT THE DOCUMENT STATES. IT  
18 SPEAKS FOR ITSELF.  
19 BY MR. CUMMINGS:  
20 Q. DID YOU RECEIVE S0086 ON OCTOBER 21, 2004?  
21 A. YES.  
22 Q. AND DID YOU SEND S0084 TO MR. LIBOW THE EVENING  
23 OF OCTOBER 21, 2004, AFTER YOU RECEIVED S0086 FROM  
24 MR. ZERNIK?  
25 MR. STEIN: PLEASE RESTATE THAT BECAUSE I'M CONFUSED

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1 AS TO THE NUMBERS OR HAVE THE COURT REPORTER --  
 2 BY MR. CUMMINGS:  
 3 Q. S0086 WAS FAXED TO YOU AT 4:36 P.M. ON  
 4 OCTOBER 21, 2004; CORRECT?  
 5 A. I DON'T SEE THE TIME. I'M NOT SURE.  
 6 Q. CAN YOU TURN TO THE FRONT PAGE, S0085, THE  
 7 COVER SHEET.  
 8 A. OKAY. YES.  
 9 Q. OKAY. AND THEN YOUR E-MAIL TO MR. LIBOW IS  
 10 7:09 P.M.  
 11 A. THAT'S FROM MICHAEL LIBOW.  
 12 Q. OKAY. FROM MICHAEL LIBOW TO YOU. OKAY.  
 13 GOING BACK THEN TO S0083.  
 14 A. YES.  
 15 Q. THAT E-MAIL IS DATED OCTOBER 21, 2004; CORRECT?  
 16 A. YES.  
 17 Q. AND WAS IT SENT BY YOU TO MR. LIBOW AT OR ABOUT  
 18 5:09 P.M.?  
 19 A. YES.  
 20 Q. ON THAT DATE?  
 21 A. YES.  
 22 Q. NOW, WAS THAT SENT BEFORE OR AFTER YOU RECEIVED  
 23 S0085?  
 24 A. I DON'T HAVE AN S0085.  
 25 MR. STEIN: YES, YOU DO.

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1 THE WITNESS: OKAY. WHAT WAS THE QUESTION?  
 2 BY MR. CUMMINGS:  
 3 Q. WHICH ONE WAS SENT FIRST? DID YOU RECEIVE  
 4 S0085 BEFORE YOU SENT S0083?  
 5 MR. STEIN: IF SHE HAS KNOWLEDGE.  
 6 THE WITNESS: I DON'T BELIEVE I'D SEEN THE DOCUMENT  
 7 S0086 BEFORE I SENT MY DOCUMENT, EVEN THOUGH THE TIMES  
 8 STATE THAT I SENT MINE -- THAT MICHAEL -- THAT  
 9 MR. ZERNIK SENT HIS BEFORE MINE, I DON'T KNOW IF I SAW  
 10 HIS BEFORE I SENT MINE.  
 11 BY MR. CUMMINGS:  
 12 Q. OKAY. SO YOU SENT S0083.  
 13 THEN YOU SEE S0085 AND S0086; CORRECT?  
 14 A. YES.  
 15 Q. AND THEN DID YOU RECEIVE S0084 FROM MR. LIBOW?  
 16 A. YES.  
 17 Q. DO YOU SEE THE LAST PARAGRAPH IN MR. LIBOW'S  
 18 E-MAIL TO YOU? THAT'S S0084, WHERE IT SAYS, "I WILL  
 19 MAKE EVERY ATTEMPT TO CALM MR. ZERNIK, AND, HOPEFULLY,  
 20 WE'LL BE ABLE TO TELL HIM TOMORROW THAT YOU ARE READY TO  
 21 RELEASE ALL CONTINGENCIES. I DO NOT KNOW IF THIS WILL  
 22 BE EFFECTIVE, BUT IT'S THE BEST THAT I CAN DO. SHOULD  
 23 HE ELECT NOT TO CANCEL THE CONTRACT, I BELIEVE THAT HE  
 24 WILL NEED ADDITIONAL TIME IN THE PROPERTY, INCLUSIVE OF  
 25 THE NEED FOR FUMIGATION." DO YOU SEE THAT?

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1 A. YES.  
 2 Q. DID YOU UNDERSTAND AT THAT TIME THAT DR. ZERNIK  
 3 MAY PROCEED WITH HIS ELECTION TO CANCEL THE CONTRACT?  
 4 MR. STEIN: I'M GOING TO OBJECT AS IT CALLS FOR A  
 5 LEGAL CONCLUSION.  
 6 MR. CUMMINGS: I'M ASKING FOR HER STATE OF MIND.  
 7 MR. STEIN: OKAY.  
 8 MR. CUMMINGS: HER UNDERSTANDING.  
 9 THE WITNESS: COULD YOU REPEAT THE QUESTION.  
 10 BY MR. CUMMINGS:  
 11 Q. YES. DID YOU UNDERSTAND WHEN YOU RECEIVED  
 12 MR. LIBOW'S E-MAIL TO YOU, THAT'S MARKED S00884, THAT  
 13 DR. ZERNIK MAY CONTINUE TO ELECT TO CANCEL THE CONTRACT?  
 14 A. YES.  
 15 Q. LOOKING AT EXHIBIT OR AT DOCUMENT NO. S00 --  
 16 S0102, S0103 --  
 17 A. YES.  
 18 Q. -- THAT'S WHEN YOU FINALLY WAIVED THE LOAN  
 19 CONTINGENCY; IS THAT CORRECT?  
 20 A. ALL THE CONTINGENCIES WERE REMOVED.  
 21 Q. AND THAT'S ON OCTOBER 25, 2004?  
 22 A. YES.  
 23 Q. THAT'S WHEN YOU WAIVED THE APPRAISAL  
 24 CONTINGENCY FOR THE FIRST TIME; CORRECT?  
 25 A. YES.

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1 Q. AND YOU FAXED THAT TO MR. LIBOW; IS THAT  
 2 CORRECT?  
 3 A. YES.  
 4 MR. STEIN: MR. CUMMINGS, I THINK THAT THIS WOULD BE  
 5 A GOOD TIME FOR ME, IF YOU DON'T MIND.  
 6 MR. CUMMINGS: FINE. WE'LL BREAK AT THIS TIME.  
 7 OFF THE RECORD.  
 8 (WHEREUPON AT THE HOUR OF 12:32 P.M.,  
 9 THE DEPOSITION WAS ADJOURNED FOR A LUNCH  
 10 BREAK, TO RESUME AT 1:30 P.M.)  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 AFTERNOON SESSION  
2 (WHEREUPON AT THE HOUR OF 1:32 P.M.  
3 OF THE SAME DAY, AT THE SAME PLACE, THE  
4 SAME PARTIES BEING PRESENT, THE TAKING OF  
5 THE WITHIN DEPOSITION WAS RESUMED, AND  
6 THE FOLLOWING PROCEEDINGS OCCURRED:)

7  
8 NIVIE SAMAAAN,  
9 THE WITNESS HEREIN, HAVING BEEN PREVIOUSLY  
10 DULY ADMINISTERED THE OATH, WAS EXAMINED  
11 AND TESTIFIED FURTHER AS FOLLOWS:

## EXAMINATION (RESUMED)

BY MR. CUMMINGS:

15 Q. LOOK AT 0030.  
16 WERE YOU AWARE OF THESE TWO E-MAILS IN THE TIME  
17 FRAME OF OCTOBER 18 --

18 A. THE 19TH?

19 Q. -- AND THE 19, 2004?

20 A. YES.

21 Q. DOCUMENT S0031.

22 WERE YOU AWARE OF THAT E-MAIL ON OCTOBER 19,  
23 2004?

24 A. I WAS AWARE THAT THE SELLER MIGHT CANCEL, BUT I  
25 WANT TO ELABORATE ON SOMETHING.

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1 EVEN THOUGH IT WAS HIS LEGAL RIGHT TO CANCEL, I  
2 DID NOT BELIEVE THAT -- THAT HE WOULD CANCEL OR HE  
3 SHOULD CANCEL BECAUSE OF THE FACT THAT HIM AND HIS  
4 REPRESENTATIVES DELAYED US IN RECEIVING ALL THE  
5 INFORMATION THAT WE NEEDED TO MEET OUR OBLIGATIONS. SO,  
6 IN MY OPINION, I DID NOT FEEL THAT HE SHOULD HAVE  
7 CANCELED OR BECAUSE THAT THEY DID NOT MEET THEIR  
8 OBLIGATIONS IN GETTING US ANYTHING IN A TIMELY FASHION  
9 SO WE WERE PRECLUDED FROM MEETING OUR OBLIGATIONS.

10 Q. WHAT IS IT THAT YOU CLAIM THAT MR. ZERNIK  
11 PREVENTED YOU FROM -- DID NOT PROVIDE TO YOU WITHIN A  
12 TIMELY FASHION?

13 A. WELL, THEY ARE THE ONES THAT PICKED THE ESCROW  
14 COMPANY, WHICH IS MARA ESCROW; SO THEY WERE RESPONSIBLE  
15 IN NOT GETTING US THE PRELIMINARY TITLE, AND THERE WAS  
16 SOMETHING ELSE. I DON'T KNOW EXACTLY. I THINK THE  
17 LOAN -- THE ESCROW INSTRUCTIONS AND THE PRELIMINARY  
18 TITLE, UNTIL -- I THINK IT WAS NOTED OCTOBER 6. WE HAD  
19 ACCEPTED THE OFFER AS OF THE 16TH, AND THOSE THINGS WERE  
20 NOT FORWARDED TO THE LOAN OFFICERS UNTIL OCTOBER 6. SO  
21 WAS QUITE DELAYED. AND ALSO OUR ESCROW INSTRUCTIONS  
22 WERE DELAYED BEING SENT TO US.

23 AND I WANTED TO POINT OUT IN THE ESCROW  
24 INSTRUCTIONS -- WHERE ARE THE ESCROW INSTRUCTIONS?

25 MR. STEIN: IT WOULD BE 44.

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1 THE WITNESS: 44?

2 MR. STEIN: YES.

3 THE WITNESS: OKAY. IN NO. 44, WHERE IT STATES THAT  
4 ON OCTOBER 8, WE WOULD BE GIVING A \$15,000 DEPOSIT, THAT  
5 IS EVIDENCE TO ME THAT THEY DID AGREE TO THE ONE-WEEK  
6 EXTENSION BECAUSE IF THEY HADN'T, IT WOULD HAVE BEEN  
7 OCTOBER 1. SO THAT IS EVIDENCE THAT THEY AGREED TO  
8 EXTEND THE ACCEPTANCE.

9 SO MY THINKING WAS THAT THERE WAS NO RUSH  
10 BECAUSE THEY WERE NOT RUSHING IN GETTING US WHAT WE  
11 NEEDED.

12 WE ALSO DID NOT RECEIVE ANY OF THE TRANSFER  
13 DISCLOSURE AGREEMENTS. THOSE WERE ALSO LATE. WE DID  
14 NOT SIGN THOSE OR EVEN RECEIVE THEM UNTIL OCTOBER 4, AND  
15 THAT WAS WAY PAST THE SEVEN DAYS AFTER ACCEPTANCE; SO  
16 THEY WERE NOT IN A TIMELY FASHION AS FAR AS GETTING  
17 EVERYTHING THAT WE NEEDED, BUT THEY EXPECTED US TO BE IN  
18 A TIMELY FASHION. THEY MADE IT DIFFICULT FOR US TO GET  
19 ANYTHING WE NEEDED TO GET IN ON TIME.

20 Q. DID YOU PERSONALLY EVER ASK THE ESCROW COMPANY  
21 TO GIVE YOU A COPY OF THE ESCROW INSTRUCTIONS?

22 A. ABSOLUTELY.

23 Q. WHAT DAY?

24 A. ON THE THREE DAYS. ON THOSE THREE OCCASIONS  
25 THAT WAS STATED IN ONE OF THE LETTERS WHICH WE'D ALREADY

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1 GONE OVER. I DON'T REMEMBER WHERE IT IS. THAT TIME  
2 THAT I WROTE TO MICHAEL LIBOW AND TOLD HIM ON THREE  
3 SEPARATE OCCASIONS I SPOKE TO GAIL HERSHOWITZ, AND SHE  
4 KEPT SAYING, "I HAVE TO WAIT FOR MICHAEL LIBOW TO GIVE  
5 ME THE AUTHORITY TO DO ANYTHING."

6 MR. STEIN: IT'S HERE.

7 THE WITNESS: 78. IT'S IN PARAGRAPH 4.

BY MR. CUMMINGS:

9 Q. WHEN WAS THE FIRST DATE THAT YOUR LOAN BROKER  
10 REQUESTED THAT ESCROW INSTRUCTIONS BE PROVIDED?

11 MR. STEIN: IF SHE HAS KNOWLEDGE.

12 NOT TO GUESS.

13 THE WITNESS: I DON'T -- I'M SURE IT'S IN ONE OF  
14 THESE DOCUMENTS. I DON'T KNOW EXACTLY WHAT DATE IT IS,  
15 BUT I'M SURE THAT THEY'RE IN THESE DOCUMENTS. IT'S IN  
16 ONE OF THE E-MAILS THAT HE HAD SENT TO MICHAEL LIBOW.  
17 BY MR. CUMMINGS:

18 Q. HOW DID GETTING THE PRELIMINARY TITLE REPORT --  
19 NOT GETTING THAT UNTIL OCTOBER 6 PREVENT YOU FROM  
20 WAIVING THE APPRAISAL CONTINGENCY ON OCTOBER 20?

21 A. FROM MY KNOWLEDGE, WHAT HAS BEEN EXPLAINED TO  
22 ME, AND I MIGHT NOT BE SAYING THIS CORRECTLY, BUT THE  
23 LENDER NEEDS TO HAVE THE PRELIMINARY TITLE REPORT IN  
24 ORDER TO SUBMIT THE LOAN. WITHOUT IT, THEY CANNOT  
25 PROCEED WITH THE LOAN.

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1 Q. IS IT YOUR TESTIMONY THAT THE DELAY IN GETTING  
2 THE PRELIMINARY TITLE REPORT BEFORE OCTOBER 6 PREVENTED  
3 THE APPRAISAL FROM BEING COMPLETED?

4 A. IT PREVENTED --

5 MR. STEIN: HOLD ON. I'M GOING TO OBJECT TO THE  
6 QUESTION AS IT CALLS FOR A LEGAL CONCLUSION, AND IT ASKS  
7 FOR HER OPINIONS IN THE AREAS THAT SHE'S NOT QUALIFIED  
8 TO TESTIFY, AND IT ASKS FOR EXPERT OPINION.  
9 BY MR. CUMMINGS:

10 Q. DO YOU KNOW WHEN THE APPRAISAL WAS ORDERED?

11 A. I DO NOT.

12 Q. DO YOU KNOW WHO ORDERED IT?

13 A. I DO NOT. IT WAS EITHER VICTOR PARKS -- IT WAS  
14 PROBABLY VICTOR PARKS OR MY HUSBAND. I DON'T KNOW.

15 Q. DID YOU EVER MEET WITH THE APPRAISER?

16 A. I DID NOT PERSONALLY, NO.

17 Q. DID YOU EVER TALK TO HIM?

18 A. NO.

19 Q. NOW, IS IT YOUR UNDERSTANDING THAT MR. ZERNIK  
20 WAS SUPPOSED TO ORDER THE APPRAISAL?

21 A. NO.

22 Q. IS IT YOUR UNDERSTANDING THAT MARA ESCROW  
23 COMPANY WAS THE AGENT FOR YOU AND MR. ZERNIK?

24 A. I KNOW THAT THEY WERE SELECTED BY MR. ZERNIK;  
25 SO I DON'T KNOW. I MEAN I GUESS THEY'RE A NEUTRAL

1 PARTY; SO I GUESS THEY WOULD BE WORKING FOR BOTH OF US,  
2 BUT THEY WERE SELECTED BY THEM.

3 Q. WELL, ISN'T IT CORRECT THAT FROM YOUR EDUCATION  
4 IN REAL ESTATE AS A SALES AGENT, THAT YOU'RE AWARE THAT  
5 AN ESCROW COMPANY IS THE AGENT FOR BOTH THE BUYER AND  
6 THE SELLER?

7 A. YES, I AM AWARE, BUT LET ME RESTATE THAT I HAD  
8 NOT HAD ANY REAL ESTATE EXPERIENCE BEFORE THIS  
9 TRANSACTION.

10 Q. BUT YOU'RE AWARE FROM YOUR EDUCATION TO GET A  
11 LICENSE TO SELL REAL ESTATE IN THE STATE OF CALIFORNIA  
12 THAT AN ESCROW COMPANY ACTS AS THE AGENT FOR THE BUYER  
13 AND THE SELLER; CORRECT?

14 A. YES.

15 Q. DID ANYBODY AT MARA ESCROW COMPANY EVER TELL  
16 YOU THAT THEY WERE NOT YOUR AGENT?

17 A. NO, BUT THEY STATED, QUITE FRANKLY, THAT THEY  
18 WORK FOR MICHAEL LIBOW.

19 Q. WHO TOLD YOU THAT THEY WORK FOR MICHAEL LIBOW?

20 A. WELL, EVERYTHING THAT I EVER CALLED TO ASK FOR  
21 WAS NOT GIVEN TO ME UNLESS THERE WAS AN AGREEMENT  
22 BETWEEN HER AND MICHAEL LIBOW. SHE WAS ALWAYS WAITING  
23 FOR MICHAEL LIBOW'S ANSWER, FOR A BETTER TERM. I WAS  
24 NEVER GIVEN WHAT I REQUESTED ON THE TIMES THAT I  
25 REQUESTED IT, UNLESS MICHAEL LIBOW AGREED TO IT.

1 Q. I WANT YOU TO TELL ME EVERY SINGLE ITEM THAT  
2 YOU REQUESTED THAT GAIL HERSHOWITZ SAID SHE WOULD NOT  
3 PROVIDE TO YOU UNLESS MICHAEL LIBOW AGREED TO IT.

4 A. THE ESCROW INSTRUCTIONS.

5 Q. ANYTHING ELSE?

6 A. I DON'T KNOW WHAT ELSE COMES FROM THE ESCROW  
7 COMPANY; SO THAT'S ALL --

8 Q. YOU MADE A STATEMENT THAT SHE TOLD YOU SHE  
9 WOULDN'T GIVE YOU THINGS. I WANT TO KNOW, OTHER THAN  
10 THE ESCROW INSTRUCTIONS, WHAT IT IS THAT YOU CLAIM GAIL  
11 HERSHOWITZ TOLD YOU SHE WOULD NOT GIVE YOU UNLESS  
12 MICHAEL LIBOW APPROVED IT.

13 A. THE PRELIMINARY TITLE, WHICH I REQUESTED IN  
14 THAT LETTER, AND THE ESCROW INSTRUCTIONS.

15 Q. ANYTHING ELSE?

16 A. NOT TO MY KNOWLEDGE. I'VE REQUESTED THOSE  
17 SEVERAL TIMES, BOTH ITEMS.

18 Q. DID YOU ASK ANYBODY AT MARA ESCROW TO DO  
19 ANYTHING REGARDING THE APPRAISAL OF THE PROPERTY FOR  
20 YOUR LOAN APPLICATION?

21 A. I DON'T KNOW. I DIDN'T DEAL WITH THE  
22 APPRAISAL.

23 Q. DID YOU ASK MICHAEL LIBOW TO DO ANYTHING  
24 REGARDING THE APPRAISAL FOR YOUR LOAN APPLICATION?

25 A. I DID NOT PERSONALLY ASK HIM ANYTHING REGARDING

1 THE APPRAISAL.

2 Q. ISN'T IT A FACT THAT THE APPRAISAL -- THE  
3 APPRAISING OF THE PROPERTY IS SOMETHING THAT IS DONE BY  
4 THE PROSPECTIVE LENDER?

5 A. I BELIEVE SO.

6 Q. AND THE LENDER WAS SELECTED BY YOUR MORTGAGE  
7 BROKER; CORRECT?

8 A. YES.

9 Q. AND THE MORTGAGE BROKER WAS THE COMPANY THAT  
10 YOUR HUSBAND WORKS FOR; CORRECT?

11 A. YES.

12 AND ONE MORE THING TO ADD TO WHAT I HAD ASKED  
13 OF MARA ESCROW. I ALSO ASKED THEM NOT TO DEPOSIT THE  
14 CHECK, WHICH THEY DID ON MICHAEL LIBOW'S INQUIRY. I HAD  
15 TOLD HER TO HOLD THE CHECK BECAUSE IT WOULD BE  
16 INSUFFICIENT FUNDS, AND SHE STILL WENT AHEAD AND CASHED  
17 IT BECAUSE OF WHAT MICHAEL LIBOW TOLD HER TO DO.

18 Q. DID GAIL HERSHOWITZ TELL YOU THAT SHE CASHED  
19 THE CHECK BECAUSE OF WHAT MICHAEL LIBOW TOLD HER?

20 A. ABSOLUTELY. SHE SAID, "MICHAEL LIBOW" -- WHAT  
21 IS THE WORD?

22 MR. STEIN: DIRECTED.

23 THE WITNESS: -- "DIRECT ME TO CASH THE CHECK, AND  
24 THAT'S WHAT I DID."

25 //

1 BY MR. CUMMINGS:

2 Q. DOCUMENT NO. S0032 AND S0033.

3 WERE YOU AWARE OF THE THREE E-MAILS THAT ARE  
4 LISTED ON THOSE -- SET FORTH ON THOSE TWO PAGES, AND  
5 THEY'RE ALL DATED FRIDAY, OCTOBER 22, 2004?

6 A. I WAS AWARE OF THEM.

7 Q. WERE YOU AWARE OF THEM ON OR ABOUT THE TIME  
8 THEY WERE RECEIVED?

9 A. I DON'T RECALL IF I WAS AWARE OF THEM AT THE  
10 TIME THEY WERE RECEIVED.

11 Q. WERE YOU AWARE OF THEM BY FRIDAY, OCTOBER 22,  
12 2004?

13 A. I DON'T KNOW IF I WAS AWARE OF THEM THAT DAY OR  
14 IF IT WAS ANOTHER DAY.

15 Q. DID YOUR HUSBAND TELL YOU THAT MR. LIBOW HAD  
16 CONTACTED VICTOR PARKS AND TOLD HIM THAT THE SELLER HAS  
17 REQUESTED A CANCELLATION OF THE ESCROW?

18 A. I WAS AWARE OF HIM WANTING TO CANCEL THE  
19 ESCROW.

20 Q. YOU WERE AWARE OF THAT ON OCTOBER 22, 2004;  
21 CORRECT?

22 A. I DON'T RECALL THE DATE. I MEAN WHENEVER IT  
23 WAS DONE, I WAS PROBABLY AWARE OF IT.

24 Q. DO YOU SEE THE E-MAIL THAT'S DOCUMENT S0034?

25 A. YES.

NIVIE SAMAAAN 7/10/06

1 Q. WERE YOU AWARE OF THAT E-MAIL ON OR ABOUT  
2 OCTOBER 22, 2004?

3 A. YES.

4 Q. WERE YOU AWARE OF THE E-MAIL DOCUMENT S0035?

5 A. YES.

6 Q. WERE YOU AWARE OF THAT E-MAIL ON OCTOBER 25,  
7 2004?

8 A. YES, ON OR ABOUT THAT TIME.

9 Q. DID YOU GET ALL OF THE E-MAILS THAT ARE SET  
10 FORTH ON PAGES 0027 THROUGH 0038 FROM YOUR HUSBAND?

11 A. I'VE SEEN THE E-MAILS. I LOOKED AT THEM, YES.

12 Q. THROUGH YOUR HUSBAND?

13 A. THROUGH MY HUSBAND, YES.

14 Q. LOOKING AT DOCUMENT NO. 0081, DID YOU INSTRUCT  
15 VICTOR PARKS TO KEEP ALL CORRESPONDENCE WITH MR. LIBOW  
16 IN WRITING?

17 A. MY HUSBAND AND I BOTH DID.

18 Q. DID YOU PERSONALLY ASK MR. PARKS TO DO THAT?

19 A. I MAY HAVE. I DON'T REMEMBER.

20 Q. WERE YOU PRESENT WHEN YOUR HUSBAND DID?

21 A. I DON'T RECALL.

22 Q. LOOKING AT 0086 AND 0085, IS IT CORRECT THAT ON  
23 OCTOBER 21, 2004, YOU KNEW THAT MR. ZERNIK WAS  
24 INSTRUCTING HIS REALTOR TO DRAW INSTRUCTIONS FOR  
25 CANCELLATION OF THE CONTRACT?

NIVIE SAMAAAN 7/10/06

1 A. YES, I WAS MADE AWARE OF THAT, BUT, AGAIN, AS I  
2 STATED BEFORE, I DID NOT BELIEVE THAT IT WAS HIS RIGHT  
3 TO CANCEL BECAUSE THEY WERE -- THEY PRECLUDED US FROM  
4 PERFORMING IN A TIMELY MANNER.

5 Q. TO YOUR KNOWLEDGE, DID ANYBODY AT PACIFIC  
6 MORTGAGE CONSULTANTS DO ANYTHING TO ATTEMPT TO OBTAIN A  
7 LOAN APPROVAL FOR YOU BEFORE YOU AND YOUR HUSBAND  
8 RETURNED FROM HAWAII ON SEPTEMBER 23, 2004?

9 A. NO. I DON'T BELIEVE ANYTHING WAS STARTED  
10 BEFORE WE RETURNED FROM HAWAII. NOTHING BEGAN.

11 Q. DOCUMENT S0105. WHO PREPARED THIS DOCUMENT?

12 A. IT SAYS LOUISE AT MARA ESCROW. THIS WAS A  
13 VOICE MESSAGE THAT WAS LEFT.

14 Q. BUT WHO TYPED UP THIS DOCUMENT?

15 A. I BELIEVE MY HUSBAND OR VICTOR DID.

16 MR. STEIN: FOR THE RECORD, MY OFFICE PREPARED THAT.  
17 THE WITNESS: OH.

18 MR. CUMMINGS: DO YOU HAVE THE ORIGINAL TAPE?

19 MR. STEIN: WE HAVE THE TAPE THAT WE RECEIVED THE  
20 COPY FROM, YES.

21 MR. CUMMINGS: THE TAPE?

22 MR. STEIN: YES. WE HAVE A COPY.

23 MR. CUMMINGS: AN AUDIOTAPE?

24 MR. STEIN: YES.

25 MR. CUMMINGS: HAVE YOU PROVIDED THAT TO US?

NIVIE SAMAAAN 7/10/06

1 MR. STEIN: NO. WE CAN FORWARD IT VIA E-MAIL TO  
2 YOU.

3 MR. CUMMINGS: THE AUDIO?

4 MR. STEIN: YES.

5 MR. CUMMINGS: YOU CAN'T PUT IT ON A TAPE AND GET IT  
6 TO ME OR CD OR ANYTHING?

7 MR. STEIN: THAT'S HOW WE RECEIVED IT WAS -- YOU  
8 PLAY IT RIGHT BACK FROM THE E-MAIL. I CAN DO IT ANY WAY  
9 YOU WANT IT.

10 MR. CUMMINGS: I WOULD RATHER HAVE IT ON A CD.

11 MR. STEIN: IT WILL BE DONE. WHEN I PRODUCE THE  
12 OTHER DOCUMENTS TO YOU, WE'LL GIVE YOU A CD OF THIS  
13 TEXT.

14 BY MR. CUMMINGS:

15 Q. DID YOU EVER DEPOSIT THE ADDITIONAL \$15,000?

16 A. YOU MEAN THE SECOND DEPOSIT?

17 Q. YES.

18 A. YES. IT WAS GIVEN BY CASHIER'S CHECK. I  
19 PERSONALLY WALKED IT IN TO MARA ESCROW MYSELF, BUT WHAT  
20 HAPPENED WAS -- WHICH IS PROVEN BY THE DATE THAT THEY  
21 POSTED THE CHECK -- I WALKED IT IN TO MARA ESCROW. I  
22 HAD CALLED THEM THAT DAY AND TOLD THEM THAT I WAS GOING  
23 TO BE BRINGING IN THE CHECK. I LEFT THE CHECK WITH THE  
24 RECEPTIONIST BECAUSE GAIL HERSHOWITZ WAS NOT IN THE  
25 OFFICE, AND I TOLD -- I HAD THE ENVELOPE ADDRESSED TO

NIVIE SAMAAAN 7/10/06

1 GAIL HERSHOWITZ AND SAID THAT SHE SHOULD BE GIVEN THIS  
2 CHECK. AND I CAN'T REMEMBER -- TWO TO THREE DAYS LATER  
3 I GET A FRANTIC CALL FROM MICHAEL LIBOW STATING THAT I  
4 DID NOT KEEP MY WORD AND DID NOT TAKE IN A CHECK, AND I  
5 STATED TO HIM, "OF COURSE, I DID." AND THEN I GOT A  
6 PHONE CALL FROM GAIL HERSHOWITZ STATING THE SAME THING,  
7 AND I SAID, "I WALKED IN THE CHECK PERSONALLY ON THE DAY  
8 I SAID I WAS GOING TO GIVE IT TO YOU." AND THEY SAID  
9 THEY COULDN'T FIND THE CHECK. SO THEN I BELIEVE AFTER  
10 THEY SEARCHED FOR THIS CHECK, AND I DON'T KNOW -- I  
11 GUESS THEY BELIEVE THEY FOUND IT ON THE 12TH, WHICH IS  
12 DATED WHEN THEY RECEIVED IT, IS WHEN SHE CALLED ME, AND  
13 SHE TOLD ME SHE HAD THE CHECK.

14 Q. WHAT IS THE DATE OF THE CHECK?

15 A. I BELIEVE IT'S OCTOBER 8. THE DATE IT WAS  
16 DELIVERED WAS OCTOBER 8 THAT I DROPPED IT OFF. THE DAY  
17 I GOT IT WAS OCTOBER 8. THE DAY I DELIVERED IT WAS  
18 OCTOBER 8.

19 Q. WHAT DOCUMENT NUMBER ARE YOU LOOKING AT?

20 MR. STEIN: THAT'S S0110.

21 BY MR. CUMMINGS:

22 Q. WHEN YOU BROUGHT IT IN TO MARA ESCROW, WHOM DID  
23 YOU GIVE IT TO?

24 A. THE RECEPTIONIST, BECAUSE GAIL HERSHOWITZ WAS  
25 NOT THERE.

NIVIE SAMAAAN 7/10/06

1 Q. DO YOU KNOW THE RECEPTIONIST'S NAME?

2 A. NO.

3 Q. WHAT DID SHE LOOK LIKE?

4 A. I BELIEVE SHE HAD LONG BROWN STRAIGHT HAIR. I  
5 THINK SHE WAS OF HISPANIC DESCENT.

6 Q. I'M SORRY. WHAT?

7 A. OF HISPANIC DESCENT, I BELIEVE.

8 Q. DID YOU RECEIVE DOCUMENT S0104?

9 A. WHAT WAS YOUR QUESTION?

10 Q. DID YOU RECEIVE THAT DOCUMENT, S0104?

11 A. YES.

12 Q. DID YOU SIGN IT?

13 A. DID I SIGN IT?

14 Q. YES.

15 A. NO. MY SIGNATURE IS NOT ON THERE.

16 Q. IS YOUR MONEY STILL IN ESCROW?

17 A. YES.

18 Q. \$30,000?

19 A. YES.

20 Q. DID YOU SIGN LOAN DOCUMENTS?

21 A. NO, WE DID NOT.

22 Q. S0106. WHAT IS THAT DOCUMENT?

23 A. I DON'T KNOW. I'VE NEVER SEEN THAT BEFORE.

24 Q. DO YOU KNOW WHO PREPARED IT?

25 A. NO, I DON'T.

NIVIE SAMAAAN 7/10/06

1 Q. HAVE YOU EVER DISCUSSED THE CONTENTS OF THIS  
2 WITH ANYBODY?

3 A. CONTEXT OF WHAT?

4 Q. CONTENTS OF EXHIBIT 106 WITH ANYBODY.

5 A. I DON'T KNOW. I DON'T KNOW WHAT IT IS. IT  
6 LOOKS LIKE A TIMELINE OF SOMETHING. I DON'T KNOW WHAT  
7 IT IS.

8 Q. LOOK AT DOCUMENT NO. S0107.

9 DID YOU RECEIVE THIS DOCUMENT?

10 A. DID I RECEIVE IT?

11 Q. YES.

12 A. YES.

13 Q. WHEN?

14 A. WELL, IT SAYS "NOVEMBER 10, 2004." I DON'T  
15 KNOW IF THAT'S THE DAY I READ IT OR NOT.

16 Q. DO YOU KNOW WHO BETH IS?

17 A. YES. SHE'S THE MANAGER AT COLDWELL BANKER,  
18 WHICH, BY THE WAY, THAT WAS ANOTHER INDICATION TO ME  
19 THAT MICHAEL LIBOW WAS ACTING IN HIS CLIENT'S INTEREST  
20 BECAUSE HIS MANAGER WAS UNDER THE IMPRESSION THAT THE  
21 SEVEN-DAY EXTENSION WAS AGREED UPON AS WELL.

22 BY THE WAY, CAN I POINT OUT ANOTHER PARAGRAPH  
23 IN HERE? ON THE FOURTH PARAGRAPH, IT STATES THAT --

24 Q. I DON'T HAVE ANY QUESTION PENDING, MA'AM.

25 A. OKAY, BUT I WANT TO MAKE IT FOR THE RECORD.

NIVIE SAMAAAN 7/10/06

1 Q. IF I ASK YOU A QUESTION. YOUR ATTORNEY CAN ASK  
2 YOU A QUESTION. I JUST MAKE THINGS FOR THE RECORD.

3 WAS IT YOUR UNDERSTANDING THAT THE AGREEMENT --  
4 THAT YOUR COUNTER OFFER NO. 2 WAS ACCEPTED BY DR. ZERNIK  
5 ON SEPTEMBER 15, 2004?

6 A. WHICH DOCUMENT IS THAT?

7 Q. 0026.

8 A. WHAT WAS YOUR QUESTION?

9 Q. IS IT YOUR UNDERSTANDING THAT YOUR COUNTER  
10 OFFER NO. 2 WAS ACCEPTED BY DR. ZERNIK ON SEPTEMBER 15,  
11 2004?

12 A. YES.

13 Q. WHAT'S YOUR FAX NUMBER AT HOME?

14 A. (310) 275-5352. I THINK THERE WAS A COUPLE OF  
15 DIFFERENT FAX NUMBERS. I DON'T KNOW THE OTHER ONES.

16 Q. WHAT WAS THE FAX NUMBER AT WORK?

17 A. AT MY OFFICE?

18 Q. WELL, DOES THAT --

19 A. GILLERAN GRIFFIN, YOU MEAN? I NEED TO LOOK  
20 THAT UP, AND I CAN TELL YOU. HOLD ON A SECOND. I KNOW  
21 WHERE IT IS. I ACTUALLY DON'T -- I KNOW THE OFFICE  
22 NUMBER. I DON'T USE THAT FAX NUMBER. I USE MY PERSONAL  
23 FAX, BUT --

24 Q. WHAT IS THE FAX NUMBER?

25 A. AT GILLERAN GRIFFIN?

NIVIE SAMAAAN 7/10/06

1 Q. YES.

2 A. I DON'T KNOW IT. I DON'T KNOW IT BY HEART.

3 Q. YOU DON'T HAVE IT ON YOUR CARD?

4 A. NO. ON MY CARD, I HAVE MY PERSONAL FAX NUMBER.

5 Q. WHICH IS WHAT?

6 A. I THOUGHT I HAD IT. LET ME JUST LOOK FOR A

7 SECOND.

8 MR. STEIN: IS THIS YOUR HOUSE NUMBER, YOUR HOUSE

9 FAX NUMBER?

10 THE WITNESS: I THINK, YES. YES.

11 I HAVE ANOTHER FAX NUMBER THAT USED TO BE AT MY

12 HOME BEFORE I MOVED IN WITH MY HUSBAND. I CAN GIVE YOU

13 THAT ONE. (323) 843-9378 IS ONE, AND --

14 BY MR. CUMMINGS:

15 Q. WHAT ADDRESS DID YOU LIVE AT BEFORE YOU MOVED

16 IN WITH YOUR HUSBAND?

17 A. 1227-1/2 SOUTH ALFRED STREET, LOS ANGELES,

18 90035.

19 Q. DID YOU HAVE YOUR MAIL FORWARDED WHEN YOU

20 MOVED?

21 A. YES.

22 (RECESS TAKEN.)

23 BY MR. CUMMINGS:

24 Q. WERE YOU TO SHARE IN THE COMMISSION ON THE

25 PROPERTY?

NIVIE SAMAAAN 7/10/06

1 A. I'M SORRY?

2 Q. WERE YOU TO SHARE IN THE COMMISSION ON THE

3 PROPERTY?

4 A. YES.

5 Q. AND GILLERAN GRIFFIN WAS GOING TO GET HALF THE

6 COMMISSION; IS THAT CORRECT?

7 A. NO. THEY DON'T GET HALF. OH, YOU MEAN BETWEEN

8 THE AGENTS?

9 Q. GILLERAN GRIFFIN AND COLDWELL BANKER WAS GOING

10 TO GET HALF; CORRECT?

11 A. YES.

12 Q. WHAT PERCENTAGE WERE YOU GOING TO GET OF THE

13 PORTION THAT WENT TO GILLERAN GRIFFIN?

14 A. I DON'T KNOW EXACTLY. I DON'T KNOW EXACTLY

15 WHAT PERCENTAGE THEY GOT AND WHAT PERCENTAGE I GOT.

16 Q. CAN YOU LOOK AT DOCUMENT NO. S0009.

17 A. YES.

18 Q. WAS THAT THE LAST PAGE OF THE OFFER YOU

19 SUBMITTED, THE ORIGINAL OFFER YOU SUBMITTED?

20 A. WELL, I ALSO SUBMITTED THE BUYER'S INSPECTION

21 ADVISORY AND THE WOOD DESTROYING PEST INSPECTION; SO

22 THAT WAS NOT THE LAST PAGE.

23 Q. BUT I MEAN OF THE OFFER.

24 A. OF THE OFFER, YES.

25 Q. WHAT ADDRESS DO YOU LIST THERE?

NIVIE SAMAAAN 7/10/06

1 A. 1333 WESTWOOD BOULEVARD. OUR OFFICE HAS MOVED.

2 Q. WHAT ADDRESS DO YOU LIST FOR YOURSELF RIGHT

3 UNDER YOUR SIGNATURE?

4 A. MY LAST HOME ADDRESS BEFORE I MOVED IN WITH MY

5 HUSBAND.

6 Q. WHAT ADDRESS IS THAT?

7 A. 1227-1/2 SOUTH ALFRED STREET.

8 Q. AND YOU ALSO LISTED GILLERAN GRIFFIN'S ADDRESS;

9 CORRECT?

10 A. YES.

11 MR. CUMMINGS: WE'LL MARK AS EXHIBIT 5 --

12 MR. STEIN: I THINK IT'S EXHIBIT 4.

13 BY MR. CUMMINGS:

14 Q. EXHIBIT 4. DID YOU RECEIVE THAT DOCUMENT?

15 EXHIBIT 4 IS A TRANSMITTAL, DATED SEPTEMBER 30, 2004,

16 FROM MARA ESCROW COMPANY TO GILLERAN GRIFFIN COMPANY,

17 1333 WESTWOOD BOULEVARD, SUITE 101; ATTENTION: NIVIE

18 SAMAAAN.

19 A. I NEVER RECEIVED THIS. I DON'T RECALL SEEING

20 THIS BEFORE.

21 Q. THAT WAS YOUR WORK ADDRESS FOR GILLERAN

22 GRIFFIN; CORRECT?

23 A. YES, AT THE TIME.

24 Q. MAY I HAVE IT BACK, PLEASE.

25 (WHEREUPON THE AFOREMENTIONED DOCUMENT

NIVIE SAMAAAN 7/10/06

1 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS

2 DEFENDANT'S EXHIBIT 4 FOR IDENTIFICATION AND

3 IS HERETO ATTACHED.)

4 MR. CUMMINGS: I'LL MARK AS EXHIBIT 5 A LETTER OF

5 TRANSMITTAL, DATED SEPTEMBER 30, 2004, NIVIE SAMAAAN, AT

6 1227-1/2 SOUTH ALFRED STREET.

7 (WHEREUPON THE AFOREMENTIONED DOCUMENT

8 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS

9 DEFENDANT'S EXHIBIT 5 FOR IDENTIFICATION AND

10 IS HERETO ATTACHED.)

11 BY MR. CUMMINGS:

12 Q. DID YOU EVER RECEIVE THAT DOCUMENT?

13 MR. STEIN: IF YOU RECALL.

14 THE WITNESS: I DON'T RECALL THIS.

15 MR. CUMMINGS: WE'LL MARK AS EXHIBIT 6 A COPY OF THE

16 TRANSMITTAL FROM MARA ESCROW COMPANY TO NIVIE SAMAAAN,

17 DATED OCTOBER 6, 2004, ADDRESSED AT 1227-1/2 SOUTH

18 ALFRED STREET.

19 (WHEREUPON THE AFOREMENTIONED DOCUMENT

20 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS

21 DEFENDANT'S EXHIBIT 6 FOR IDENTIFICATION AND

22 IS HERETO ATTACHED.)

23 BY MR. CUMMINGS:

24 Q. DID YOU RECEIVE THAT TRANSMITTAL?

25 A. YES.

NIVIE SAMAAAN 7/10/06

1 Q. DO YOU KNOW WHEN YOU RECEIVED IT?  
 2 A. ON OR ABOUT THAT DATE, I BELIEVE.  
 3 Q. ON OR ABOUT OCTOBER 6, 2004?  
 4 A. I IMAGINE THAT'S WHEN --  
 5 MR. STEIN: IT WOULD HAVE TO BE SUBSEQUENT TO THAT  
 6 DATE.  
 7 THE WITNESS: I DON'T KNOW.  
 8 MR. CUMMINGS: MARK AS EXHIBIT 7 A DOCUMENT ENTITLED  
 9 "APPLICABLE TIME FRAMES." IT'S DATED SEPTEMBER 23,  
 10 2004.  
 11 (WHEREUPON THE AFOREMENTIONED DOCUMENT  
 12 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS  
 13 DEFENDANT'S EXHIBIT 7 FOR IDENTIFICATION AND  
 14 IS HERETO ATTACHED.)  
 15 BY MR. CUMMINGS:  
 16 Q. DID YOU RECEIVE THAT DOCUMENT? IT'S ADDRESSED  
 17 TO NIVIE SAMAAN IN CARE OF GILLERAN GRIFFIN COMPANY,  
 18 1333 WESTWOOD BOULEVARD, SUITE 101.  
 19 A. YES, I HAD RECEIVED IT.  
 20 Q. ON WHAT DATE?  
 21 A. PROBABLY AROUND THE FEW DAYS -- WITHIN A FEW  
 22 DAYS OF THE DATE STATED. I DON'T RECALL EXACTLY THE  
 23 DATE.  
 24 CAN I SEE THAT ONE MORE TIME?  
 25 MR. CUMMINGS: MARK AS EXHIBIT 8 A DOCUMENT ENTITLED

NIVIE SAMAAN 7/10/06

1 "APPLICABLE TIME FRAMES," DATED SEPTEMBER 28, 2004,  
 2 ADDRESSED TO MICHAEL LIBOW, WITH SOME HANDWRITING ON THE  
 3 DOCUMENT. "RE: NIVIE. DATES CHANGED?" AND SOME OTHER  
 4 HANDWRITING.  
 5 (WHEREUPON THE AFOREMENTIONED DOCUMENT  
 6 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS  
 7 DEFENDANT'S EXHIBIT 8 FOR IDENTIFICATION AND  
 8 IS HERETO ATTACHED.)  
 9 BY MR. CUMMINGS:  
 10 Q. IS ANY OF THAT HANDWRITING ON THAT DOCUMENT  
 11 YOURS?  
 12 A. NO.  
 13 Q. DID YOU PROVIDE ANY OF THE INFORMATION THAT'S  
 14 IN HANDWRITING TO GAIL HERSHOWITZ OR ANYBODY ELSE AT  
 15 MARA ESCROW?  
 16 A. I BELIEVE I HAD WHEN I HAD SPOKEN TO HER. WHEN  
 17 I GOT THE FIRST SET THAT YOU JUST SHOWED ME, I HAD  
 18 CALLED HER AND SAID THAT THE DATES WERE WRONG AND THAT  
 19 THEY WERE SUPPOSED TO BE OCTOBER 8 AND THE 24TH OR THE  
 20 23RD, AND SHE SAID THAT SHE COULDN'T CHANGE ANYTHING  
 21 UNTIL SHE SPOKE WITH MICHAEL; SO THEN THIS IS WHAT WAS  
 22 SENT.  
 23 Q. LET ME GO OVER THESE ITEMS. JUST A SECOND.  
 24 NOW, STARTING AT THE TOP WHERE IT HAS -- I'LL  
 25 GIVE YOU THE PRIOR ONE SO YOU CAN READ IT, THE ONE THAT

NIVIE SAMAAN 7/10/06

1 WE MARKED AS EXHIBIT 7, SO YOU CAN COMPARE THEM.  
 2 THERE'S A SCRATCH OUT.  
 3 ORIGINALLY IT SAID, "INITIAL DEPOSIT TO BE  
 4 RECEIVED BY ESCROW HOLDER" AND ORIGINALLY WAS WRITTEN  
 5 DOWN SEPTEMBER 22, 2004; CORRECT?  
 6 A. YES.  
 7 Q. AND THEN IT'S SCRATCHED OUT. AND CAN YOU READ  
 8 THE DATE THERE AFTER THAT?  
 9 A. I BELIEVE IT SAYS THE 24TH.  
 10 Q. OKAY. DID YOU TELL GAIL HERSHOWITZ THAT IT WAS  
 11 SUPPOSED TO BE SEPTEMBER 24?  
 12 A. I PROBABLY DID, YES.  
 13 Q. OKAY. THEN IT SAYS "ADDITIONAL DEPOSIT." IT  
 14 SAYS "OCTOBER." IT HAD BEEN THE 1ST, AND IT'S WRITTEN  
 15 OCTOBER 8.  
 16 DID YOU PROVIDE THE OCTOBER 8 DATE TO GAIL  
 17 HERSHOWITZ?  
 18 A. YES.  
 19 Q. THEN THERE'S NO CHANGE IN DATE FOR THE SIGNED  
 20 ESCROW INSTRUCTIONS; IS THAT CORRECT? THIRD ITEM DOWN.  
 21 A. OKAY. WE WEREN'T EVEN HERE ON THAT DAY.  
 22 Q. DID YOU GIVE GAIL HERSHOWITZ A DIFFERENT DATE  
 23 FOR THAT ITEM?  
 24 A. NO, I DID NOT. THE ONLY ITEMS I TOLD GAIL  
 25 HERSHOWITZ ABOUT WAS THE INITIAL DEPOSIT, WHICH WAS THE

NIVIE SAMAAN 7/10/06

1 24TH, AND THE ADDITIONAL DEPOSIT OF THE 8TH, AND THAT  
 2 THE ACCEPTANCE WAS SUPPOSED TO BE -- ACCEPTANCE OF THE  
 3 PURCHASE WAS SUPPOSED TO BE ON SEPTEMBER 23. THOSE ARE  
 4 THE ONLY DATES THAT I GAVE HER.  
 5 Q. OKAY. THERE'S AN ITEM THERE. IT SAYS "BUYER'S  
 6 INVESTIGATION CONTINGENCIES EXPIRE," AND THEY HAD STATED  
 7 SEPTEMBER 27, 2004, AND THEN IT'S HANDWRITTEN IN "TEN  
 8 DAYS FROM 9/24."  
 9 DID YOU PROVIDE THAT INFORMATION TO HER?  
 10 MR. STEIN: ONE ADDITION. THERE'S A QUESTION MARK.  
 11 IF YOU'RE GOING TO REFERENCE, YOU MIGHT AS WELL HAVE  
 12 THAT TOO.  
 13 BY MR. CUMMINGS:  
 14 Q. DID YOU PROVIDE THAT PROVISION TO GAIL  
 15 HERSHOWITZ?  
 16 A. NO.  
 17 Q. DOWN BELOW, IT SAYS, "LAST DAY FOR BUYER TO  
 18 REMOVE APPRAISAL CONTINGENCY: 17 DAYS - 24?"  
 19 DID YOU PROVIDE THAT INFORMATION TO HER?  
 20 A. NO.  
 21 Q. "LAST DAY FOR BUYER TO RECEIVE FINAL LOAN  
 22 APPROVAL." IT STATES "17 DAY - 24TH?"  
 23 DID YOU PROVIDE THAT INFORMATION TO HER?  
 24 A. NO.  
 25 MR. CUMMINGS: THE LAST EXHIBIT WAS 5 -- 8,

NIVIE SAMAAN 7/10/06

1 EXHIBIT 8; CORRECT?

2 MR. STEIN: YES. THAT'S CORRECT.

3 MR. CUMMINGS: I'LL MARK AS 9 ANOTHER SET OF  
4 APPLICABLE TIME FRAMES, DATED OCTOBER 5, ADDRESSED TO  
5 NIVIE SAMAAAN IN CARE OF GILLERAN GRIFFIN COMPANY.

6 (WHEREUPON THE AFOREMENTIONED DOCUMENT  
7 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS  
8 DEFENDANT'S EXHIBIT 9 FOR IDENTIFICATION AND  
9 IS HERETO ATTACHED.)

10 BY MR. CUMMINGS:

11 Q. DID YOU RECEIVE THAT DOCUMENT?

12 A. YES, I BELIEVE SO.

13 Q. WHEN DID YOU RECEIVE IT?

14 A. IT WAS AROUND THIS DATE, OCTOBER 5.

15 Q. DID YOU READ IT WHEN YOU RECEIVED IT?

16 A. I LOOKED OVER IT, YES.

17 Q. AFTER YOU RECEIVED IT, DID YOU NOTIFY ANYBODY  
18 AT MARA ESCROW THAT ANY OF THE DATES SET FORTH ON  
19 EXHIBIT 9, THE APPLICABLE TIME FRAMES SCHEDULE, DATED  
20 OCTOBER 5, 2005, WERE INCORRECT?

21 A. NO, I DON'T BELIEVE SO.

22 Q. DID YOU NOTIFY MICHAEL LIBOW THAT ANY OF THE  
23 DATES SET FORTH ON THE OCTOBER 5 APPLICABLE TIME FRAME  
24 SCHEDULE WERE INCORRECT?

25 A. NO.

NIVIE SAMAAAN 7/10/06

1 Q. DID YOU NOTIFY DR. ZERNIK THAT ANY OF THE TIME  
2 FRAMES -- ANY OF THE DATES SET FORTH ON THE APPLICABLE  
3 TIME FRAMES, DATED OCTOBER 5, 2004, WERE INCORRECT?

4 A. NO.

5 Q. HANDING YOU BACK EXHIBIT 9. DO YOU SEE THE  
6 STATEMENT UNDERNEATH THE NOVEMBER -- THE LAST DATE, THE  
7 PARAGRAPH WHERE IT SAYS, "BUYER AND SELLER HAVE  
8 INDICATED IN THE ORIGINAL RESIDENTIAL PURCHASE AGREEMENT  
9 AND JOINT ESCROW INSTRUCTIONS THAT THEY DESIRE THE  
10 ACTIVE METHOD FOR REMOVAL OF CONTINGENCIES"? DO YOU SEE  
11 THAT?

12 A. YES.

13 Q. DID YOU READ THAT WHEN YOU RECEIVED IT?

14 A. NO.

15 Q. ANY REASON YOU DIDN'T READ IT?

16 A. NO. I JUST -- I LOOKED AT THE DATES. THAT'S  
17 ALL I LOOKED AT.

18 Q. ANYBODY PREVENT YOU FROM READING IT?

19 A. NO.

20 Q. IS THERE ANYTHING YOU DON'T UNDERSTAND ABOUT  
21 THAT PARAGRAPH?

22 A. YES. I DON'T UNDERSTAND WHAT THAT MEANS,  
23 "ACTIVE METHOD."

24 Q. IT SAYS, "THEREFORE, IF WITHIN THE TIME" --  
25 READ THE REST OF PARAGRAPH, AND TELL ME IF YOU DON'T

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1 UNDERSTAND IT AND WHAT IT IS YOU DON'T UNDERSTAND ABOUT  
2 IT.

3 A. OKAY. I UNDERSTAND WHAT IT'S SAYING.

4 Q. DO YOU UNDERSTAND THAT PARAGRAPH THAT'S WRITTEN  
5 THERE --

6 A. YES.

7 Q. -- UNDERNEATH THE NOVEMBER 1, 2004, DATE?

8 A. YES.

9 CAN I SEE ONE MORE THING IN THAT PARAGRAPH?

10 Q. SURE.

11 DID YOU RECEIVE A COPY OF THE PEST CONTROL  
12 REPORT THAT HAD BEEN DONE ON THE PROPERTY?

13 A. I DON'T KNOW. I'D HAVE TO ASK MY HUSBAND.

14 MR. STEIN: SHOW HER WHAT YOU'RE REFERRING TO, IF  
15 YOU WOULD, PLEASE. I THINK THAT MIGHT REFRESH HER  
16 RECOLLECTION.

17 MR. CUMMINGS: I'LL MARK THAT AS EXHIBIT 10, THE FAX  
18 FROM MICHAEL LIBOW TO GAIL HERSHOWITZ, WITH A COPY TO  
19 NIVIE SAMAAAN, OF A BOND PEST CONTROL REPORT.

20 (WHEREUPON THE AFOREMENTIONED DOCUMENT  
21 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS  
22 DEFENDANT'S EXHIBIT 10 FOR IDENTIFICATION AND  
23 IS HERETO ATTACHED.)

24 THE WITNESS: YES.

25 //

NIVIE SAMAAAN 7/10/06

1 BY MR. CUMMINGS:

2 Q. DID YOU RECEIVE --

3 A. THE QUESTION WAS DID I RECEIVE IT?

4 Q. CORRECT.

5 A. YES.

6 Q. DID YOU RECEIVE IT ON OR ABOUT THE DATE OF THE  
7 TRANSMITTAL LETTER, TRANSMITTAL FAX?

8 A. YES.

9 Q. OKAY. DO YOU HAVE A WRITTEN AGREEMENT WITH  
10 GILLERAN GRIFFIN AS TO HOW MUCH YOUR COMMISSIONS ARE  
11 SUPPOSED TO BE, WHAT PERCENTAGE YOU GET OF THE  
12 COMMISSION THAT THE COMPANY RECEIVES?

13 A. YES, I BELIEVE SO, YES.

14 Q. WHAT DOES IT PROVIDE?

15 A. I DON'T KNOW THE EXACT PERCENTAGE. I WOULD BE  
16 ESTIMATING. I THINK --

17 Q. WHAT WOULD BE YOUR BEST ESTIMATE?

18 A. I THINK I GET 90 PERCENT, AND THEY GET TEN.  
19 IT'S AROUND THAT ESTIMATE.

20 Q. DID YOU HAVE A SPECIAL AGREEMENT WITH GILLERAN  
21 GRIFFIN RELATING TO THE PERCENTAGE OF THE COMMISSION  
22 THAT YOU WOULD RECEIVE ON THE PURCHASE OF THE PROPERTY  
23 AT 320 SOUTH PECK DRIVE?

24 A. NO.

25 MR. CUMMINGS: I'M GOING TO MARK AS EXHIBIT 11 A

NIVIE SAMAAAN 7/10/06

1 ONE-PAGE DOCUMENT SIGNED BY GAIL HERSHOWITZ, DATED  
2 NOVEMBER 8, 2004. AND I WANT YOU TO GO THROUGH THAT  
3 DOCUMENT AND TELL ME WHAT, IF ANYTHING, IN YOUR BELIEF,  
4 AS YOU SIT HERE TODAY, IS NOT ACCURATE ABOUT THAT  
5 STATEMENT MADE BY GAIL HERSHOWITZ, STARTING AT THE TOP  
6 AS YOU GO THROUGH, AND IF YOU CAN JUST TELL ME BY --

7 MR. STEIN: WHY DON'T WE READ THE SENTENCE AND DEAL  
8 WITH IT. OTHERWISE, IT'S ALL OVER THE PLACE.

9 (WHEREUPON THE AFOREMENTIONED DOCUMENT  
10 WAS SUBSEQUENTLY MARKED BY THE REPORTER AS  
11 DEFENDANT'S EXHIBIT 11 FOR IDENTIFICATION AND  
12 IS HERETO ATTACHED.)

13 BY MR. CUMMINGS:

14 Q. THE FIRST SENTENCE SAYS, "MICHAEL LIBOW FAXED ME  
15 A PURCHASE CONTRACT ON SEPTEMBER 22, 2004."

16 A. WHO IS THIS LETTER ADDRESSED TO? I MEAN WHO IS  
17 IT GOING TO? WAS IT ADDRESSED TO ME OR --

18 Q. IT'S NOT ADDRESSED TO ANYBODY. IT'S A  
19 STATEMENT.

20 A. OH, IT'S A STATEMENT SHE'S MAKING. OKAY. I  
21 DON'T -- I DON'T KNOW IF THAT'S TRUE OR NOT. IT DOESN'T  
22 HAVE ANYTHING TO DO WITH ME.

23 Q. THE NEXT SENTENCE SAYS, "I TYPED THE  
24 INSTRUCTIONS AND FAXED THEM TO MICHAEL LIBOW AND NIVIE  
25 SAMAAAN ON SEPTEMBER 23, 2004."

NIVIE SAMAAAN 7/10/06

1 MR. STEIN: DID YOU RECEIVE THEM?

2 THE WITNESS: IS THAT THE ESCROW INSTRUCTION?

3 MR. STEIN: YES.

4 THE WITNESS: NO, I DID NOT RECEIVE THEM ON THAT  
5 DATE.

6 BY MR. CUMMINGS:

7 Q. DO YOU KNOW IF GILLERAN GRIFFIN RECEIVED THEM?

8 A. NO, I DON'T.

9 Q. AND THE NEXT SENTENCE SAYS, "RECEIVED A CHECK  
10 FROM BUYER ON SEPTEMBER 27, 2004."

11 A. NO, THAT'S NOT CORRECT. I GAVE THEM A CHECK ON  
12 SEPTEMBER 24, 2004, WHICH IS STATED ON THE CHECK.

13 Q. WHEN DID YOU TELL THEM TO HOLD IT UNTIL?

14 MR. STEIN: TWO DAYS.

15 THE WITNESS: TWO DAYS. TWO TO THREE DAYS.

16 BY MR. CUMMINGS:

17 Q. ALL RIGHT. "PURCHASE CONTRACT CALLS FOR CHECK  
18 TO BE DEPOSITED ON SEPTEMBER 24, 2004."

19 DO YOU DISPUTE THAT?

20 A. THAT'S NOT WHAT WAS AGREED UPON.

21 Q. WAS THAT AGREED TO IN WRITING?

22 A. NO, NOT IN WRITING.

23 Q. WAS THE DATE OF SEPTEMBER 24, 2004, AGREED TO  
24 IN WRITING?

25 A. NO.

NIVIE SAMAAAN 7/10/06

1 Q. "WE DEPOSITED THE CHECK TWICE, AND IT CAME BACK  
2 NSF TWICE."

3 A. THAT'S INCORRECT. THE CHECK CAME BACK ONCE  
4 WITH NOT SUFFICIENT FUNDS, AND WE WERE TOLD WE NEEDED TO  
5 GET A CASHIER'S CHECK AND DELIVER IT TO MICHAEL LIBOW  
6 PERSONALLY.

7 Q. IT SAYS, "WE CALLED BROKER TO ADVISE THEM, AND  
8 ON OCTOBER 4 RECEIVED A REPLACEMENT CHECK."

9 A. YES, THAT IS -- I ACTUALLY GAVE THE REPLACEMENT  
10 CHECK TO MICHAEL LIBOW PERSONALLY ON THE DAY THAT THE  
11 HOME INSPECTION WAS BEING DONE, WHICH HE SHOWED UP AT ON  
12 OCTOBER 4.

13 Q. IT SAYS, "AN ADDITIONAL DEPOSIT WAS DUE ON  
14 OCTOBER 1, 2004, AND WE RECEIVED IT ON OCTOBER 12,  
15 2004."

16 A. THAT IS NOT CORRECT. THE NEXT DEPOSIT WAS DUE  
17 ON OCTOBER 8, WHICH IS VERIFIED IN THE ESCROW  
18 INSTRUCTIONS. AND WHEN I DELIVERED ON IT OCTOBER 8,  
19 THEY LOST THE CHECK AND DID NOT RETRIEVE IT -- DID NOT  
20 FIND IT UNTIL OCTOBER 12, AND THAT'S WHY IT WAS DATED ON  
21 OCTOBER 12.

22 Q. "ON SEPTEMBER 24, 2004, VICTOR (LENDER) CALLED  
23 TO ADVISE ME HE WAS THE LENDER."

24 A. I DON'T KNOW IF THAT WAS DONE OR NOT.

25 Q. "TOLD HIM WE COULD NOT SEND OUT ESCROW

NIVIE SAMAAAN 7/10/06

1 INSTRUCTIONS IF THEY WERE NOT FINALIZED."

2 A. I DON'T KNOW.

3 Q. "ON SEPTEMBER 24, NIVIE CALLED AND ASKED IF WE  
4 COULD EXTEND THE TIME FRAMES FROM DIFFERENT DATES FROM  
5 THE CONTRACT AS SHE WAS GOING OUT OF TOWN."

6 A. NO, BECAUSE, FIRST OF ALL, I WAS NOT GOING OUT  
7 OF TOWN. I HAD JUST COME BACK FROM TOWN, AND THAT'S  
8 WHEN -- THAT'S WHEN I TOLD HER ABOUT THE DATES NEEDING  
9 TO BE -- WHEN I CALLED HER ABOUT NOT DEPOSITING THE  
10 CHECK, I ALSO TOLD HER ABOUT THE DATES THAT WERE AGREED  
11 UPON BY MICHAEL AND I FOR THE FIRST DEPOSIT, THE SECOND  
12 DEPOSIT, AND THE START OF THE PURCHASE AGREEMENT; SO  
13 THAT IS NOT CORRECT BECAUSE I HAD JUST COME BACK FROM  
14 TOWN.

15 Q. DID YOU REQUEST DIFFERENT DATES ON THAT?

16 A. YES, I DID.

17 Q. THE NEXT SENTENCE SAYS, "I CALLED AND LEFT A  
18 MESSAGE FOR MICHAEL LIBOW REGARDING THIS MATTER."

19 A. I DON'T KNOW IF SHE DID. I BELIEVE SHE DID. I  
20 DON'T KNOW FOR SURE.

21 Q. "HE ADVISED ME TO HOLD OFF SENDING THE ESCROW  
22 INSTRUCTIONS OUT PENDING THE TIME FRAME CHANGES MADE BY  
23 THE BUYER."

24 A. SHE MENTIONED TO ME THAT SHE WAS TO HOLD OFF  
25 UNTIL MICHAEL GOT BACK TO HER.

NIVIE SAMAAAN 7/10/06

1 Q. "I SENT OUT ESCROW INSTRUCTIONS ON OCTOBER 5,  
2 2004."

3 A. YES, I DON'T KNOW. IT MAY HAVE BEEN AROUND  
4 THAT TIME.

5 Q. "SENT OUT PRELIMINARY TITLE REPORT ON  
6 OCTOBER 6, 2004, BY CERTIFIED MAIL."

7 A. YES.

8 Q. "NIVIE CALLED TO SAY SHE HAD NOT RECEIVED THE  
9 PRELIMINARY TITLE REPORT, BUT I HAD A CERTIFIED SLIP  
10 BACK FROM HER SIGNED OCTOBER 8, 2004, WITH HER SIGNATURE  
11 ON IT THAT SHE HAD RECEIVED IT."

12 A. I GUESS SO.

13 Q. "NIVIE ADVISED THAT THERE WAS A MISTAKE IN THE  
14 ESCROW INSTRUCTIONS, AND I ADVISED HER TO CORRECT THEM,  
15 INITIAL THEM, AS WE WILL DO A FINAL AMENDMENT."

16 A. YES, THAT'S TRUE.

17 Q. WHAT CORRECTIONS DID YOU REQUEST?

18 A. THE DATES TO BE CHANGED, AS I -- THE  
19 PURCHASE -- THE ACCEPTANCE OF THE OFFER TO BE CHANGED,  
20 THE INITIAL DEPOSIT DATE AND THE SECOND DEPOSIT DATE TO  
21 BE CHANGED.

22 Q. "ON OCTOBER 22, 2004, WE RECEIVED HER SIGNED  
23 PAPERS."

24 A. I DON'T KNOW IF THE DATE IS CORRECT OR NOT,  
25 OCTOBER 22.

NIVIE SAMAAN 7/10/06

1 Q. DO YOU THINK YOU GAVE HER SIGNED ESCROW  
2 INSTRUCTIONS BEFORE THAT DATE?

3 MR. STEIN: IF YOU DON'T RECALL, JUST SAY YOU DON'T  
4 RECALL.

5 THE WITNESS: YES, I DON'T RECALL.

6 BY MR. CUMMINGS:

7 Q. "ON OCTOBER 22, 2004, I RECEIVED A CONTINGENCY  
8 REMOVAL FORM SIGNED BY BUYER AND SELLER AND A FAX FOR  
9 NOTICE TO PERFORM FOR BUYER."

10 MR. STEIN: THAT'S INCORRECT.

11 THE WITNESS: THAT'S INCORRECT.

12 BY MR. CUMMINGS:

13 Q. WHAT IS THE CORRECT INFORMATION?

14 A. PROBABLY AROUND THE 20TH.

15 Q. "ON OCTOBER 25 AND NOVEMBER 5, 2004, I RECEIVED  
16 INSTRUCTIONS FROM SELLER TO CANCEL THE ESCROW, AS THE  
17 CONTINGENCY DATES HAD EXPIRED AND THE BUYER HAD NOT  
18 PERFORMED."

19 A. I BELIEVE SO. I DON'T KNOW WHEN SHE RECEIVED  
20 THAT FROM THE SELLER.

21 Q. "BUYER HAS NOT SIGNED SAID CANCELLATION  
22 INSTRUCTIONS."

23 A. YES.

24 MR. STEIN: THAT'S EXHIBIT 11, COUNSEL?

25 MR. CUMMINGS: YES.

NIVIE SAMAAN 7/10/06

1 Q. I'M GOING TO SHOW YOU EXHIBIT 9 AGAIN, WHICH  
2 HAS THE REVISED APPLICABLE TIME FRAMES.

3 YOU'VE ALREADY STATED YOU DIDN'T NOTIFY ANYBODY  
4 THAT YOU DISAGREED WITH THOSE TIME FRAMES; CORRECT?

5 A. TO MY KNOWLEDGE, I DID NOT, NO.

6 Q. WHEN YOU RECEIVED IT, WERE THERE ANY OF THOSE  
7 TIME FRAMES YOU DISAGREED WITH?

8 MR. STEIN: ASKED AND ANSWERED, BUT SHE CAN ANSWER  
9 IF SHE RECALLS.

10 THE WITNESS: NO, I DON'T BELIEVE SO.

11 BY MR. CUMMINGS:

12 Q. SO AS YOU SIT HERE TODAY, DO YOU BELIEVE THAT  
13 THOSE ARE THE ACCURATE APPLICABLE TIME FRAMES FOR THOSE  
14 TRANSACTIONS?

15 A. YES.

16 Q. AND IS IT CORRECT THAT YOU DIDN'T REMOVE THE  
17 APPRAISAL CONTINGENCY BY OCTOBER 11, 2004?

18 A. YES.

19 Q. IS IT CORRECT THAT YOU DIDN'T REMOVE THE FINAL  
20 LOAN APPROVAL CONTINGENCY BY OCTOBER 11, 2004?

21 A. YES.

22 Q. IS IT CORRECT THAT ESCROW WAS TO CLOSE BY  
23 NOVEMBER 1, 2004?

24 A. YES.

25 Q. WERE LOAN DOCUMENTS EVER PREPARED, TO YOUR

NIVIE SAMAAN 7/10/06

1 KNOWLEDGE?

2 A. NO.

3 Q. IS IT YOUR UNDERSTANDING THAT BETH STYNE IS THE  
4 MANAGER AT THE COLDWELL BANKER OFFICE WHERE MR. LIBOW  
5 WORKS?

6 A. YES.

7 Q. DO YOU BELIEVE THAT MICHAEL LIBOW DID ANYTHING  
8 WRONG IN CONNECTION WITH THIS TRANSACTION?  
9 JUST HER UNDERSTANDING.

10 MR. STEIN: JUST YOUR UNDERSTANDING, NOT ANY LEGAL  
11 CONCLUSIONS.

12 THE WITNESS: I BELIEVE THAT HE DIDN'T KEEP HIS WORD  
13 ABOUT OUR UNDERSTANDING OF WHEN THE ACCEPTANCE OF THE  
14 PURCHASE SHOULD BE AND THAT, IN ESSENCE, IT RUSHED  
15 EVERYTHING. IT MADE IT IMPOSSIBLE FOR US TO MEET OUR  
16 OBLIGATIONS AND BELIEVING THAT HE WAS BEING INSTRUCTED  
17 BY HIS CLIENT; SO...

18 BY MR. CUMMINGS:

19 Q. WAS IT YOUR UNDERSTANDING THAT DR. ZERNIK  
20 DIDN'T AGREE WITH ANY EXTENSIONS?

21 A. NO, THAT WAS NOT MY UNDERSTANDING.

22 MR. CUMMINGS: I'LL BE BACK IN ABOUT THREE MINUTES.

23 (BRIEF RECESS.)

24 THE WITNESS: CAN I ADD ONE MORE THING TO WHAT YOU  
25 ASKED ME --

NIVIE SAMAAN 7/10/06

1 BY MR. CUMMINGS:

2 Q. YES.

3 A. -- ABOUT IF MICHAEL LIBOW HAD DONE ANYTHING  
4 WRONG.

5 I NEVER DID RECEIVE A FULLY EXECUTED AND SIGNED  
6 PURCHASE AGREEMENT FROM MICHAEL LIBOW OR FROM ZERNIK  
7 WITH HIS SIGNATURE ON IT, AND I BELIEVE THAT THAT WAS  
8 SOMETHING THAT WE NEEDED FOR THE LOAN APPROVAL TO GO  
9 THROUGH; SO THAT WAS SOMETHING THAT I NEVER RECEIVED.

10 Q. HAS ANYBODY TOLD YOU WHAT THEY BELIEVE THE  
11 PROPERTY AT 320 SOUTH PECK DRIVE IN BEVERLY HILLS IS  
12 CURRENTLY WORTH?

13 A. NO, NOBODY HAS TOLD ME.

14 Q. HAS ANYBODY TOLD YOU -- STATED ANY OPINION OF  
15 VALUE OF THE PROPERTY TO YOU AT ANY TIME SINCE  
16 OCTOBER 25, 2004?

17 A. YES.

18 Q. WHO?

19 A. MY HUSBAND.

20 Q. WHAT DID HE TELL YOU?

21 A. THAT THE PROPERTY HAS GONE UP IN VALUE.

22 Q. DID HE SAY HOW MUCH?

23 A. I'M ESTIMATING ABOUT 2.2 MILLION.

24 Q. THAT IT WAS WORTH THAT AT THE TIME HE TOLD YOU?

25 A. YOU MEAN AT THE TIME THAT WE WERE BUYING IT?

1 Q. NO. AT THE TIME THAT HE TOLD YOU THAT.

2 A. OH, OKAY. YES, THAT IT WAS BETWEEN 2.1 AND  
3 2.2.

4 Q. WHEN DID HE TELL YOU?

5 A. IT WAS PROBABLY JUST A FEW MONTHS AGO.

6 AND THERE WAS ALSO A HOME AROUND THE BLOCK THAT  
7 SOLD FOR \$700,000 MORE THAN WHAT WE HAD PURCHASED THE  
8 PECK PROPERTY FOR.

9 Q. WHAT PROPERTY WAS THAT?

10 A. IT WAS ON BEDFORD. I DON'T KNOW THE EXACT  
11 ADDRESS, BUT IT WAS ON BEDFORD.

12 Q. BETWEEN WHAT STREET AND WHAT STREET?

13 A. IT'S THE STREET RIGHT NEXT TO PECK, AND THAT  
14 HAD ACTUALLY HAPPENED A WEEK AFTER WE HAD ACCEPTED AN  
15 OFFER FOR THE PECK PROPERTY.

16 Q. DID YOU FEEL THAT PROPERTY WAS COMPARABLE TO  
17 THE PECK PROPERTY?

18 A. IT WAS 500 SQUARE FEET LARGER, BUT IT WAS  
19 PRETTY COMFORTABLE, OTHER THAN THAT...

20 Q. HOW LARGE IS THE PECK PROPERTY?

21 A. TWENTY-SIX SOMETHING, 26,000 SOMETHING.

22 Q. 2,600?

23 A. 2,600, I MEAN.

24 MR. STEIN: 26,000 IS PRETTY GOOD.

25 MR. CUMMINGS: IT WOULD BE ONE BIG HOUSE.

1 Q. DO YOU HAVE AN OPINION WHAT THE PROPERTY'S  
2 WORTH NOW?

3 A. I WOULD SAY PROBABLY BETWEEN TWO AND 2.2  
4 MILLION.

5 Q. WHAT DID YOU THINK THE PROPERTY WAS WORTH ON  
6 OCTOBER 25, 2004?

7 A. I DIDN'T REALLY THINK ABOUT IT. I BELIEVED IT  
8 WAS -- I BELIEVED IT WAS WORTH THE PRICE IT WAS LISTED  
9 AT.

10 Q. WHAT WAS THE PRICE IT WAS LISTED?

11 A. I DON'T KNOW EXACTLY. 1.6 SOMETHING.

12 Q. WAS YOUR OFFER -- WAS THE COUNTER OFFER,  
13 1,718,000, GREATER THAN THE LISTING PRICE?

14 A. YES, BUT I BELIEVE THAT IT COULD HAVE BEEN  
15 WORTH MORE, THOUGH -- I MEAN THAN WHAT IT WAS LISTED. I  
16 BELIEVE -- I BELIEVED I WAS GETTING A GOOD DEAL FOR THE  
17 PROPERTY.

18 Q. YOU BELIEVED THAT THE PROPERTY WAS WORTH LESS  
19 THAN 1,718,000?

20 MR. STEIN: MISSTATES HER TESTIMONY.

21 BY MR. CUMMINGS:

22 Q. DID YOU BELIEVE THAT THE PROPERTY WAS WORTH  
23 LESS THAN 1,718,000?

24 A. NO.

25 Q. TELL ME WHAT YOU MEANT WHEN YOU SAID YOU

1 THOUGHT YOU WERE GETTING A GOOD DEAL.

2 A. I BELIEVED THAT IT WAS WORTH MORE THAN THAT,  
3 MORE THAN ONE POINT SEVEN EIGHTEEN.

4 Q. HOW MUCH MORE?

5 A. PROBABLY AROUND 250,000 TO 300,000 MORE.

6 Q. SO YOU THOUGHT THE PROPERTY WAS WORTH -- OKAY.  
7 FINE.

8 I HAVE NO FUTURE QUESTIONS OF THIS WITNESS AT  
9 THIS TIME.

10 MR. STEIN: I HAVE NO QUESTIONS.

11 MY ONLY CONCERN IS THAT MR. SHULKIN WILL.  
12 WE'LL DEAL WITH THAT ACCORDINGLY.

13 MR. CUMMINGS: YOU KNOW WHAT YOUR RIGHTS ARE. I  
14 DON'T HAVE TO TELL YOU THAT.

15 THE WITNESS: I UNDERSTAND. THAT I UNDERSTAND.

16 MR. CUMMINGS: HE GOT NOTICE.

17 MR. STEIN: YES. YOU WANT TO SET A STIPULATION,  
18 MR. CUMMINGS?

19 MR. CUMMINGS: I WOULD PROPOSE THAT THE ORIGINAL  
20 TRANSCRIPT BE SENT TO COUNSEL FOR THE DEPONENT; THAT  
21 WITHIN 30 DAYS AFTER RECEIPT OF IT BY COUNSEL FOR THE  
22 DEPONENT, THAT THE DEPONENT WILL REVIEW IT, OUR FIRM  
23 WILL BE NOTIFIED OF ANY CHANGES THAT ARE MADE; IT CAN BE  
24 SIGNED UNDER PENALTY OF PERJURY; THE REPORTER CAN BE  
25 RELIEVED OF HER OBLIGATION; AND THAT IF WE'RE NOT

1 NOTIFIED OF THE CHANGES WITHIN THAT 30-DAY PERIOD, THEN  
2 A CERTIFIED COPY CAN BE USED AS THOUGH IT WERE THE  
3 ORIGINAL SIGNED UNDER PENALTY OF PERJURY, WITHOUT ANY  
4 CHANGES; AND THAT THE ORIGINAL DEPOSITION WILL BE  
5 PRODUCED AT THE TRIAL OF THIS ACTION AND AT ANY OTHER  
6 TIME ON A REASONABLE NOTICE TO COUNSEL FOR PLAINTIFF.

7 MR. STEIN: SO STIPULATED.

8 (WHEREUPON AT THE HOUR OF 3:29 P.M.,  
9 THE DEPOSITION WAS CONCLUDED.)

10 -000-

11 I DECLARE UNDER PENALTY OF PERJURY THAT THE  
12 FOREGOING IS TRUE AND CORRECT.

13 EXECUTED AT \_\_\_\_\_, CALIFORNIA,  
14 THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

15  
16  
17  
18 \_\_\_\_\_  
SIGNATURE OF THE WITNESS