

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Action No. 2:11-cv-07296 (KSH) (PS)

NATALIE A. WILLIAMS and	:	
ALAN J. SETNESKA,	:	
individually and on	:	
behalf of all others	:	DEPOSITION OF:
similarly situated,	:	
	:	STEVEN P. MC CABE
Plaintiffs,	:	
	:	
vs.	:	
	:	
PRESSLER & PRESSLER, LLC,	:	
	:	
Defendant.	:	

T R A N S C R I P T of the
proceedings as taken stenographically by and before
ANN P. CONLON, a Notary Public and Certified Court
Reporter of the State of New Jersey, at the offices
of Pressler & Pressler, 7 Entin Road, Parsippany, New
Jersey, on Friday, October 12, 2012, commencing at
3:45 p.m.

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15 BY: MITCHELL WILLIAMSON, ESQ.

16 MICHAEL J. PETERS, ESQ.

17 ATTORNEYS FOR DEFENDANT

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I N D E X

WITNESS: MARKO GALIC

EXAMINATION BY:

PAGE

Mr. Stern

5

E X H I B I T S

NUMBER

DESCRIPTION

PAGE

none marked

REQUESTS FOR DOCUMENTS/INFORMATION

PAGE - LINE

none

4	<p>1 STEVEN MCCABE, 2 having been duly sworn according 3 to law, testified as follows: 4 5 MR. WILLIAMSON: Before we start, I'm 6 going to make a similar comment as I made at the 7 beginning of the prior deposition, and I believe Mr. 8 McCabe is here in response to the order on informal 9 application which we marked as P-1 dated July 5th, 10 2012, to discuss the matters identified in that order 11 and he's not here for any other purpose. And any 12 questions which go outside, too far outside the 13 guidelines set by this order will be objected to and 14 he will be directed not to answer. 15 MR. STERN: We'll see what happens as 16 we go, but Mr. McCabe was identified in accordance 17 with the court's direction that someone be 18 identified. 19 MR. WILLIAMSON: Yes. 20 MR. STERN: I thought in terms of our 21 discussion, because in Rule 26 disclosures Mr. Felt 22 was also identified, and I was under the impression 23 from what we talked about that we would call Mr. Felt 24 only if we needed to cover matters that were not 25 covered by the other deponents from Pressler.</p>	6	<p>1 complaint? 2 A. Yes, I have. 3 Q. So you have an understanding as to 4 what the lawsuit generally is about? 5 A. Yes, I do. 6 Q. Where did you attend law school? 7 A. I went to Rutgers Law School in 8 Newark. 9 Q. When did you graduate? 10 A. I graduated in 1971. 11 Q. Are you admitted to practice in any 12 jurisdiction? 13 A. The Federal and State Courts of New 14 Jersey and the Third Circuit Court of Appeals. 15 Q. Were you admitted to practice in the 16 state of New Jersey shortly after your graduation 17 from Rutgers Law School? 18 A. Yes, almost immediately after. 19 Q. Do you hold any professional or 20 vocational licenses other than your admission to the 21 bar or those courts? 22 A. No. 23 Q. Have you participated as a panelist on 24 any continuing legal education courses or workshops? 25 A. Yes.</p>
5	<p>1 So I thought you were indicating that 2 we probably would have everything covered between Mr. 3 McCabe and Mr. Galic, but if you're telling me now 4 that's not the case, maybe when we get done with this 5 we may need Mr. Felt's deposition. I didn't know you 6 would take such a strict limitation. I thought Mr. 7 McCabe was being offered, but let's see where it 8 goes. I understand he's being offered for this, but 9 I didn't understand that that meant that this was the 10 exclusivity as to what he was going to testify to. 11 MR. WILLIAMSON: Well, I'll certainly 12 try to be somewhat flexible, and again, try not to 13 object where no objection is necessary. So we'll see 14 what you ask before I go any further. 15 MR. STERN: Okay. 16 17 EXAMINATION BY MR. STERN: 18 Q. Mr. McCabe, my name is Philip Stern. 19 I believe we've met before. 20 A. Yes, we have. 21 Q. And I'm representing Natalie Williams, 22 formerly known as Natalie Freeman, and Alan Setneska 23 who have filed a lawsuit against Pressler & Pressler 24 for claims arising of Fair Debt Collection Practices 25 Act. Have you had an opportunity to review that</p>	7	<p>1 Q. What were the subject matter of those 2 workshops? 3 A. I've been practicing since 1971, and 4 I've had the honor to appear in seminars and 5 workshops in many places on many subjects. Most of 6 my professional career I've been involved in issues 7 related to the extension of credit to consumers. 8 I've lectured, I've presented workshops to the 9 National Consumer Law Center on class actions. I've 10 presented workshops to the New Jersey Superior Court 11 judges at the yearly meetings that they have I think 12 in the fall on the issue of awarding interest in 13 judgement and non-judgement cases and the factors the 14 courts might consider. 15 I think I've actually given or at 16 least been a member of a panel on an FDCPA seminar, 17 but I'm not positive of that. Usually it's on 18 consumer credit issues and also on general 19 litigation. 20 Q. Have you been engaged in the private 21 practice of law as your full-time employment since 22 you were admitted to the bar? 23 A. Yes. 24 Q. Can you run through what your 25 employment has been?</p>

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1 **A. Yes, I can.**
 2 **Q.** Please do.
 3 MR. WILLIAMSON: Objection, relevance,
 4 but you can answer.
 5 **A. The first employment I had was with --**
 6 **it was called at that time the State Office of Legal**
 7 **Services, which was the predecessor to Legal Services**
 8 **of New Jersey. At the time I worked for that**
 9 **department or that agency, that entity, it was**
 10 **located as part of the Department of Community**
 11 **Affairs, so I was a state employee.**
 12 **My immediate supervisor and mentor**
 13 **there was a Melville DeSoto Miller, who was the**
 14 **president of LSNJ, and after working with him for a**
 15 **year, he departed the State Office of Legal Services**
 16 **and became the director of Middlesex County Legal**
 17 **Services. I joined Middlesex County Legal Services,**
 18 **and for the approximate next ten years I was a staff**
 19 **attorney. And then the next made-up job title was**
 20 **senior staff attorney, but I represented low income**
 21 **consumers usually, an individual. I also did quite a**
 22 **bit of divorce work.**
 23 **Then I went into private practice. I**
 24 **spent a year with my private practice in Westfield,**
 25 **New Jersey. I then became a partner in a law firm in**

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1 **Jersey City, Miller, Menaker & McCabe. The next firm**
 2 **I joined was also as an associate, Mackenzie, Welt,**
 3 **Duane & Maher. They're what's generally known as a**
 4 **banking firm in Elizabeth, New Jersey.**
 5 **And after that I became associated**
 6 **with and then joined this firm to the present date.**
 7 **Q.** And what year did you join this firm?
 8 **A. I'm going to think out loud, if you**
 9 **don't mind. My youngest son was born in '84 and it**
 10 **was November of '84, so it was February of '85 is my**
 11 **approximate recollection.**
 12 **Q.** What positions have you held at
 13 Pressler & Pressler?
 14 **A. Two positions, associate and limited**
 15 **partner.**
 16 **Q.** Currently you're a limited partner?
 17 **A. That's correct.**
 18 **Q.** What services do you provide currently
 19 as a limited partner?
 20 MR. WILLIAMSON: Objection, relevance.
 21 **Q.** Basically, what do you do? What do
 22 you do as a limited partner?
 23 MR. WILLIAMSON: Objection, relevance.
 24 Do you want me to explain to you why I'm objecting
 25 and maybe you can clarify? It might help.

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1 MR. STERN: Go ahead, if it's quick.
 2 MR. WILLIAMSON: Are you asking what
 3 he does as a partner or are you asking what he does
 4 as an attorney here? What does he do all day?
 5 That's what you really want to know, what are his
 6 activities?
 7 **Q.** I do want to know what your activities
 8 are.
 9 MR. WILLIAMSON: Not limited as a
 10 partner.
 11 MR. STERN: Well, that's his position
 12 that he holds is a limited partner. So all his
 13 activities are in connection with his position as a
 14 limited partner.
 15 MR. WILLIAMSON: Okay, I think we
 16 clarified it.
 17 MR. STERN: Whether it's
 18 administrative, whether he's arguing in court or
 19 drafting documents.
 20 **Q.** Go ahead.
 21 **A. My present duties right now, what I**
 22 **usually do is review payments made by the firm to**
 23 **clients and vendors, review checks that are written,**
 24 **and after I review them I sign them if I approve.**
 25 **I work with groups of paralegals.**

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1 **When I say groups, I work with a number of individual**
 2 **paralegals who answer letters and phone calls from**
 3 **debtors, and I review the files with those**
 4 **paralegals, sign the letters as drafted, don't sign**
 5 **the letters as drafted, try to set up general formats**
 6 **for responding to the letters.**
 7 **I take part in meetings every week to**
 8 **review the smooth operations of the office, to review**
 9 **any issues that there are regarding changes of law,**
 10 **changes of procedure. I spend quite a bit of time**
 11 **keeping up with recent developments in consumer**
 12 **credit law.**
 13 **I guess in general terms that's what I**
 14 **do.**
 15 **Q.** Are you involved in the management of
 16 any particular debt collection cases?
 17 MR. WILLIAMSON: Objection.
 18 **Q.** Do you understand the question?
 19 **A. Yes, I do.**
 20 MR. WILLIAMSON: I'm going to withdraw
 21 the objection.
 22 **A. Could you read back the question?**
 23 (The question is read by the reporter.)
 24 **A. Only in a -- if I can explain it to**
 25 **you or make it clear, only in a consultive fashion.**

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1 **I don't appear in court anymore. I actually -- I**
 2 **probably appear in court less than once a month now.**
 3 **Previously to becoming a limited partner, I appeared**
 4 **in court the overwhelming majority of days of the**
 5 **week.**
 6 **You may recall that you and I met on a**
 7 **day when the courts were closed, downtown New**
 8 **Brunswick was vacant, but you and I were doing an**
 9 **arbitration. We spent a lot of time involved in a**
 10 **lot of cases.**
 11 **I do not appear in court. I counsel**
 12 **usually younger attorneys, although not always**
 13 **younger attorneys on what we consider -- that is to**
 14 **say what I consider to be best practices in handling**
 15 **a particular case due to, you know, related to the**
 16 **legal issues, related to the factual issues, relating**
 17 **to the way an attorney evaluates a case, how to**
 18 **relate to a client. That's what I do.**
 19 **Q.** And you also are involved in setting
 20 policies and procedures with respect to either the
 21 management of the office or the handling of cases?
 22 **A. Within the parameters I discussed,**
 23 **since I've been employed at this firm, it's gone from**
 24 **approximately 40 total employees to at one time**
 25 **reaching nearly 370 I think at one time. Then we**

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1 **became smaller.**
 2 **But as you might imagine, the**
 3 **organization of the office just becomes a more**
 4 **critical issue, to get things done uniformly, and if**
 5 **I could use a term that I don't like to use, but to**
 6 **make sure that we always focus on what are often**
 7 **called best practices.**
 8 **So in a limited sense, to answer your**
 9 **question, yes, I do, and in a general sense it's to**
 10 **what is that role. The role is to bring to people's**
 11 **attention that there is an exact -- there is a**
 12 **general format that we file in many, many areas,**
 13 **whether it's a document template or a set of**
 14 **procedures or a checklist or something else, that we**
 15 **stick to the path as much as possible.**
 16 **One of the things we found to be very**
 17 **important is that we explain to people why they do**
 18 **it, because it's been our experience that people can**
 19 **pay attention to an issue better if they understand**
 20 **exactly what the ramifications of the issue is.**
 21 **I'm sorry for being so long-winded.**
 22 **Q.** No, I think it was responsive to the
 23 question, so thank you.
 24 So would you agree that in the
 25 management of a practice of this type that you have

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1 to put in play certain templates, forms, checklists,
 2 the kind of things you talked about in order to
 3 effectively manage the practice?
 4 **A. Yes.**
 5 MR. WILLIAMSON: Objection to form.
 6 **Q.** Have you reviewed any documents in
 7 preparation for your deposition?
 8 **A. Yes, I have.**
 9 **Q.** What have you looked at?
 10 **A. I've looked at the complaint file**
 11 **against us and the letter which I believe is an**
 12 **exhibit to the complaint.**
 13 **Q.** Let me ask you, do you know if you
 14 looked at the complaint or there was an amended
 15 complaint? Do you recall?
 16 **A. I can't remember that, to be honest**
 17 **with you.**
 18 **Q.** Do you recall whether the complaint
 19 involved one plaintiff or two plaintiffs?
 20 **A. When I reviewed it -- is it Mr. or**
 21 **Mrs. Setneska?**
 22 **Q.** It's Mister.
 23 **A. I don't believe he had.**
 24 **Q.** So it was the complaint as opposed to
 25 the amended complaint, fine.

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1 We'll start with showing you what
 2 we've already marked as P-2 and P-3.
 3 MR. WILLIAMSON: Time out. Off the
 4 record.
 5 (A discussion is held off the record.)
 6 **Q.** To the best of your knowledge, P-2 and
 7 P-3 are copies of letters that Pressler & Pressler
 8 sent?
 9 **A. Yes.**
 10 **Q.** And each of the letters bear a date.
 11 Do you see those?
 12 **A. Yes. P-2 bears the date of 11/1/2010**
 13 **and P-3 bears the date of April 14th, 2011.**
 14 **Q.** Are those letters based upon a
 15 template or a form?
 16 **A. Yes.**
 17 **Q.** In your office, do you refer to them
 18 as templates or do you refer to them as forms? I
 19 want to use whatever term you're most comfortable
 20 referring to them as.
 21 **A. The term we use internally for these**
 22 **letters are FD letters, fair debt letters.**
 23 **Q.** An FD letter is based upon a form --
 24 **A. Correct, that's correct.**
 25 **Q.** -- that's utilized?

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1 I'm now showing you P-4 and P-5. Are
 2 you familiar with those documents?
 3 **A. Yes.**
 4 **Q.** Is P-4 based upon a template?
 5 **A. Yes.**
 6 **Q.** Is P-5 based on the same template as
 7 P-4?
 8 **A. I have to say that, amazingly, I can't**
 9 **answer that question, or at least amazingly to me,**
 10 **because if I can refer to them as the Freeman**
 11 **letters, both have an aspect to them asking -- not**
 12 **asking, but it has an individual's first name and**
 13 **then the initial as their last name. The Setneska**
 14 **letters do not, but that important detail aside,**
 15 **they're probably the identical form.**
 16 **Q.** So the best you're able to tell as you
 17 sit here today, they're the same form?
 18 **A. Yes.**
 19 **Q.** P-4 and P-5 are based upon the same
 20 form?
 21 **A. Yes.**
 22 MR. WILLIAMSON: Oh, I see. This is
 23 not here. That's the difference.
 24 MR. STERN: I see, okay.
 25 MR. WILLIAMSON: Do you want to say

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1 for the record what the difference is?
 2 **A. I'll try again, excuse me. Natalie**
 3 **Freeman's letter dated 1/12/11 says in a sentence**
 4 **fragment that's after the first three full**
 5 **paragraphs, "Thank you, Kevin V. - Paralegal,**
 6 **Extension 5368." That same sentence fragment is on**
 7 **P-2.**
 8 **Q.** And would you contrast that to P-3 and
 9 P-5?
 10 **A. Yes, they do not have that single line**
 11 **in them.**
 12 **Q.** Which identifies the paralegal?
 13 **A. Yes.**
 14 **Q.** P-2 and P-3 you referred to as the FD
 15 letter.
 16 **A. That's correct.**
 17 **Q.** Do you have a name for the P-4 and P-5
 18 letters?
 19 **A. Yes, in general terms we would call**
 20 **this a settlement letter.**
 21 **Q.** Do you know who prepared the form or
 22 the template for the settlement letter?
 23 **A. My answer to you is this. I don't**
 24 **know who drafted the document but I do know who**
 25 **approved the use of the document.**

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1 **Q.** Okay. Who approved the use of the
 2 document?
 3 **A. I did.**
 4 **Q.** Do you know when you approved the use
 5 of the document?
 6 **A. I know it was in 2009. I can't**
 7 **remember the exact date.**
 8 **Q.** What was your understanding of the
 9 function that the settlement letter was to be used
 10 for at the time when you approved it?
 11 **A. The reason the letter is drafted is to**
 12 **offer to consumers, or to debtors as they are in**
 13 **these instances, an offer of settlement whereby they**
 14 **can resolve a claim against them for less than the**
 15 **full value, and it also has a follow-up design, which**
 16 **is to be a reminder to the debtor that this is the**
 17 **procedure that's there and sometimes hopefully will**
 18 **be a reminder that they can resolve the matter in a**
 19 **mutually agreeable fashion if that's their wish.**
 20 **Q.** Was it your understanding that the
 21 settlement letter would be used under particular
 22 circumstances?
 23 **A. Yes.**
 24 **Q.** What were those circumstances?
 25 **A. These circumstances are simple and it**

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1 **really is explained by the informal name we give to**
 2 **this letter. This is a post-suit prejudgement**
 3 **settlement letter. Both of these documents, if I can**
 4 **refer to them, bear a docket number. They contain**
 5 **the amount of the claim and then they give various**
 6 **methods of payment should the debtor wish to call our**
 7 **office and settle it, so to change a lawsuit into a**
 8 **settled agreement.**
 9 **Q.** Let's just try to hone down a little
 10 bit on the post-suit prejudgement. So to be more
 11 particular, a post-suit would be after a lawsuit has
 12 been instituted, correct?
 13 **A. That's correct.**
 14 **Q.** A prejudgement would be before the
 15 court made a determination as to the merits of the
 16 case?
 17 **A. That is correct.**
 18 **Q.** Was the intent that that letter --
 19 well, a lawsuit is commenced upon the filing of a
 20 complaint, correct?
 21 **A. That is correct.**
 22 **Q.** And after the filing of the complaint,
 23 a summons and complaint have to be served upon the
 24 defendant, correct?
 25 **A. That is correct.**

20

1 **Q.** Was it intended that the settlement
 2 letter be used after the complaint had been filed but
 3 before there had been service of process?
 4 **A. No. As a matter of fact, there's a**
 5 **reference to that in the letter, just because so many**
 6 **things happen in litigation that we formed this over**
 7 **time. We say, "As you probably know, this office has**
 8 **filed a lawsuit." Our assumption is that they have**
 9 **been served. It wouldn't make much sense to send the**
 10 **letter and let it be the first thing. We probably**
 11 **received at least a return of service from the court**
 12 **through whatever method.**
 13 **So the answer to your question I think**
 14 **is no, we wouldn't send it before the service, we**
 15 **would wait for a period of time.**
 16 **Q.** Would it be sent after there's been
 17 service or process but before the defendant has filed
 18 a response to the complaint?
 19 **A. Yes. I mean, that wasn't the**
 20 **mandatory criteria, but yes, it would be.**
 21 **Q.** That is a possible use of the
 22 settlement letter?
 23 **A. Yes.**
 24 **Q.** From the discovery responses, my
 25 understanding is something like 75 of these letters

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1 went out in a period of a little more than a year.
 2 Is it fair to say that 75 represents a very small
 3 percentage of the number of cases that your firm
 4 files?
 5 **A. Yes.**
 6 **Q.** And I think it was also limited, that
 7 number was limited to cases that were filed on behalf
 8 of New Century Financial. So would it also be fair
 9 to say that the 75 represents a relatively small
 10 percentage of the cases that your office files on
 11 behalf of New Century?
 12 **A. That's correct.**
 13 **Q.** How was it decided which cases would
 14 receive a settlement letter?
 15 **A. I was not able to determine that. I**
 16 **couldn't gather a pattern, to be very honest with**
 17 **you. I made an inquiry, but I couldn't decide how**
 18 **one particular file receives a letter and another**
 19 **particular file didn't. I was able to see what our**
 20 **exact -- if you think of it or to clarify for you,**
 21 **because of the huge number of cases we file every**
 22 **year, we do things assisted by a computer program or**
 23 **I guess a number of computer programs.**
 24 **The criteria were that the file**
 25 **contained a docket number, which obviously we could**

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1 **not have until a suit was filed. We have a field or**
 2 **an entry for the residence of the debtor, which we**
 3 **refer to as the HA or home address, and that is**
 4 **continually monitored routinely to be good or no**
 5 **good.**
 6 **And the last thing, we have a field**
 7 **for judgement, which is a very complicated field.**
 8 **It's the amount the judgement was entered for, the**
 9 **amount of the particular costs that were added either**
 10 **by application to the court or through the court**
 11 **granting it itself.**
 12 **So we needed a good home, that is the**
 13 **street address, we needed a docket number, and we**
 14 **needed no judgement. And then there was one other**
 15 **field that I was able to determine, and that field is**
 16 **that there was not an attorney on the file. I can**
 17 **speculate as to why we did that, but from my**
 18 **experience here, the attorney/non-attorney would not**
 19 **be a reason the letter would be sent or not sent.**
 20 **So with all of that being said, the**
 21 **answer to your question is no, I could not determine**
 22 **how it was that that number was filed or mailed.**
 23 **Q.** Explain to me a little more, the no
 24 attorney on file field, that was a criterion in order
 25 for someone to be able to use this letter?

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1 **A. Yes. In other words, if someone**
 2 **directed that a settlement letter be sent, it would**
 3 **not be sent if the party had an attorney.**
 4 **Q.** If the defendant --
 5 **A. The debtor, yes.**
 6 **Q.** Okay.
 7 **A. We enter a code for every attorney who**
 8 **ever contacts the office, whether by phone only or in**
 9 **writing, and again, the computer terminology, it**
 10 **populates a field for the file, and if that field was**
 11 **populated, the letters didn't go out on that.**
 12 **Q.** Was the sending of the letter
 13 determined by a computer program that was set up with
 14 certain parameters obviously or criteria or was there
 15 a human who made a decision as to each letter as to
 16 whether it would go?
 17 **A. My investigation led me to conclude**
 18 **that it was done on an ad hoc basis by an employee of**
 19 **our firm.**
 20 **Q.** What level of employee made that
 21 decision?
 22 **A. I believe it was done at the paralegal**
 23 **level.**
 24 **Q.** Okay.
 25 **A. Although it may have been one step up,**

24

1 **which to be very honest with you, even though I**
 2 **attended so many meetings, it was either a manager or**
 3 **a supervisor.**
 4 **Q.** On the paralegal level?
 5 **A. Yes, on the paralegal level.**
 6 **Q.** Have you looked at the 75 instances
 7 where the letter was sent?
 8 **A. No, I haven't.**
 9 **Q.** So you don't have any knowledge as to
 10 the circumstances that the other letters were sent,
 11 other than the two in this case?
 12 **A. No. I -- no. The answer to your**
 13 **question is no.**
 14 **Q.** I'll ask the next question which
 15 you're going to tell me you don't know, which is
 16 fine. So you don't know whether the letter was sent
 17 to any of those 75 prior to them filing an answer to
 18 the complaint?
 19 MR. WILLIAMSON: Objection.
 20 **Q.** Or stated the other way around, do you
 21 know whether any of those 75 were sent prior to the
 22 recipient's file of an answer?
 23 **A. Because I didn't look at the 75, I**
 24 **cannot answer that question.**
 25 **Q.** Okay. Is that information that your

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1 office would have?
 2 **A. Well --**
 3 MR. WILLIAMSON: Objection to form.
 4 **Q.** The information as to whether the
 5 letter was sent prior to the filing of an answer.
 6 MR. WILLIAMSON: Okay.
 7 **A. If I can answer it as precisely as I**
 8 **can, I don't think we could perform a computer search**
 9 **that could do that, but if someone spent the time to**
 10 **look at the list, if a list was sent to you, someone**
 11 **could review the list and I think could determine**
 12 **what person decided to send it and very often under**
 13 **what circumstances.**
 14 **One of the things that we attempt to**
 15 **do, and, parenthetically, I mentioned it at a meeting**
 16 **and I mentioned it to an attorney today, is that when**
 17 **our office, when any office such as ours is involved**
 18 **in so many activities every day at so many levels,**
 19 **it's very important to document what happens. And to**
 20 **quote one of the partners here, the time to do it is**
 21 **now, not later.**
 22 **So every file, I believe, if someone**
 23 **took the time to look at each one, I think every**
 24 **file, we might be able to determine the**
 25 **circumstances. But the answer is no.**

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1 **Did you ask me could it be done or has**
 2 **it been done?**
 3 **Q.** No, whether you have the information,
 4 whether you have the records that you could
 5 determine.
 6 **A. We have every file in our office. It**
 7 **consists of both pieces of paper and also computer**
 8 **records and images. There would be indicators in the**
 9 **file that would lead us to pretty accurately**
 10 **determine why it was sent on a given case, why that**
 11 **letter was used.**
 12 **Q.** I think you went a little broader,
 13 which is fine, but I was asking whether there are
 14 records to reflect whether or not the letter was sent
 15 after an answer had been filed. So I assume from
 16 your answer that you just gave, yes, those records
 17 would exist. It could be looked up and may have to
 18 be on a case-by-case basis rather than running a
 19 computer search.
 20 **A. That is correct.**
 21 **Q.** Have you seen the declaration of Eman
 22 Hendricks, an expert that was retained by plaintiffs
 23 in this case?
 24 **A. To be precise, I believe I may have**
 25 **had it read to me rather than actually physically**

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1 **reading it myself, but I am aware that there's an**
 2 **expert report supplied by the plaintiffs.**
 3 **Q.** Okay. Did you also review the answer
 4 that was filed by your office?
 5 **A. I did not.**
 6 **Q.** The decision as to whether to send the
 7 settlement letter, is that made entirely by someone
 8 working at Pressler & Pressler as opposed to, to give
 9 us a contrast, as opposed to input from the client?
 10 **A. I believe your question is asked in**
 11 **general terms, and the general answer to that**
 12 **question is maybe yes, maybe no.**
 13 **Q.** My understanding from having taken Mr.
 14 Galic's testimony earlier is that, at least with
 15 respect to New Century, that the discretion over
 16 sending letters such as P-4 and P-5 is left to your
 17 office. Is your understanding consistent with his?
 18 **A. That's entirely believable. In other**
 19 **words, if Marko said it's so, it is so. We have**
 20 **clients that --**
 21 MR. WILLIAMSON: I'm going to object
 22 there. I think that's limited to New Century. What
 23 other clients I don't think is appropriate to discuss
 24 at this point.
 25 MR. STERN: I don't think it's

28

1 appropriate that you object to your own witness's
 2 testifying. He's responding to a question. You can
 3 object to a question. You can't object to his
 4 testimony.
 5 MR. WILLIAMSON: I'm objecting to the
 6 question.
 7 MR. STERN: I'm not going to go
 8 further. I'm not saying that I needed to know about
 9 anybody beyond New Century, but I think it's
 10 inappropriate to --
 11 MR. WILLIAMSON: I'm trying not to
 12 interrupt. I'm trying to let you ask the questions
 13 and really, I mean, I think as I said, I think some
 14 are outside, but I'm trying not to.
 15 MR. STERN: I understand that,
 16 particularly under the circumstances where the
 17 defendant is pro se, but in particular, I think it's
 18 wholly inappropriate to object to a witness's
 19 testimony while they're testifying. You can object
 20 to questions.
 21 MR. WILLIAMSON: No, I think that you
 22 would agree with me that when a witness -- I know,
 23 I've seen you do it -- that when a witness is
 24 starting to get into an area where you think it might
 25 be privileged information, you'll caution the witness

29

1 to not go further. The witness may not realize, and
 2 I think this is the same instance where the witness
 3 may not realize that he's getting into an area that
 4 he shouldn't be.
 5 MR. STERN: I didn't hear you object
 6 that he was about to reveal something that was
 7 privileged.
 8 MR. WILLIAMSON: I'm using that as an
 9 example.
 10 MR. STERN: And I think if you're the
 11 examiner, you can interrupt a witness's testimony if
 12 you feel the response is not responsive. But for you
 13 to interrupt your own witness who is here who is not
 14 responding is not appropriate.
 15 MR. WILLIAMSON: I stand by the
 16 objection, but since you don't feel that it's that
 17 critical --
 18 MR. STERN: I just don't want it to
 19 continue. That's the reason why I'm saying
 20 something.
 21 MR. WILLIAMSON: I'm trying not to.
 22 **Q.** Let's focus, if we can, on the second
 23 paragraph of both P-4 and P-5.
 24 **A.** **I've read the second paragraph of both**
 25 **letters.**

30

1 **Q.** Are you aware that one of the claims
 2 in this case is that language contained within the
 3 second paragraph violates the Fair Debt Collection
 4 Practices Act?
 5 **A.** **Yes.**
 6 **Q.** Are you aware that it relates
 7 specifically to language that deals with proposing
 8 that the recipient send the letter, the copy of the
 9 letter that's sent to the court to the credit
 10 bureaus?
 11 **A.** **Yes.**
 12 **Q.** So I'd like to focus a little bit more
 13 on them. We agree that P-4 and P-5, the paragraph is
 14 identical?
 15 **A.** **Yes. The only change that I saw in my**
 16 **quick review is the 75/25 and the other is 80/20.**
 17 **Q.** But in terms of the amounts that's
 18 being offered.
 19 MR. WILLIAMSON: Right.
 20 **Q.** Certainly the first two sentences are
 21 identical.
 22 **A.** **Yes.**
 23 **Q.** So the first sentence states that if
 24 the payment proposed in the first paragraph is
 25 received by the date indicated, that payment will

31

1 satisfy the lawsuit, the pending lawsuit, correct?
 2 **A.** **Correct.**
 3 **Q.** And if that event occurs, if the
 4 payment is made, the next sentence goes on to say
 5 that proof that the debt has been paid will be sent
 6 to the court.
 7 **A.** **Correct.**
 8 **Q.** You will agree the letter does not
 9 identify what that proof consists of, but it consists
 10 of something.
 11 **A.** **That is correct.**
 12 **Q.** And a copy, meaning a copy of the
 13 proof, correct?
 14 **A.** **That's correct.**
 15 **Q.** To you, meaning it's being sent to the
 16 debtor.
 17 **A.** **Correct.**
 18 **Q.** And the last clause, so that you can
 19 advise the credit bureau, it's saying that one
 20 purpose of sending you that proof is so that that
 21 proof can be sent to the credit bureau, correct?
 22 **A.** **That is correct.**
 23 **Q.** So having broken down the sentence,
 24 I'd like to go back a little bit and see if I can
 25 find out if there's some content to what that proof

32

1 consists of. I haven't asked you a question yet.

2 **A. Good. I thought maybe I dozed off for**

3 **a second.**

4 **Q.** I want to make sure you understand

5 what I'm focusing on.

6 **A. Yes.**

7 **Q.** Do you have an understanding as to

8 what that proof consists of?

9 **A. Yes.**

10 **Q.** What's your understanding?

11 **A. A stipulation of dismissal.**

12 **Q.** Anything else?

13 **A. That's the document that**

14 **overwhelmingly will demonstrate to the clerk of the**

15 **court that the matter has been ended, that the**

16 **lawsuit has been resolved. So I quite frankly, in a**

17 **post-suit prejudgement settlement letter, I can't**

18 **imagine what the document would be other than a**

19 **stipulation of dismissal, although I'm quite**

20 **confident that there might be something else. But**

21 **that's the only one that comes to my mind.**

22 **Q.** Okay. I think you said it was 2009

23 when you approved this?

24 **A. I believe I said 2009.**

25 **Q.** In 2009, did it contain the language

33

1 in the first two sentences in the second paragraph?

2 **A. Yes.**

3 **Q.** Was there a previous form of this

4 letter in 2009?

5 **A. Yes.**

6 **Q.** Do you know whether the language in

7 the first two sentences came from the prior version

8 or whether that was new language?

9 **A. I'm sorry, but I can't recall that.**

10 **In my review of the letter at the time, and even**

11 **currently, I was focusing on other issues. I can't**

12 **recall whether those particular two sentences were**

13 **in.**

14 **Q.** Okay. The settlement letter was

15 intended to be sent on behalf of the firm?

16 **A. Correct, on behalf of our firm's**

17 **client.**

18 **Q.** On behalf of the firm's client but

19 from the firm.

20 **A. That's correct.**

21 **Q.** So on behalf of the firm, the firm had

22 I guess collectively some intent as to what these

23 words were to mean.

24 **A. Yes.**

25 **Q.** Was there an intent in the last phrase

34

1 of that second sentence? "So that you can advise the

2 credit bureau," was there an intent that that act of

3 advising the credit bureau would provide some benefit

4 to the defendant from having settled in accordance

5 with the terms of the letter?

6 **MR. WILLIAMSON:** Objection to form.

7 **Q.** You can answer.

8 **MR. WILLIAMSON:** I don't understand

9 it, but okay, if he understands it.

10 **A. This firm has been representing**

11 **creditors for many, many decades. We, that is to say**

12 **this firm realizes that when people have an unpaid**

13 **debt and they're involved with an attorney, very**

14 **often one of their concerns is what's commonly known**

15 **as their credit rating. For my career at this firm,**

16 **I speak with debtors all the time. Debtors ask me**

17 **legal advice about their credit rating. If it's not**

18 **legal advice I guess it's personal advice.**

19 **And I've always been in the**

20 **unfortunate position of saying, I can't really give**

21 **you guidance about it, but we know that this is a**

22 **subject that's of interest to debtors and we've put**

23 **it in. The general reason this letter is sent is to**

24 **resolve a lawsuit.**

25 **Q.** That's your answer?

35

1 **A. That's my answer.**

2 **Q.** You identified that the proof that the

3 debt has been paid will be sent to the court can

4 consist of a stipulation of settlement --

5 **A. Stipulation of dismissal.**

6 **Q.** Stipulation of dismissal. And in

7 accordance with this letter, a copy of the

8 stipulation of dismissal would be sent to the

9 defendant.

10 **A. That's correct.**

11 **Q.** And then the defendant would take that

12 copy and send it to the credit bureau.

13 **A. They're able to so that you can. You**

14 **are able to.**

15 **Q.** Right. Without trying to be silly,

16 but there's plenty of things they can do with a

17 stipulation of dismissal. This letter identified one

18 particular thing they can do with it?

19 **A. Yes.**

20 **Q.** Which is to advise the credit bureau.

21 **A. That's correct.**

22 **Q.** I would presume, I'm asking you to

23 confirm or deny, that by stating that you can advise

24 the credit bureau, the intent was to let the

25 defendant believe that the stipulation of dismissal

36

1 being sent to the credit bureau would benefit the
 2 consumer in some way.
 3 MR. WILLIAMSON: Objection. You're
 4 asking him to speculate what might be in somebody's
 5 mind?
 6 MR. STERN: I'm not speculating.
 7 **Q.** Can you confirm or deny that that was
 8 what was intended?
 9 **A.** **Would you please read back the**
 10 **question?**
 11 (The question is read by the reporter.)
 12 **A.** **Please excuse my long silence in not**
 13 **answering or my hesitation. I wonder if you could**
 14 **rephrase the question for me.**
 15 **Q.** Sure. A stipulation of dismissal
 16 received by a defendant who has complied with the
 17 settlement terms in this letter.
 18 **A.** **Yes.**
 19 **Q.** That defendant can do any of numerous
 20 things with that stipulation of dismissal, one of
 21 which is sending it to the credit bureau.
 22 **A.** **That's correct.**
 23 **Q.** The letter here only mentions sending
 24 it to the credit bureau.
 25 **A.** **That's correct.**

37

1 **Q.** I presume that when this letter was
 2 approved that there was some intent as to why you
 3 identified that option of the plethora of other
 4 options that a defendant had of what they could do
 5 with the stipulation of dismissal, and that's why the
 6 letter states that you can advise the credit bureau.
 7 **A.** **If I can generally comment on the**
 8 **structure of the letter, it contains an offer. It**
 9 **contains the words "significant savings," and it**
 10 **specifically gives precise figures, 80 percent. It**
 11 **gives the amount of the savings in the Setneska**
 12 **letter, \$3,099.69. It is the intent of the letter to**
 13 **offer incentives to settlement.**
 14 **We believe that it is always of**
 15 **interest to debtors that they pay the least amount of**
 16 **money to resolve a claim against them and that they**
 17 **at the end of the day always have their credit rating**
 18 **be as good as it can be under the circumstances.**
 19 **So this is one of the options or one**
 20 **of the incentives given. We don't expect people to**
 21 **settle a case for no reason. We expect people to act**
 22 **in their own best interest, so we suggest to them**
 23 **that our client has these incentives for them, pay**
 24 **less money and report it to the credit bureau.**
 25 **Q.** Okay. I'm going to rephrase it a

38

1 little bit and ask if you agree. So one of the
 2 incentives from settling is to send this information
 3 to the credit bureau. Let me withdraw it.
 4 One of the incentives from settling
 5 would be sending the stipulation of dismissal to the
 6 credit bureau?
 7 **A.** **The exact words of it is "so that you**
 8 **can." It's to suggest to them that that is an**
 9 **option. You said there was a plethora of things they**
 10 **could do with it, the stipulation of dismissal, and I**
 11 **don't mean to be disrespectful in any way. I can't**
 12 **think of many uses for it except to show that a debt**
 13 **has been paid. And sending the letter to the**
 14 **consumer credit reporting agencies will show that a**
 15 **debt has been paid.**
 16 **Q.** Okay.
 17 **A.** **The letters also -- there's no**
 18 **question, we say in the letter, we give the exact**
 19 **account. We give the Citibank for Mr. Setneska's**
 20 **letter, which is P-5, we give Citibank, South Dakota,**
 21 **account number such and such.**
 22 **Q.** And in P-4, there's similar
 23 information with respect to Ms. Freeman's account.
 24 **A.** **That's correct.**
 25 **Q.** So I may have had a hard time getting

39

1 there, but I think there's no dispute here that the
 2 intent of the language regarding the ability of the
 3 consumer to send the letter to the credit bureau is
 4 that that information would benefit the defendant
 5 with respect to whatever information is on their
 6 credit reports.
 7 MR. WILLIAMSON: Asked and answered,
 8 objection. Read back his last answer. I think he
 9 answered that.
 10 MR. STERN: Well, asked and answered,
 11 it's an objection. If he can answer the question,
 12 let him answer the question.
 13 **A.** **I can save sometime if you'll allow**
 14 **me. My undergraduate degree was in English and my**
 15 **legal career involves not only trying cases and doing**
 16 **appeals but also writing the brief that goes along**
 17 **with that. And I think that my answer, I tried to be**
 18 **very precise with my answer and I hope the way it was**
 19 **phrased answers it.**
 20 **Q.** Okay. Do you have any experience
 21 either with litigation or studying the Fair Credit
 22 Reporting Act?
 23 **A.** **Yes, but that is -- yes, but I must**
 24 **advise you that my experience is much less than what**
 25 **the Fair Debt Collection Practices Act is. I'm aware**

40

1 **of the act, I read sections of it. I read cases.**
 2 **I've never tried a case on the issue, but I read them**
 3 **as part of what I do.**
 4 **Q.** Does Pressler & Pressler report to
 5 credit agencies as a furnisher?
 6 **A. No.**
 7 **Q.** To your knowledge, does New Century
 8 report to credit bureaus as a furnisher?
 9 **A. Yes.**
 10 **Q.** To your knowledge, does New Century
 11 report every account to the credit reporting
 12 agencies?
 13 **A. I don't know that.**
 14 MR. WILLIAMSON: Could we take a
 15 two-minute break?
 16 (A brief recess is taken.)
 17 **Q.** Do you have an understanding as to
 18 what benefit a defendant would get on their credit
 19 report if they sent the stipulation of dismissal?
 20 **A. Yes.**
 21 **Q.** What's your understanding?
 22 **A. My understanding is that the account**
 23 **at issue would be converted by the settlement from**
 24 **the terminology generally known as "past due" to**
 25 **either "paid in full" or "settled in full."**

41

1 **Q.** Any other benefit?
 2 **A. That's the only benefit that I can**
 3 **think of. That's the only benefit that I'm aware of.**
 4 **Q.** Is that the benefit that was
 5 contemplated by the language in the settlement
 6 letter?
 7 **A. Yes.**
 8 MR. STERN: Could you read back the
 9 prior answer?
 10 (The following answer is read by the
 11 reporter: My understanding is that the account at
 12 issue would be converted by the settlement from the
 13 terminology generally known as "past due" to either
 14 "paid in full" or "settled in full.")
 15 **Q.** In the answer that the reporter just
 16 read back, did you hear her say you used the term
 17 "account at issue"?
 18 **A. Yes.**
 19 **Q.** Do you understand what I mean by the
 20 term "a trade line"?
 21 **A. Yes.**
 22 **Q.** Am I correct that a trade line on a
 23 credit report would be information that a creditor
 24 provides with respect to an account?
 25 **A. That's how the term is generally used.**

42

1 **Q.** So we can agree that that's what it
 2 refers to?
 3 **A. Yes.**
 4 **Q.** When you refer to an account at issue,
 5 that then would mean with respect to a credit report
 6 a trade line, correct?
 7 **A. That's correct.**
 8 **Q.** Do you understand that with respect to
 9 New Century, that -- well, before I ask that
 10 question, do you understand New Century purchases
 11 defaulted debt?
 12 **A. Yes.**
 13 **Q.** So New Century is not an original
 14 creditor.
 15 **A. That's correct.**
 16 **Q.** So that with respect to accounts
 17 acquired by New Century, there could be a trade line
 18 from the original creditor and a trade line from New
 19 Century as well as possibly trade lines from anyone
 20 who owned the account in between?
 21 **A. That is correct.**
 22 **Q.** Do you have an understanding as to
 23 what the credit bureaus' receipt of the stipulation
 24 of dismissal would have with respect to any of those
 25 trade lines?

43

1 MR. WILLIAMSON: Could you read the
 2 question back?
 3 (The question is read by the reporter.)
 4 **A. Can I -- I was going to ask if I could**
 5 **ask you a question. I've changed my mind.**
 6 **I believe that the receipt of the**
 7 **stipulation of dismissal would mark the trade line of**
 8 **New Century paid in full or settled in full, much as**
 9 **a person who does real estate or examines title in a**
 10 **closing does by checking the chain of title.**
 11 **The phrase we use here in informal**
 12 **discussions is the progeny, the origin of those**
 13 **things. They're actually pretty easy to see on**
 14 **credit reports. They're truncated, they use a**
 15 **certain form, but they usually have the date the**
 16 **account was opened and they usually have the amount**
 17 **of the account.**
 18 **And quite simply, it's my belief and**
 19 **understanding that people who are skilled, who are**
 20 **talented, who every day read credit reports, can tell**
 21 **that when New Century marks a trade line, it refers**
 22 **back to the original debt. As a matter of fact, I**
 23 **not only believe that, I've been involved in numerous**
 24 **cases where that is the case. Very often it's shown**
 25 **in the credit report itself. I think, if I can do it**

44

1 from very vague recollection, it's something like
 2 this account has been transferred to a subsequent
 3 buyer, and I think on the other end it may say this
 4 is a purchased account.
 5 I think the credit reporting agencies
 6 go under a protocol, consumer credit reporting
 7 agencies go under a protocol that benefits consumers
 8 and creditors. They always say that their sole
 9 purpose is to give a precise view of what occurred.
 10 And I think they do it because they don't want to
 11 show multiple -- they don't want to have the same
 12 debt showing multiple times. So I do believe.
 13 Q. So your understanding is that by
 14 reviewing a credit report where there have been sales
 15 of a particular account, that you could match up the
 16 full progeny, the full chain of ownership? And so,
 17 therefore, whatever is reflected on New Century, you
 18 could go back upstream and apply that?
 19 A. Yes, that's exactly correct.
 20 Q. I just want to show you what's been
 21 marked as P-7 and -- actually, P-8. Start with P-8.
 22 You can check, but when we had Marko's deposition I
 23 think we stipulated that P-7 is simply the enclosures
 24 in P-8.
 25 MR. WILLIAMSON: For the record, just

45

1 to cut to the chase, P-8 is a letter sent by me to
 2 Mr. Stern and to the court, and the last sentence
 3 reads, "I have also enclosed a copy of the documents
 4 sent to court when the matter is settled," and those
 5 documents were previously identified as P-7. And
 6 it's been stipulated that those are the documents
 7 attached to my letter and those are examples of what
 8 I just said.
 9 A. I have P-7 and P-8 before me.
 10 Q. And you heard your counsel's
 11 representation with respect to what those documents
 12 are?
 13 A. Yes, I did.
 14 Q. And I think you'll see, if you look
 15 through -- I believe there are four pages in P-7,
 16 that one of those things is a sample stipulation of
 17 dismissal?
 18 MR. WILLIAMSON: No. For the record,
 19 there is --
 20 MR. STERN: Let him identify them.
 21 MR. WILLIAMSON: All right. Identify
 22 each document for the record, please.
 23 A. I can't help myself, I'm trying to
 24 make sure every letter is correct. The first one is
 25 what we call in our office a settlement letter. It's

46

1 a letter to the clerk of the court on a certain case,
 2 which has been redacted, advising the clerk, there's
 3 a cc at the bottom, I assume that the cc is to the
 4 defendant, advising the clerk that the matter
 5 previously scheduled for a certain trial date has
 6 been settled.
 7 It then goes on to give more
 8 information. The stipulation of settlement, which
 9 advises the clerk that there is a stipulation of
 10 settlement, has been forwarded to our adversary for
 11 signature. Upon receipt of a fully executed
 12 stipulation of settlement, it will be forwarded to
 13 the clerk. This letter serves the function of
 14 advising the clerk that a case no longer has to be
 15 listed for trial.
 16 The next letter is a cover letter,
 17 which may or may not be on the identical case,
 18 sending such stipulation of settlement to the debtor
 19 is what has always been described to me as a
 20 transmittal letter. I dictate "Please do a
 21 transmittal letter. Enclosed please find original
 22 and two copies of the stipulation of settlement."
 23 The next paragraph says, "Kindly sign
 24 the original and copy or mark with an X." It recites
 25 that we've supplied a postage paid envelope and it

47

1 stresses something. Again, "We feel as best
 2 practices, the immediate return is necessary even if
 3 your payment may not be due until a future date. If
 4 you fail to return it, we will have to continue with
 5 our collection efforts. Please keep the last copy
 6 for your records."
 7 So we have settlement notice to the
 8 court, a copy of the stipulation of settlement to the
 9 debtor. I see that the next document bears the same
 10 balance as the first, i.e. 667.37. This is the
 11 stipulation of settlement, the signature of our
 12 associate attorney Rita E. Ayoub has been, quote,
 13 slash, unquote or conformed. That is to say it says
 14 S slash. I believe that that goes back to the days
 15 before they had photocopies and that stood for
 16 signed, and then the copy below is or a line slightly
 17 below that and to the side is February blank, 2012,
 18 it bears the X reflected in the transmittal letter.
 19 And by the fact that it has three lines, I presume it
 20 gives the debtor's address, and the last is a warrant
 21 for satisfaction of judgement on which, by the way,
 22 for what it's worth, apparently something happened to
 23 the settlement, because instead of a stipulation of
 24 dismissal, we filed a warrant of satisfaction of
 25 judgement, which would normally not be done.

1 Q. Well, just to point out, I don't know
2 that those -- I know you were careful trying to match
3 them up. I don't think that warrant matches up
4 because the --

5 A. Thank you for paying more attention to
6 it than I did. Thank you.

7 Q. So --

8 A. So it's the standard flow of documents
9 to conclude a case with the court.

10 Q. Okay. And these are the type of
11 documents that would have been sent, what we marked
12 as P-4 and P-5 refer to proof of the type of things
13 being sent to the court, this is the type of things
14 that are shown in P-7.

15 You also mention a stipulation of
16 dismissal, and just for purposes of the record so
17 that we understand, a stipulation of dismissal just
18 is a document that's signed by or consented to by
19 both parties agreeing that the case is dismissed?

20 A. That's correct.

21 Q. Okay. Since the filing of this
22 lawsuit, has the settlement letter, the template for
23 the settlement letter been modified?

24 A. Yes.

25 Q. And do you know whether the language,

1 the reference to sending a copy of the proof that's
2 sent to the court to the credit bureaus has been
3 removed?

4 A. Yes, I do know, and the answer is yes,
5 it has been.

6 Q. Do you know the date when that became
7 effective?

8 A. No.

9 MR. STERN: We're done.

10
11 (The deposition is concluded at 5:12 p.m.)

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13 * * * * *

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1 CERTIFICATE OF OFFICER

2
3 I, ANN P. CONLON, a Notary Public and
4 Certified Court Reporter of the State of New Jersey,
5 do hereby certify that prior to the commencement of
6 the examination, the witness was duly sworn by me.

7
8 I DO FURTHER CERTIFY that the
9 foregoing is a true and accurate transcript of the
10 testimony as taken stenographically by and before me
11 at the time, place, and on the date hereinbefore set
12 forth.

13 I DO FURTHER CERTIFY that I am neither
14 a relative nor employee, nor attorney or counsel to
15 any of the parties involved, that I am neither
16 related to nor employed by such attorney or counsel,
17 and that I am not financially interested in the
18 outcome of the action.

19
20
21
22 _____
23 NOTARY PUBLIC OF THE STATE OF NEW JERSEY

24 My Commission Expires: 2/3/16

25 License No. 30XI000999