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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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iFREEDOM DIRECT CORPORATION,  
f/k/a New Freedom Mortgage Corporation

Plaintiff,

v.

FIRST TENNESSEE BANK NATIONAL  
ASSOCIATION, successor-in-interest to First  
Horizon Home Loan Corporation,

Defendant.

**MEMORANDUM DECISION AND  
ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
EXCLUDE EXPERT TESTIMONY OF  
KEVIN GATES**

Case No. 2:09-cv-205-DN

District Judge David Nuffer

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Defendant First Tennessee Bank National Association (FTB) moves<sup>1</sup> this Court to exclude Plaintiff iFreedom Direct Corporation's (Freedom) witness Kevin P. Gates from offering any expert testimony or opinions. After reviewing the parties' filings<sup>2</sup> and the governing law, the court rules that Mr. Gates may testify about his experience, but not offer opinions.

Freedom intends to call Mr. Gates as an expert to testify about “various factors that have affected opportunities and lender performance in the mortgage industry since 2000,” ‘the difference between subprime lenders and the lenders involved in this matter,’ and that ‘periods of economic downturn . . . present opportunities to mortgage lenders, which are able to continue to be profitable for numerous reasons such as lower interest rates that frequently accompany

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<sup>1</sup> Defendant First Tennessee Bank National Association's Motion to Exclude Expert Testimony of Kevin Gates, docket no. 96, filed May 23, 2012.

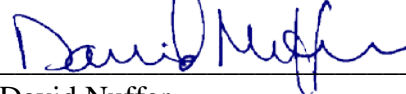
<sup>2</sup> Memorandum in Support of Defendant's Motion to Exclude Expert Testimony of Kevin Gates (Memo in Support), docket no. 97, filed May 23, 2012; Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Exclude Expert Testimony of Kevin Gates, docket no. 104, filed June 11, 2012; Declaration of Kevin P. Gates Submitted in Opposition to Defendant's Motion to Exclude Expert Testimony (Declaration), docket no. 105, filed June 11, 2012; Reply Memorandum in Support of Defendant's Motion to Exclude Expert testimony of Kevin Gates, docket no. 118, filed June 28, 2012.

economic downturns, as occurred in 2008.”<sup>3</sup> However, the Declaration offered in support of his qualifications provides no factual support for Mr. Gates’s assertion that he has “experience running a mortgage lending business during many types of economic climates, including expansions and recessions.”<sup>4</sup> If he had such experience, he could testify about that experience. Yet, the court would still not permit him to give opinion testimony about the opportunities for FTB’s mortgage operations to continue to be profitable in the economic downturn beginning in 2008. The court will only permit Mr. Gates to testify about *his experience*. He may testify incidentally about his direct experience, if any, with various factors that have affected opportunities and lender performance in the mortgage industry since 2000 and his direct experience with the difference between subprime lenders and other lenders. But, Mr. Gates also may not opine about the application of those experiences to FTB’s mortgage operations.

IT IS HEREBY ORDERED that the Motion to Exclude Expert Testimony of Kevin Gates<sup>5</sup> is GRANTED IN PART AND DENIED IN PART.

Dated July 9, 2012.

BY THE COURT:



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David Nuffer  
United States District Judge

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<sup>3</sup> Memo in Support at 3 (quoting Plaintiff’s Supplemental Disclosure of Possible Expert Testimony by Kevin P. Gates (Supplemental Disclosure) at 2, docket no. 75, filed Mar. 20, 2012).

<sup>4</sup> Declaration at 4.

<sup>5</sup> Docket no. 96.