

October 21, 2011

VIA HAND DELIVERY

Clerk
New Jersey Supreme Court
Richard J. Hughes Justice Complex
25 W. Market Street
Trenton, NJ 08625

William P. Higgins, Jr.
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Re: U.S. Bank National Association, as Trustee for CSAB Mortgage-Backed Pass-Through Certificates, Series 2006-3 v. Marse Guillaume; Mr. Guillaume, Husband of Maryse Guillaume; Emilio Guillaume; Mrs. Emilio Guillaume, his wife; City of East Orange
Docket No. 068176

McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102-4056
T. 973.622.4444
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www.mccarter.com

Dear Sir or Madam:

This Firm represents movant and proposed amicus curiae, the New Jersey Bankers Association ("NJBankers"). We enclose an original and ten copies of the following in support of NJBankers' motion to appear as amicus curiae:

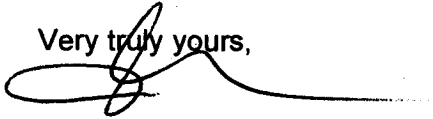
- (1) Notice of Motion;
- (2) Brief;
- (3) Affidavit of John E. McWeeney;
- (4) Appendix; and
- (5) Proposed form of Order.

We also enclose an original and two copies of an Affidavit of Service.

October 21, 2011
Page 2

Kindly charge our Account No. 66800 (reference number 59699-00029) for any filing fee. Please file the originals and return one copy of each document marked "filed" to our messenger who has been instructed to wait. Thank you for your assistance. If you have any questions or comments, please do not hesitate to contact me.

Very truly yours,



William P. Higgins, Jr.

WPH\ebk

Enclosures

cc: Margaret Lambe Jurow, Esq. (Via Hand Delivery)
Mark S. Melodia, Esq. (via Email and FedEx)

IN THE
SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR CSAB MORTGAGE-
BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-3,

Plaintiff/Respondent,

v.

MARYSE GUILLAUME; MR.
GUILLAUME, HUSBAND OF MARYSE
GUILLAUME; EMILIO GUILLAUME;
MRS. EMILIO GUILLAUME, HIS
WIFE; CITY OF EAST ORANGE,

Defendants/Petitioners.

: On Certification from the
: Superior Court of New Jersey,
: Appellate Division, granted
: September 27, 2011

: Civil Action

: Sat Below:

: Trial Court:

: Harriet Farber Klein, J.S.C.

: Appellate Division:

: Clarkson S. Fisher, Jr., J.A.D.

: Douglas M. Fasciale, J.A.D.

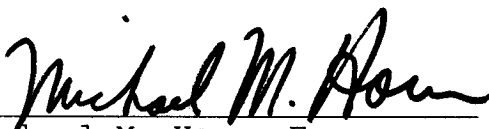
NOTICE OF MOTION FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE

PLEASE TAKE NOTICE that pursuant to R. 1:13-9 of the Rules
Governing the Courts of the State of New Jersey, New Jersey
Bankers Association ("Movant") respectfully moves this Court for
an order granting them leave to appear in the above matter and
in oral argument as Amici Curiae. Movant is an association of
New Jersey Banks, savings banks and savings and loan
associations in New Jersey courts, with a vital interest in this

Court's treatment of the issues on appeal. If this Motion is granted, Movant will address the effect of the Appellate Division's ruling and the contrary ruling in Bank of New York v. Laks, A-4221-09T3, on the residential foreclosure process. This request for leave to participate as amicus is timely and no party will be unduly prejudiced hereby. Further support for this Motion is set out in the attached Affidavit of John E. McWeeney, Jr. and Brief.

Respectfully submitted,

By:


Michael M. Horn, Esq.
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102
(973) 622-4444
Attorneys for Movant
New Jersey Bankers Association

Dated: October 21, 2011

involvement with NJBankers and my review of its business records, I have personal knowledge of the facts set forth herein.

2. This Affidavit is submitted in support of the application of NJBankers to appear as amicus curiae in the above captioned matter pursuant to R. 1:13-9.

3. For more than 106 years, NJBankers has been an advocate for the New Jersey banking industry. Its membership consists of 118 banking institutions that are headquartered or have branches in New Jersey. One of NJBankers' missions is to represent its membership's interests before state and federal government and regulatory authorities. NJBankers also promotes sound business practices and hosts forums for the free exchange of ideas and experiences. Importantly, NJBankers educates banks and their employees on compliance with consumer banking laws and regulations.

4. NJBankers seeks leave to appear as amicus curiae to address the issue of whether the Court should affirm the decision of the Appellate Division that a written Notice of Intention to Foreclose pursuant to N.J.S.A. 2A:50-56 that includes the name and telephone number of the mortgage servicer satisfies the Fair Foreclosure Act because the servicer is the appropriate party for the mortgagor to contact to exercise the

mortgagor's right to cure the default. NJBankers believes that this Court should affirm that aspect of the decision of the Appellate Division.

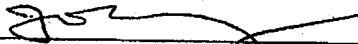
5. Collectively, members of NJBankers are plaintiffs or servicers for thousands of pending New Jersey foreclosures. As a result of the volume of foreclosures and applicable requirements, the processing of a foreclosure action, even if uncontested, is already extended. Requiring the dismissal of residential foreclosures due to the absence of contact information for the "lender", which often has no role in the cure or foreclosure process where a servicer has been engaged, will have a negative effect on the New Jersey economy, housing market and on NJBankers members. During the additional delay, debtors are unlikely to pay, among other things, real estate taxes, insurance costs and property maintenance expenses, which costs will ultimately be incurred by NJBankers' members and other financial institutions. Those costs will reduce the ultimate recovery causing additional losses to an industry that has already suffered significant losses stemming from the current financial crisis. Delaying the foreclosure process also prevents NJBankers' members from selling foreclosed properties and making the resulting funds available for new loans. These entities, therefore, will have less money to lend, and it will

be longer before they are able to lend it, which will all have a negative impact on New Jersey's struggling economy. The delay will also sustain or increase the inventory of distressed properties stuck in the foreclosure process awaiting release into the housing market.

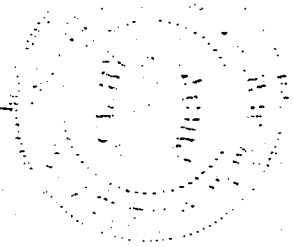
6. NJBankers believes that the Appellate Division correctly concluded that where a servicer is involved, the relevant information for a mortgagor interested in pursuing cure and reinstatement under the Fair Foreclosure Act is the contact information for the servicer, which generally has sole authority to deal with all aspects of the mortgage loan, rather than the contact information for the "lender", which information would be unlikely to assist the borrower in any way.

7. If this Court determines that it is necessary to include the "lender" contact information in a Notice of Intention to Foreclose, and that the failure to do so renders a Notice of Intention defective, NJBankers respectfully submits that dismissal would not be the appropriate remedy to address such a "defect." Instead, NJBankers would respectfully request that the Court adopt the solution of the Hon. Judge William C. Todd, III, P.J.Ch., as set forth in BAC Home Loans Servicing, LP etc. v. Rothweiler, et al., Docket No. F-26617-10, and described more fully in the accompanying brief. Alternatively, if this

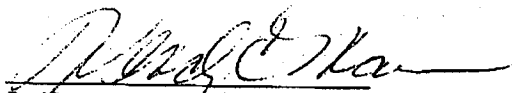
Court decides that dismissal is the appropriate remedy, NJBankers would respectfully request that the Court adopt that remedy prospectively. As addressed above in paragraph 5, the dismissal of numerous pending foreclosure matters would have a deleterious effect on New Jersey's residential real estate market and would negatively impact the availability of credit to residential borrowers. Regardless, NJBankers will be instrumental in implementing the Court's decision and will endeavor to educate its members as to compliance.



 John E. McWeeney, Jr.



Subscribed before me this
21 day of October, 2011



 A Notary Public of the
 State of New Jersey

Wendy C Mandelbaum
 Notary Public
 New Jersey
 My Commission Expires 4-13-18

IN THE
SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR CSAB MORTGAGE-
BACKED PASS-THROUGH
CERTIFICATES, SERIES 2006-3,

Plaintiff/Respondent,

v.

MARYSE GUILLAUME; MR.
GUILLAUME, HUSBAND OF MARYSE
GUILLAUME; EMILIO GUILLAUME;
MRS. EMILIO GUILLAUME, HIS
WIFE; CITY OF EAST ORANGE,

Defendants/Petitioners.

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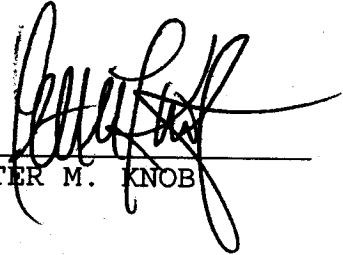
CERTIFICATION OF FACSIMILE SIGNATURE

PETER M. KNOB, being of full age, does hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey and an associate with the firm of McCarter & English, LLP, attorneys for the New Jersey Bankers Association. I make this Certification pursuant to R. 1:4-4(c) with respect to the accompanying Affidavit of John E. McWeeney, Jr., dated October 21, 2011.

2. On October 21, 2011, I communicated with John E. Mcweeney, who acknowledged to me the genuineness of his signature on his Affidavit, which signature was transmitted to me by facsimile. The Affidavit, with original signature affixed thereon, will be filed if requested by the Court or a party.

I certify that the foregoing statements made by me are true. I understand that if any of the foregoing is willfully false, I am subject to punishment.


PETER M. KNOB

Dated: October 21, 2011

IN THE
SUPREME COURT OF NEW JERSEY
DOCKET NO. 068176

U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR CSAB MORTGAGE-
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: Douglas M. Fasciale, J.A.D.

**ORDER GRANTING MOTION OF NEW JERSEY BANKERS ASSOCIATION
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**

THIS MATTER having been opened to the Court by McCarter & English, LLP, attorneys for the NJBankers Association ("NJBankers"), by the filing of a Notice of Motion for an order granting the NJBankers leave to appear in the above matter and in oral argument as Amici Curiae (the "Motion"); and the Court having reviewed the Affidavit of John E. McWeeney, Jr., dated October 21, 2011, the Appendix and the Brief in Support of the

Motion, and any opposition thereto; and for good and sufficient cause shown:

IT IS, on this ____ day of _____, 2011,

ORDERED that leave is hereby granted to the New Jersey Bankers Association to appear in the above matter and in oral argument as Amici Curiae, to address the effect of the Appellate Division's ruling in this matter and the contrary ruling in Bank of New York v. Laks, A-4221-09T3, on the residential foreclosure process.

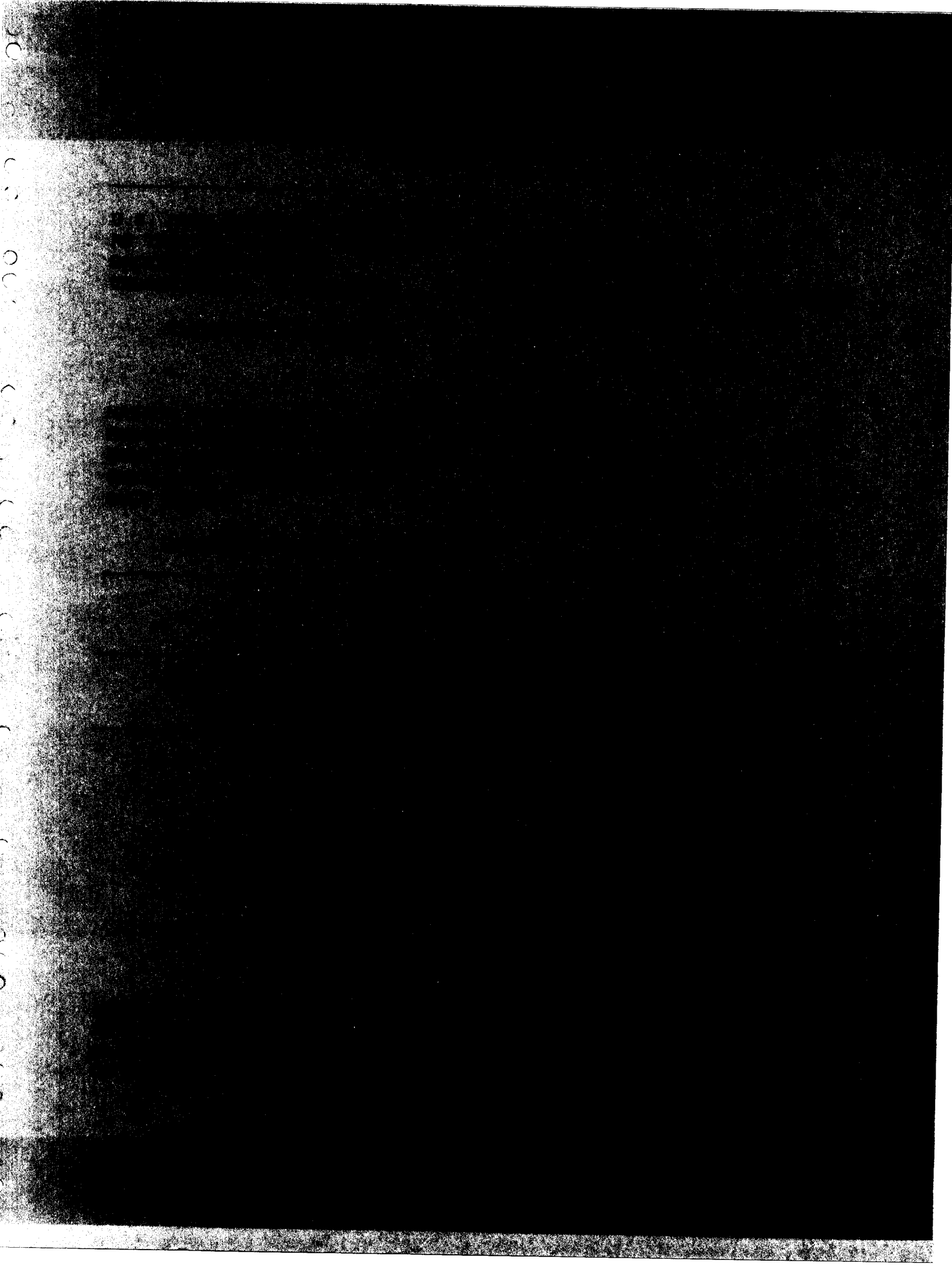


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THE IDENTITY OF THE APPLICANT

For more than 106 years, the New Jersey Bankers Association ("NJBankers"), which seeks leave to appear as amicus curiae, has been an advocate for the New Jersey banking industry. Affidavit of John E. McWeeney ("McWeeney Aff.") submitted herewith, ¶3. Its membership consists of 118 banking institutions that are headquartered or have branches in New Jersey. Id. Its members include plaintiffs and servicers involved in thousands of pending foreclosures in New Jersey. Id. at ¶5. One of NJBankers' missions is to represent its membership's interests before state and federal government and regulatory authorities. Id. at ¶3. NJBankers also promotes sound business practices and hosts forums for the free exchange of ideas and experiences. Id. Importantly, a large part of what NJBankers does is to educate banks and their employees on compliance with consumer banking laws and regulations. Id.

**THE ISSUE INTENDED TO BE ADDRESSED,
THE NATURE OF THE PUBLIC INTEREST THEREIN, AND
THE NATURE OF THE APPLICANT'S SPECIAL INTEREST**

NJBankers seeks leave to appear as amicus curiae pursuant to R. 1:13-9 to address the issue of whether the Court should affirm the decision of the Appellate Division that a written notice of intention to foreclose ("NOI") pursuant to N.J.S.A. 2A:50-56 that includes the name, address and telephone number of the mortgage servicer, but not the "lender", satisfies the purpose of the Fair Foreclosure Act (the "FFA") because the servicer is the appropriate party for the debtor to contact if the debtor disagrees with the assertion that a default has occurred or disagrees with the calculation of the amount required to cure the default. NJBankers urges that the Court reject the conflicting, subsequent, published Appellate Decision in Bank of New York as trustee for the Certificate Holders of CWALT 2004 26T1 v. Laks, et al., 2011 WL 3424983 (App. Div. 2011), which required dismissal of a foreclosure action for failure to comply with an overly rigid interpretation of the FFA that ignores the actual conditions in the residential mortgage industry.

For foreclosure matters on loans that are not serviced by the owners of the loans themselves, requiring the name and address of the "lender" in the NOI serves no real purpose, but

the economic and systemic consequences of the delay caused by requiring dismissal of pending foreclosures will likely be severe, because:

- Further burdening an already overburdened Office of Foreclosure will delay all foreclosures and needlessly consume government resources.
- Additional carrying costs for real estate taxes, insurance, and property maintenance, which are unlikely to be paid by borrowers during the delay, will be incurred by members of NJBankers reducing their ultimate recovery and increasing the amount of the loss generally suffered in connection with most residential foreclosures.
- The delay will prevent members of NJBankers from selling foreclosed properties and making the resulting funds available for new loans. These entities, therefore, will have less money to lend, and it will be longer before they are able to lend it, which will all have a negative impact on New Jersey's struggling economy.
- The delay will sustain or increase the inventory of vacant and distressed properties about to come

into the housing market which will continue to depress real estate values, increase blight and prevent the stabilization and recovery of the New Jersey housing market.

The Court should therefore affirm the decision of the Appellate Division herein and reject the holding in Laks. In the alternative, if this Court determines that the name and address of the "lender" is required for a valid NOI, the Court should permit the plaintiff to cure the invalid NOI rather than to dismiss its foreclosure, or, the harsh dismissal remedy should be applied only prospectively and should not require dismissal of pending residential mortgage foreclosure actions.

PROCEDURAL HISTORY

NJBankers joins in the procedural history recited by Respondent and notes that, in this case, the NOI was properly served before institution of the foreclosure proceeding. Da 121.

STATEMENT OF FACTS

NJBankers joins in the relevant portion of the Statement of Facts recited by Respondent and notes in particular that the NOI served on the mortgagors prior to the commencement of the subject foreclosure action contained the name, address and telephone number of the servicer, who was the only entity with the authority and information necessary to respond to debtor inquiries about the NOI. There is nothing in the record

indicating that the debtors were confused, misled or prejudiced by the absence of contact information for the plaintiff.

LEGAL ARGUMENT

POINT I

**A NOTICE OF INTENT TO FORECLOSE CONTAINING
THE CONTACT INFORMATION FOR THE SERVICER SATISFIES
THE PURPOSE OF THE FAIR FORECLOSURE ACT**

The Appellate Division here was correct in deciding that "The NOI satisfied the purpose of the FFA because ASC [the servicer] is the appropriate party for the Guillaumes to contact to cure their default." US Bank Nat'l Ass'n v. Guillaume, No. A-0376-10T3 (App. Div. Apr. 20, 2011) (slip op. at 6). The decision in Laks to the contrary, which required dismissal of a foreclosure for failure to comply with a rigid interpretation of the FFA, is incorrect. The Appellate Division's decision in this case is squarely in accordance with the doctrine of substantial compliance and should be affirmed.

The doctrine of substantial compliance has been recognized and applied by this Court in a number of circumstances, including required notice of claims against public entities, See Zamel v Port of New York Authority, 56 N.J. 1 (1970) (failure to provide verified notice of claim was not grounds for dismissal); Alan J. Cornblatt, P.A. v. Barow, 153 N.J. 218 (1998) (affidavit of merit statute). The requirements of the substantial compliance doctrine are: lack of prejudice, attempts to comply

with statutory requirements, general compliance with the purpose of the statute, reasonable notice, and a reasonable explanation of the lack of strict compliance. See Zamel, supra., 56 N.J. at 6-7.

Here, there was no prejudice to the debtor whatsoever. The debtor received the information necessary to fulfill the purpose of N.J.S.A. 2A:50-56(c)(11), which is to provide the debtor with contact information should it wish to dispute the default or the amount due to cure the loan. Inclusion of information regarding the identity of the actual owner or holder of the loan would likely only have served to confuse the debtor since it might be unclear who the debtor should contact to discuss the default or amount due to cure the default. Plaintiff/Respondent attempted to comply with the statute, and there is a reasonable explanation for any lack of strict compliance: given the realities of the relationship between the owner of a residential mortgage loan and its mortgage loan servicer, the NOI contained relevant, practical information identifying the appropriate entity to contact to fulfill the purpose of the statute and excluded irrelevant, confusing information.

Prior to the current financial crisis, the relationship between the owner of a residential mortgage loan and its mortgage loan servicer remained largely unexplored. Legislators, Courts and parties historically operated under the

reasonable assumption that the owner of a residential mortgage loan also possessed all relevant information about the loan, and was the party with the authority to foreclose or modify a mortgage loan. As the current financial crisis unfolded, that reasonable assumption proved to be incorrect because, in most cases, it is the mortgage loan servicer, and not the named plaintiff in the foreclosure, that has all relevant knowledge of the loan and the decision making authority with respect to the loan.

The relationship between plaintiff and its mortgage loan servicer was probed in detail in connection with proceedings and changes to the Court Rules instituted on December 20, 2010. In response to allegations that some of the largest financial institutions in the nation had engaged in the practice of so-called "robo-signing" (execution of affidavits without personal knowledge) and that some "robo-signing" may have occurred in New Jersey, the Court, on December 20, 2010, took three distinct actions:

1. This Court instituted changes to Rules 1:5-6, 4:64-1 and 4:46-2. See AA001-007, Notice to the Bar and Order of this Court dated December 20, 2010.
2. Judge Jacobson entered an Order to Show Cause (the "Big Six OSC") initiating proceedings requiring the six named plaintiffs in the majority of the residential foreclosure matters in New Jersey to show cause why the processing of their foreclosures should not be suspended

pending further order of the Court. See A008-015.

3. Judge Barisonek entered an Administrative Order (the "AO Proceeding") requiring twenty-four foreclosure plaintiffs filing 200 or more residential foreclosures to submit information about their document execution practices to a special master. See A016-017.

In each of these actions, the focus was initially on the foreclosure plaintiffs, but the focus eventually shifted to the servicers, since the servicers were the entities with the information and authority relevant to foreclosures.

The Rule changes made by this Court on December 20, 2010 first required, among other things, that plaintiff's counsel annex to the foreclosure complaint and to the motion to enter judgment a "certification of diligent inquiry" stating that counsel communicated with "an employee or employees of the plaintiff who (a) personally reviewed the documents being submitted and (b) confirmed their accuracy" AA005¹ (emphasis added). The Court thereafter solicited comments to the Rule changes, and received, among others, comments from the "banks, mortgage servicers and law firms, which prosecute the

¹NJBankers asks the Court to take judicial notice of certain facts pursuant to N.J.R.E. 201 and 202. In furtherance of that request, and for the Court's convenience, NJBankers has submitted an Appendix containing information from the public domain that supports a number of the asserted facts. References to the Appendix of NJBankers are cited as "AA###."

vast majority of residential mortgage foreclosures in New Jersey". AA018. Those comments included the following:

II. It is literally impossible to comply with the "employee of plaintiff" requirement

* * *

The plaintiff may be, and often is, a securitized trust or other entity that is not responsible for the daily servicing of the subject mortgage loan. If the plaintiff is a trust entity, it may not even have any employees. Even if a given plaintiff does have employees, those employees may not have access to, or personal knowledge of, the relevant loan information and other business records, unless the plaintiff is also the servicer. Daily account activity and information, such as acceptance/application of mortgage payments, providing payoff and reinstatement figures, distribution of taxes, etc., are the duties of the mortgage servicer and such "loan-level" information is within the exclusive possession of the servicer.

AA039.

In apparent recognition that it is often the servicer, and not the plaintiff, that has the information about the loan, the default, and the amounts due, this Court amended the Rules to change the requirement in the certifications of diligent inquiry that foreclosure counsel communicate with "an employee or employees of plaintiff" to instead require that foreclosure counsel communicate with "an employee or employees of plaintiff or of the plaintiff's mortgage loan servicer." AA049.

Similarly, the Order to Show Cause initiating the Big Six OSC was directed to "Foreclosure Plaintiffs". AA008. The Court there too soon recognized that it was the servicer, and not the plaintiff, that had the requisite information and authority with respect to the loan. That it is often the servicer, and not the named plaintiff, that has the information and authority regarding the loan, the default, and the amount due was also ultimately recognized by the Court in the Big Six OSC and the AO Proceeding. See AA079, the Recommended Stipulation filed in the Big Six OSC on March 18, 2011, which Recommended Stipulation was approved by the Court by Order Approving the Recommended Stipulation and Appointing Special Master entered March 29, 2011 see AA094-096:

it being recognized that in most cases, it is the servicer that either has the information or has direct access to the information that is required to be provided under the Rules. Servicers manage, maintain, and handle the accounting for the mortgages that they service and, as such, in the case of default or non-payment on the part of a mortgagor, it is the servicer, and not necessarily the mortgagee or named plaintiff in the resulting mortgage foreclosure action, that either has the information or has direct access to the information concerning the default or non-payment.

and see AA016, Administrative Order dated April 25, 2011 from the Hon. Walter Barisonek, A.J.S.C. (ret.), Special Master in the AO Proceeding, detailing the information to be submitted by

the 24 foreclosure plaintiffs subject to the Administrative Order and stating:

2. If you are a plaintiff in uncontested residential foreclosure matters and any other entity not a part of these proceedings or part of the "Big Six", acts as a servicer on those mortgages, secure the information requested in Question #1 from the entity that provides the servicing.

In this case, as in many cases, it was the servicer, not the "lender", that had the information regarding the default and the amount due. See excerpt from the Pooling and Servicing Agreement governing the Plaintiff / Respondent herein at Da 111:

each Servicer shall have full power and authority . . . to do or to cause to be done any and all things that it may deem necessary or desirable in connection with such servicing and administration, including but not limited to, the power and authority, subject to the terms hereof ... to effectuate foreclosure

The NOI in this case therefore contained all the information that was practical and reasonable to provide in order to effectuate the purpose of the statute given the reality of the roles of the parties involved in a serviced loan relationship. The Appellate Division's decision holding that the NOI in this case "satisfied the purpose of the FFA" is squarely in accordance with the actual conditions of the mortgage industry and the doctrine of substantial compliance and should be upheld.

NJBankers urges that the Court reject the Laks decision, which required dismissal of a foreclosure for failure to comply with a rigid interpretation of the FFA because that decision would likely have significant negative impact on the housing market, the economy and NJBankers' members. The Legislature could not have intended such a result.

NJBankers members are involved in thousands of pending foreclosures. McWeeney Aff., ¶5. Due to volume, the requirements of the FFA, and the nature of New Jersey's judicial foreclosure proceedings, residential mortgage foreclosures often take a year and a half to two years to complete. See AA098, AA148, and AA149. Requiring the dismissal of residential foreclosures due to the absence of the name and address of the owner, who in the case of most serviced loans does not have the information or authority necessary to respond to debtor inquiries about the NOI, will serve no real purpose and will cause substantial additional delay in an already lengthy foreclosure process.

Forcing plaintiffs to re-commence foreclosures will multiply the workload of the overburdened Office of Foreclosure, delaying all foreclosures. During the additional delay, debtors are unlikely to pay, among other things, real estate taxes, insurance costs and property maintenance expenses, which costs will ultimately be incurred by NJBankers' members and other

financial institutions. McWeeney Aff., ¶5. Those costs will reduce the ultimate recovery, causing additional losses to an industry that has already suffered significant losses stemming from the current financial crisis. Id. Delaying the foreclosure process also prevents NJBankers' members from selling foreclosed properties and making the resulting funds available for new loans. Id. These entities, therefore, will have less money to lend, and it will be longer before they are able to lend it, which will all have a negative impact on New Jersey's struggling economy. Id.

Significantly, it is estimated that 20% to 30% of properties in foreclosure are vacant. Delay could therefore accelerate blight and other problems commonly associated with vacant property such as squatters, vandals, thieves and criminal activity. See AA087, brief of Counsel to the Court in the Big Six OSC, recommending against a suspension of foreclosures because:

an efficient and normalized mortgage foreclosure process is essential to the health of the New Jersey housing market. Properties tied up in a lengthy and protracted . . . foreclosure process can potentially remain off the market for well over a year or even longer. This is particularly problematic considering that as much a quarter of properties in uncontested residential mortgage foreclosures are unoccupied and are thus contributing to blight in New Jersey communities.

See also AA141 and AA146. Delay will also sustain or increase the inventory of distressed properties stuck in the foreclosure process awaiting release into the housing market. McWeeney Aff., ¶5. A mounting inventory of vacant and distressed properties would continue to depress real estate values and prevent the stabilization and recovery of the New Jersey housing market. Id.

For loans that are not serviced by the owners of the loans themselves, requiring the name and address of the "lender" in the NOI risks confusion and serves no practical purpose, but the economic consequences of rigidly enforcing such a requirement will likely be severe. The Court should therefore affirm the decision of the Appellate Division herein and reject the holding in Laks.

POINT II

IF IDENTIFYING THE LENDER IS REQUIRED, THE COURT SHOULD PERMIT PLAINTIFF TO CURE THE DEFECT BY SENDING A NEW NOI, OR, THE LAKS DECISIONS REQUIRING DISMISSAL SHOULD ONLY BE APPLIED PROSPECTIVELY

The various decisions of the Appellate Division have not been in accord on the effect of any omission from the information set forth in N.J.S.A. 2A:50-56(c), and no clear rule has been established as to whether dismissal is the required remedy. See Cho Hung Bank v. Ki Sung Kim, 361 N.J. Super 331

(App. Div. 2003) (holding that dismissal is not required, and Laks (holding that dismissal is required).

One alternative remedy is the solution chosen by Judge Todd in his letter opinion of September 15, 2011 in the case of BAC Home Loans Servicing, LP etc. v. Rothweiler, et al., Docket No. F-26617-10. AA151-153. Although Judge Todd had previously reached a contrary decision based, in part, on the reasoning of the Appellate Decision in this matter, Judge Todd recognized that he was subsequently bound by the published decision in Laks with respect to the existence of a defect in the NOI itself in the case before him. Although Judge Todd felt bound by the decision in Laks with respect to the defect in the NOI, the Judge did not feel bound with respect to the remedy for that defect due the conflicting, published, Appellate Division in Kim supra. Judge Todd decided that the appropriate remedy was to permit a "cure" of the defect by sending a new NOI giving the debtor the right to cure the default as provided in the FFA without payment of the plaintiff's attorneys fees and costs. As stated in Judge Todd's letter opinion:

That is the precise remedy that would be available to her if the Complaint was dismissed and a new Notice of Intention was issued. It seems to me such a cure is particularly appropriate given the long delays that plaintiffs typically face in the processing of foreclosure actions in this State.

AA153.

Judge Todd's solution is sensible, practical, fair, and in accordance with existing Appellate Division authority. It gives the debtor the same opportunity that the debtor would have had if the plaintiff was forced to re-commence its foreclosure, but avoids the harsh economic consequences of further delay in an already lengthy foreclosure process. If the Court decides that an NOI is defective because it identifies the servicer, but not the "lender", it should adopt Judge Todd's solution as the remedy for that defect.

If the Court is not inclined to adopt Judge Todd's solution, the Laks decision, should only be applied prospectively. As this Court stated in The Tax Authority, Inc. v Jackson Hewitt, Inc., 187 N.J. 4, 22 (2006):

The general rule is that judicial decisions will be applied retroactively. *Velez v. City of Jersey City*, 180 N.J. 284, 296, 850 A.2d 1238 (2004). Even so, "[o]ur tradition is to confine a decision to prospective application when fairness and justice require." *Montells v. Haynes*, 133 N.J. 282, 297, 627 A.2d 654 (1993). We emphasized in *Montells* that prospective application is "appropriate when 'a court renders a first-instance or clarifying decision in a murky or uncertain area of the law . . .,' or when a member of the public could reasonably have 'relied on a different conception of the state of the law.'" *Id.* at 298, 627 A.2d 654.

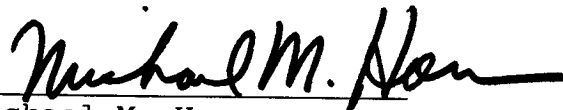
The existing conflict of decisions regarding the impact of omission of any item in N.J.S.A. 2A:50-56(c), the absence of any

practical purpose in requiring the identity of the lender in the NOI for serviced loans, and the dire consequences of retrospective application for the New Jersey economy, the New Jersey real estate market, NJBankers members, all militate for prospective application of any requirement of dismissal.

CONCLUSION

The Court should affirm the decision of the Appellate Division holding that the NOI in this case "satisfied the purpose of the FFA" because that decision is squarely in accordance with the realities of the mortgage industry and the doctrine of substantial compliance, and it should reject the contrary holding in Laks. In the alternative, if this Court determines that the name and address of the "lender" is required for a valid NOI, the Court should permit the plaintiff to cure the invalid NOI in accordance with Judge Todd's decision in Rothweiler rather than to dismiss the foreclosure, or, as an alternative to the Judge Todd's solution, the harsh dismissal remedy should only be applied prospectively.

McCarter & English, LLP
Attorneys for Amicus,
New Jersey Bankers Association

By: 
Michael M. Horn
A Member of the Firm

Dated: October 21, 2011

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NOTICE TO THE BAR

RE: Emergent Amendments to *Rules* 1:5-6, 4:64-1 and 4:64-2

In light of irregularities in the residential foreclosure practice as reported in sworn deposition testimony in New Jersey and other states, the Court has adopted, on an emergent basis, amendments to *Rules* 1:5-6, 4:64-1 and 4:64-2. These amendments are effective December 20, 2010. The new rule and the amendments, along with the Order adopting them, appear with this notice. The Court's Order also contains directions for counsel in pending uncontested residential foreclosure cases.

The rule amendments require plaintiff's counsel in all residential foreclosure actions to file with the court (1) an affidavit or certification executed by the attorney that the attorney has communicated with an employee or employees of the plaintiff who (a) personally reviewed documents for accuracy and (b) confirmed the accuracy of all court filings in the case to date; (2) the name(s), title(s), and responsibilities of the employee(s) of the plaintiff who provided this information to the attorney; and (3) an affidavit or certification executed by the attorney that all the filings in the case comport with all requirements of *Rule* 1:4-8(a).

Plaintiff's counsel shall file such documents (1) immediately upon the commencement of any new residential foreclosure action filed after the effective date of the new rule and amendments, as to the accuracy of the information contained in the complaint, as set forth in *Rule* 4:64-1(b)(1) through (13); (2) within 60 days in any residential foreclosure action today pending and awaiting judgment, as to the accuracy of the complaint and of any proofs submitted; (3) within 45 days in any residential foreclosure action in which judgment was entered but no sale of the property has yet occurred; and (4) with the motion to enter judgment in all future foreclosure actions in which judgment is sought, as to the accuracy of any proofs submitted pursuant to *Rule* 4:64-2.

Finally, all counsel are reminded of their obligations under the New Jersey Rules of Professional Conduct and that, pursuant to *Rule* 1:4-8(a)(3), an attorney's signature on any paper filed with a court "certifies that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," all "factual allegations have evidentiary support, or, as to specifically identified allegations, they are either likely to have evidentiary support or they will be withdrawn or corrected if reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support."

Questions concerning these amendments should be directed to Kevin M. Wolfe, Esq., in the AOC's Civil Practice Division, at (609) 292-8470 or kevin.wolfe@judiciary.state.nj.us.

/s/ Glenn A. Grant

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: December 20, 2010

SUPREME COURT OF NEW JERSEY

It is ORDERED that the attached amendments to Rules 1:5-6, 4:64-1 and 4:64-2 are adopted effective immediately. And,

It is FURTHER ORDERED that in all uncontested residential foreclosure cases pending entry of judgment as of December 20, 2010, (1) within 60 (sixty) days, plaintiff's counsel shall file a certification, which shall be served on all defendants, stating (a) that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents submitted to the court thus far and (ii) confirmed their accuracy; and (b) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated; (2) plaintiff's attorney shall also file a certification attesting that the complaint and all documents subsequently filed with the court comport with the requirements of Rule 1:4-8(a). And

It is FURTHER ORDERED that in all uncontested residential foreclosure cases in which judgment has been entered but no sale of the property has occurred as of December 20, 2010, (1) within 45 (forty-five) days, plaintiff's counsel shall file a certification, which shall be served on all defendants, stating (a) that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents submitted to the court thus far and (ii) confirmed their accuracy; and (b) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated; (2) plaintiff's attorney shall also file a certification attesting that the complaint and all documents subsequently filed with the court comport with the requirements of Rule 1:4-8(a).

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: December 20, 2010

1:5-6. Filing

(a) ...no change.

(b) ...no change.

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped "Received but not Filed (date)" if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by R. 4:5-1 in the form set forth in Appendices XII-B1 or XII-B2 to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by R. 5:4-2(f), the Parents Education Program registration fee required by *N.J.S.A.* 2A:34-12.2, the Confidential Litigant Information Sheet as required by R. 5:4-2(g) in the form prescribed in Appendix XXIV, or the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives as required by R. 5:4-2 (h) in the form prescribed in Appendix XXVII-A or XXVII-B of these rules;

(D) the signature of an attorney permitted to practice law in this State pursuant to R. 1:21-1 or the signature of a party appearing pro se, provided, however, that a pro se appearance is provided for by these rules; or

(E) a certification of title search as required by R. 4:64-1(a)(1) and the certifications of diligent inquiry and of accuracy as required by R. 4:64-1(a)(2) and (3).

If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within ten days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(2) if an answer is presented by a defendant against whom default has been entered other than in a mortgage or tax foreclosure action, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(3) a demand for trial de novo may be rejected and returned if not filed within the time prescribed in *R. 4:21A-6* or if it is submitted for filing by a party in default or whose answer has been suppressed.

(4) a paper shall be returned stamped "Received but not Filed (date)" if it does not conform to the requirements of *R. 1:4-9* with notice that if the document is retransmitted on conforming paper within 10 days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(d) ...no change.

(e) ...no change.

Note: Source — *R.R. 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a)* (first and second sentence), *4:5-7* (first sentence), *5:5-1(a)*. Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d) redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2) adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1),(3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (c)(1) and (c)(3) amended July 28, 2004 to be effective September 1, 2004; subparagraph (c)(1)(E) adopted, paragraphs (c)(2) and (c)(3) amended, and paragraph (c)(4) adopted July 27, 2006 to be effective September 1, 2006; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; subparagraph (c)(1)(C) amended July 16, 2009 to be effective September 1, 2009; subparagraph (c)(1)(E) amended December 20, 2010 to be effective immediately.

4:64-1. [Uncontested Judgment: Foreclosures] Foreclosure Complaint, Uncontested Judgment

Other Than In Rem Tax Foreclosures

(a) Title Search; Certifications.

(1) Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which R. 4:64-7 does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.

(2) In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry stating

(A) that the attorney has communicated with an employee or employees of the plaintiff who (a) personally reviewed the documents being submitted and (b) confirmed their accuracy; and

(B) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

(3) Plaintiff's attorney shall also annex to the complaint a certification, executed by the attorney, attesting that the complaint and all documents annexed thereto comport with the requirements of Rule 1:4-8(a)

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

(f) ...no change.

(g) ...no change.

(h) ...no change.

(i) ...no change.

Note: Source — R.R. 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as subparagraph (a)(1), and new subparagraphs (a)(2) and (a)(3) added December 20, 2010 to be effective immediately.

4:64-2. Proof; Affidavit

(a) ...no change.

(b) ...no change.

(c) ...no change.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating (1) that the attorney has communicated with an employee or employees of the plaintiff who (A) personally reviewed the documents being submitted and (B) confirmed their accuracy; (2) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated pursuant to this rule; and (3) that the documents comport with the requirements of Rule 1:4-8(a).

Note: Source — *R.R. 4:82-3*. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; text amended and designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2008 to be effective September 1, 2008; caption amended and new paragraph (d)(1) and (2) added December 20, 2010 to be effective immediately.

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION -
GENERAL EQUITY PART
MERCER COUNTY

DOCKET NO. F -059553-10

CIVIL ACTION

IN THE MATTER OF
RESIDENTIAL MORTGAGE
FORECLOSURE PLEADING AND
DOCUMENT IRREGULARITIES

ORDER DIRECTING THE NAMED
FORECLOSURE PLAINTIFFS TO
SHOW CAUSE WHY THE COURT
SHOULD NOT SUSPEND THE
MINISTERIAL DUTIES OF THE
OFFICE OF FORECLOSURE AND THE
SUPERIOR COURT CLERK'S OFFICE
REGARDING THE PROCESSING OF
CERTAIN UNCONTESTED
RESIDENTIAL MORTGAGE
FORECLOSURE ACTIONS, STAY
SHERIFFS' SALES IN THOSE
FORECLOSURE ACTIONS, APPOINT A
SPECIAL MASTER PURSUANT TO
RULE 4:41-1 TO INVESTIGATE
QUESTIONABLE FORECLOSURE
PRACTICES, AND APPOINTING AN
ATTORNEY TO APPEAR IN SUPPORT
OF THE PROPOSED RELIEF

To: Foreclosure Plaintiffs:

ALLY FINANCIAL (F/K/A GMAC)

c/o Zucker, Goldberg & Ackerman; Phelan, Hallinan & Schmeig, PC

BANK OF AMERICA/BAC HOME LOAN SERVICING LP

c/o Stern Lavinthal Frankenberg & Norgaard, LLC; Fein Such Kahn & Shepard, PC
Zucker, Goldberg & Ackerman; Urden Law Offices, PC

JP MORGAN CHASE/ CHASE HOME FINANCE LLC

c/o Phelan, Hallinan & Schmeig, PC

**WELLS FARGO/WELLS FARGO BANK NA/ WELLS FARGO FINANCIAL NEW
JERSEY, INC.**

c/o Phelan, Hallinan & Schmeig, PC; Powers Kirm, LLC

ONEWEST BANK FSB (F/K/A INDYMAC)

c/o McCabe Weisberg & Conway, P.C.; Fein Such Kahn & Shepard, PC

CITIBANK, NA/ CITI RESIDENTIAL LENDING

c/o Zucker, Goldberg & Ackerman; Shapiro & Perez, LLP

THIS MATTER is opened *sua sponte* by the court in furtherance of its role under R. 1:34-6, which authorizes the Office of Foreclosure in the Administrative Office of the Courts to recommend the entry of orders or judgments in uncontested foreclosure matters "subject to the approval of a Superior Court Judge designated by the Chief Justice." Historically and currently, the Chief Justice has designated the General Equity Judge in Mercer County to fulfill this role. This court, in consultation with the staff of the Office of Foreclosure, has become increasingly concerned about the accuracy and reliability of documents submitted to the Office of Foreclosure. The court has therefore determined that immediate action in the form of an Order to Show Cause is necessary to protect the integrity of the judicial foreclosure process in New Jersey and to assure the public that the process going forward will be reliable.

The nature of the problem calls for a balancing of the court's supervisory and adjudicatory roles and responsibilities. The court has therefore established the procedure in this Order to address the pressing needs of the Office of Foreclosure while providing due process to affected parties. The court will direct that the six Foreclosure Plaintiffs named in this order show cause at a hearing scheduled for January 19, 2011, why the court should not suspend the processing of all foreclosure matters involving the six Foreclosure Plaintiffs and appoint a Special Master to review their past and proposed foreclosure practices. The Foreclosure Plaintiffs named in this Order will be given an opportunity to respond in writing to the Order and to be heard on January 19, 2011. The exigencies of the circumstances, especially the immediate need to restore integrity to foreclosure processing, require the relaxation of R. 4:52-1 to the extent that the procedure outlined in this Order deviates from the requirements of the Rule. As set forth below, the six Foreclosure Plaintiffs affected by this Order were selected based on a public record of questionable practices that this court must address now in its supervisory capacity over the processing of foreclosure matters.

It appearing that deposition testimony provided by employees of the above-listed Foreclosure Plaintiffs taken in various states, as well as testimony regarding national foreclosure practices provided to Congress, has raised serious questions about the accuracy and reliability of documents submitted to courts by lenders and service providers in support of foreclosure complaints; and it appearing that the integrity of the foreclosure process in New Jersey is implicated by these circumstances, as detailed in the Administrative Order issued by the Honorable Glenn A. Grant, J.A.D., Acting Administrative Director of the Courts, on December 20, 2010; and it appearing that the execution of affidavits, certifications, assignments, and other documents in numerous residential mortgage foreclosure actions in New Jersey and elsewhere may not have been based on personal knowledge in violation of the Rules of Court and may thus be unreliable; and it appearing that the responsibilities of the Office of Foreclosure in the Administrative Office of the Courts, which processes uncontested foreclosure actions on behalf of the General Equity Part pursuant to R. 1:34-6, including actions deemed uncontested after vicinage judges have resolved disputed claims, are being negatively affected by the doubts raised concerning the reliability of the documents submitted by the above-listed Foreclosure Plaintiffs; and it appearing to the court from the public record summarized in the Administrative Order of Judge Grant of December 20, 2010, that a review of existing practices of these Foreclosure Plaintiffs is essential to protect the integrity of foreclosure complaint processing through the New Jersey courts; and it appearing to the court that appointment of a Special Master pursuant to R. 4:41-1 is necessary to inquire into the foreclosure document execution practices of the Foreclosure Plaintiffs listed above and their subsidiaries, servicers, subservicers, specialty servicers, or outsource firms acting on their behalf, and to evaluate and report to the court on the remediation steps planned or taken by the Foreclosure Plaintiffs listed above, which evaluation will require an in-depth review of the Plaintiffs' policies, procedures, processes and systems to

ensure that sufficient, properly trained staff and adequate quality controls are in place to satisfy compliance with the Rules of Court and laws of New Jersey, and to prevent and/or cure any potential fraud upon the court, and to ensure that Plaintiffs' employees, agents, servants or third-party independent contractors acting on their behalf follow proper policies, procedures and processes:

IT IS on this 20th day of December, 2010, **ORDERED** that:

1. The Foreclosure Plaintiffs named in this Order shall appear and show cause on the 19th day of January, 2011, before the Superior Court, Chancery Division, General Equity Part, 210 South Broad Street, Trenton, New Jersey at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, as to whether there are any reasons why the court should not:
 - A. Direct the Office of Foreclosure to suspend the processing of orders and judgments in uncontested residential mortgage foreclosure actions where the Foreclosure Plaintiffs named in this Order, or their subsidiaries, servicers, subservicers, specialty servicers, or outsource firms acting on their behalf, are now servicing or have previously serviced the mortgage loan, pending further order of the court.
 - B. Direct the Superior Court Clerk not to issue writs of execution or writs of possession where the Foreclosure Plaintiffs named in this Order or their subsidiaries, servicers, subservicers, specialty servicers, or outsource firms acting on their behalf, are now servicing or have previously serviced the mortgage loan, pending further order of the court.
 - C. Direct that all pending Sheriffs' sales based on judgments associated with the Foreclosure Plaintiffs named in this Order or their subsidiaries,

servicers, subservicers, specialty servicers, or outsource firms acting on their behalf, that are now servicing or have previously serviced the mortgage loan, be stayed pending further order of the court.

- D. Appoint a Special Master in accordance with R. 4:41-1 to perform the following duties:
- i. To inquire into and report to the court on the extent of irregularities concerning affidavits, certifications, assignments and other documents from time to time filed with the court in residential mortgage foreclosure actions by the Foreclosure Plaintiffs.
 - ii. To inquire into and report to the court on the past business practices of the Foreclosure Plaintiffs and their subsidiaries, servicers, subservicers, specialty servicers, outsource firms, lawyers, or law firms acting on their behalf, for processing foreclosure pleadings and documents needed for court, including the role and responsibility of various persons referred to as robo-signers, who are or were executing affidavits, certifications, assignments or other documents submitted to the court.
 - iii. To inquire into and report to the court on the present business practices of the Foreclosure Plaintiffs and their subsidiaries, servicers, subservicers, specialty servicers, outsource firms, lawyers, or law firms acting on their behalf, for processing foreclosure pleadings and documents needed for court, including any remediation proposals or corrective actions taken and the

appropriateness of any present business model, remediation proposal or corrective action.

- iv. To report to the court on the conformance to the court rules of the amended documents submitted by the Foreclosure Plaintiffs and their subsidiaries, servicers, subservicers, specialty servicers, outsource firms, attorneys or law firms acting on their behalf in light of improvements to their business processes, remediation proposals or corrective actions and whether the usual processing of residential mortgage foreclosure actions by the Office of Foreclosure should resume.
 - v. To report to the court whether sanctions should be imposed on the Foreclosure Plaintiffs and their subsidiaries, servicers, subservicers, specialty servicers, outsource firms, attorneys or law firms acting on their behalf, and, if so, proposing either a recommended amount or a suggested formula to determine an appropriate sanction.
 - vi. To report to the court whether the Office of Foreclosure and Superior Court Clerk's Foreclosure Processing Unit should be reimbursed and, if so, the recommended amount, for costs incurred for re-handling and re-processing foreclosure files.
- E. Apportion the fees and costs of the attorney appointed in paragraph 2 of this Order and the fees and costs of a Special Master and any staff such Special Master might require among the Foreclosure Plaintiffs named in this Order as well as any other foreclosure plaintiffs or servicers who in

the future may be shown to have prepared invalid documents for submission to the court.

F. Require the Foreclosure Plaintiffs named in this Order to reimburse the Office of Foreclosure and the Superior Court Clerk's Processing Unit for the cost of added handling and processing of deficient and corrected foreclosure documents.

G. Require the Foreclosure Plaintiffs named in this order to produce up-to-date lists, including caption and docket number, of all pending residential mortgage foreclosure actions in which the plaintiffs or their subsidiaries, subservicers, specialty servicers or outsource companies acting on their behalf are servicing mortgages being foreclosed, to assist the Office of Foreclosure and the Superior Court Clerk's Office in implementing this Order.

2. Edward J. Dauber, Esquire, Greenberg, Dauber, Epstein, & Tucker, located at One Gateway Center, Suite 600, Newark, New Jersey 07102, is appointed to respond to the submissions made to the court by the Foreclosure Plaintiffs and to appear before the court on the return date of this Order to Show Cause and in all subsequent proceedings concerning the provisions of this Order to present argument supporting the appointment of a Special Master and the suspension of foreclosure processing for complaints filed by the Foreclosure Plaintiffs pending further order of the court.

3. A copy of this Order shall be served by the Acting Clerk of the Superior Court upon the attorneys for the parties in interest within three (3) days of the date hereof.

4. The Foreclosure Plaintiffs named in this Order shall file and serve an appearance, an answering affidavit, or a motion returnable on the return date of this order to show cause by January 5, 2011. Such appearance, answering affidavit, or motion must be filed with the Acting Clerk of the Superior Court, PO Box 971, 25 Market Street, Trenton, New Jersey 08625, and a copy of the papers must be sent or delivered directly to the chambers of Judge Mary C. Jacobson, P.J.Ch., at 210 South Broad Street, Trenton, N.J. 08625. A copy of all filings must be sent to the attorney appointed in paragraph 2 of this Order and to all attorneys who have entered appearances in this matter.
5. The attorney appointed in paragraph 2 of this Order to support the appointment of a Special Master and a suspension of foreclosure processing pending further court order shall file a response to any filings of the Foreclosure Plaintiffs by January 12, 2011. Replies, if any, by the Foreclosure Plaintiffs shall be filed by January 14, 2011.
6. If the Foreclosure Plaintiffs named in this Order do not file and serve opposition to this Order, the application will be decided on the return date and relief may be granted by default, provided that the Acting Clerk of the Superior Court files a proof of service at least three days prior to the return date.
7. The court will entertain argument, but not testimony, on the return date unless the court is requested no later than three (3) days before the return date to allow testimony and agrees to do so.

Mary C. Jacobson, P.J.Ch.
MARY C. JACOBSON, P.J. Ch.

SUPERIOR COURT OF NEW JERSEY
UNION VICINAGE
UNION COUNTY COURT HOUSE, ELIZABETH, NEW JERSEY 07207
(908) 659-4787

CHAMBERS OF

WALTER R. BARISONK, A.J.S.C.
RETIRED



SPECIAL MASTER
RECALL JUDGE

Administrative Order 0-1-2010
Docket # F-238-11

April 25, 2011

**IN THE MATTER OF RESIDENTIAL MORTGAGE FORECLOSURE PLEADINGS AND
DOCUMENT IRREGULARITIES**

TO: Foreclosure Plaintiff's Filing 200 or more residential mortgages foreclosure action in 2010

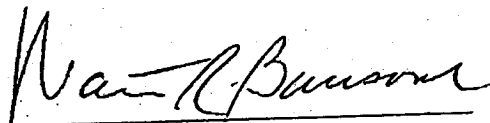
Please submit the following information in certification/affidavit form to me within twenty (20) business days following your individual conference

The individual answering the following questions must base their answers upon personal knowledge or information gained through a personal review of business records which records would be admissible in evidence in a New Jersey Court.

- 1) If you act in any capacity as a servicer of residential mortgages for your own institution or any other entity, you must answer the following questions to show whether you have processes and procedures in place to ensure that the information contained in any certification/affidavit submitted to the Court under Rule 4-64-1 et seq is accurate and reliable
 - a) State what processes and procedures you have to ensure that the certifications/affidavits submitted are based upon that person's personal knowledge or that person's review of business records which records would be admissible in evidence in a New Jersey Court. Describe the processes and procedures in detail and attach a copy of any documents that establish the processes and procedures
 - b)
 - i State the processes and procedures you have in place to ensure that the individual who executes the certification/affidavit executed it according to law, and that the signature is a valid lawful signature.
 - ii State the processes and procedures in place to ensure that the person executing the certification/affidavit, pursuant to paragraph (a), has the authority to act in behalf of the plaintiff/servicer.

- c) State in detail your record keeping system to ensure that there is accurate up-to date entries of payments, loan history, assignments, or of any other transaction involving the mortgage. If you are currently making or anticipate making changes, state the changes to be made and when they will be implemented.
 - d) State the review process you have in place to ensure that any certification/affidavit submitted to the Court is accurate, based upon current information and that the person executing the document relied upon personal knowledge and/or business records which would be admissible in a New Jersey Court. If you are currently making or anticipate making any changes, state the changes to be made and when they will be implemented.
 - e) State in detail any training programs you have in place for individuals completing certifications/affidavits to ensure that their knowledge of the contents of the certification/affidavit is based upon personal knowledge or business records which would be admissible in a New Jersey Court.
 - f) Describe in detail the process you have in place to ensure that foreclosure counsel is provided with current accurate information to support the preparation of any documentation counsel will be submitting to the Court pursuant to Court Rule.
 - g) State the review process you and foreclosure counsel have in place for the final review of documents to be submitted to the Court pursuant to Rule 4:64-1 et. seq..
 - h) State whether you utilized or intend on utilizing any independent auditor to review the process and procedures mentioned in the above answers to ensure that you are in compliance with the mandates of Court Rule 4:64-1 et. seq.
2. If you are a plaintiff in uncontested residential foreclosure matters and any other entity, not a part of these proceedings or part of the "Big Six", acts as a servicer on those mortgages, secure the information requested in Question #1 from the entity that provides the servicing.

Unless you file a motion to seal pursuant to Rule 1:38-11, any submissions pursuant to this directive must be filed with the Clerk of the Court in Trenton with a copy to me. If you wish to invoke a claim of confidentiality, your motion under Rule 1:38-11 must be filed either before or at the time you send me your submissions required under this directive. If you file a motion under Rule 1:38-11 you should still send your submissions under this directive to me but do not send them to the Clerk in Trenton. I will then schedule your motion for an ex-parte hearing.



Walter R. Barsonek, A J S C. Ret
Special Master

WRB:ard

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
ATTORNEYS AT LAW

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Direct dial: (973) 425-8846
rhaber@mdmc-law.com

February 28, 2011

Via Hand Delivery and E-mail to
Comments.mailbox@judiciary.state.nj.us

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Mortgage Foreclosure Rule Amendments
Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625

Re: Comments on Mortgage Foreclosure Rule Amendments

Dear Judge Grant:

The undersigned banks, mortgage servicers and law firms, which prosecute the vast majority of residential mortgage foreclosures in New Jersey, respectfully submit the following proposed rule changes and explanations pursuant to Chief Justice Rabner's January 31, 2011 Order and the simultaneously issued Notice to the Bar seeking public comment on the emergent rule amendments adopted on December 20, 2010.

Through the attached proposed revisions and comments, we are respectfully suggesting that the Supreme Court make further revisions to the Rules that were amended on December 20th. We believe that the further revisions proposed herein will render the Rules more workable in practice to both litigants and counsel, while also assuring the accuracy and reliability of documents submitted to New Jersey courts as part of the foreclosure process.

For Rules 1:5-6, 4:64-1 and 4:64-2, we enclose:

- (1) a "redline" version with proposed changes to the Rules as adopted on December 20, 2010 at Exhibit 1;
- (2) a "clean" version of the new proposed Rules at Exhibit 2; and
- (3) comments which explain the proposed changes at Exhibit 3.

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

Honorable Glenn A. Grant, J.A.D.

February 28, 2011

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Briefly, the centerpiece of these proposed changes is replacing the requirement that foreclosure counsel certify the accuracy of filings made to the court with a certification provided directly by plaintiff, its loan servicer, or other authorized representative, attesting to that person's review of the relevant documents and business records and, based on that review, providing confirmation of the material facts at the complaint and final judgment stages. The foreclosure counsel will continue to certify that the filings submitted to the Court comport with the requirements of Rule 1:4-8(a).

At Exhibit 4, we have also enclosed suggestions on how to address the foreclosure proceedings that are already in the "pipeline" and for which no affidavits under the new Rule have been submitted. On December 20, 2010, the Supreme Court issued an Order which required the submission of a certification of diligent inquiry and accuracy by certain dates depending upon the stage of the foreclosure. That Order has been suspended pending this public comment period. As set forth in Exhibit 4, for the "pipeline" foreclosures, we propose an orderly verification of the factual accuracy of documents on file that will not burden the Office of Foreclosure or the foreclosure parties with mass filings by a designated date.

We hope the Court finds the enclosed proposal and comments to be a productive step towards the restoration of a functioning and reliable foreclosure process in New Jersey. Because mortgage foreclosures are, unfortunately, a necessary part of a healthy housing market and economy, we thank the Court for providing this opportunity for comment and participation in a solution.

Should there be any questions about this proposal or if you believe a meeting to discuss these comments would be productive, please do not hesitate to contact me.

Very truly yours,

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP



Richard P. Haber

This submission is made on behalf of the banks, mortgage servicers and law firms, listed alphabetically on the following page.

MCÉLROY, DEUTSCH, MULVANEY & CARPENTER, LLP

Honorable Glenn A. Grant, J.A.D.

February 28, 2011

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Banks and Mortgage Servicers

Aurora Loan Services LLC

Bank of America Home Loans Servicing LP

Chase Home Finance LLC

CitiMortgage, Inc.

GMAC Mortgage, LLC

Hudson City Savings Bank, by and through its counsel McCarter & English, LLP

OneWest Bank, FSB

Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A.

Law Firms

Ralph F. Casale & Associates, LLC

Fein, Such, Kahn & Shepard, P.C.

The Law Offices of Barbara A. Fein, P.C.

Frenkel, Lambert, Weiss, Weisman & Gordon, LLP

Goldbeck, McCafferty & McKeever

Hubschman & Roman Law Offices

Frank J. Martone, P.C.

McCabe, Weisberg & Conway, P.C.

Parker McKay, P.A.

Phelan, Hallinan & Schmieg

Pluese, Becker & Saltzman, LLC

Powers Kirn

Shapiro & Perez

Stern, Lavinthal, Frankenberg & Norgaard, LLC

Udren Law Offices, P.C.

Zucker, Goldberg & Ackerman, LLC

EXHIBIT 1

“REDLINE” PROPOSED CHANGES TO RULES 1:5-6, 4:64-1 AND 4:64-2

A. Rule 1:5-6

1:5-6. Filing

(a) ...no change.

(b) ...no change.

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped “Received but not Filed (date)” if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by *R. 4:5-1* in the form set forth in Appendices XII-B1 or XII-B2 to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by *R. 5:4-2(f)*, the Parents Education Program registration fee required by *N.J.S.A. 2A:34-12.2*, the Confidential Litigant Information Sheet as required by *R. 5:4-2(g)* in the form prescribed in Appendix XXIV, or the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives as required by *R. 5:4-2 (h)* in the form prescribed in Appendix XXVII-A or XXVII-B of these rules;

(D) the signature of an attorney permitted to practice law in this State pursuant to *R. 1:21-1* or the signature of a party appearing pro se, provided, however, that a pro se

appearance is provided for by these rules; or

(E) a certification of title search as required by R. 4:64-1(a)(1) and the certifications of diligent inquiry and of accuracy as required by R. 4:64-1(a)(2) and (3).

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(2) If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within ten days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date. If an answer is presented by a defendant against whom default has been entered other than in a mortgage or tax foreclosure action, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(3) a demand for trial de novo may be rejected and returned if not filed within the time prescribed in R. 4:21A-6 or if it is submitted for filing by a party in default or whose answer has been suppressed.

(4) a paper shall be returned stamped "Received but not Filed (date)" if it does not conform to the requirements of R. 1:4-9 with notice that if the document is retransmitted on conforming paper within 10 days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(d) ...no change.

(e) ...no change.

Note: Source — R.R. 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a) (first and second sentence), 4:5-7 (first sentence), 5:5-1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d)

redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2) adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1),(3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (c)(1) and (c)(3) amended July 28, 2004 to be effective September 1, 2004; subparagraph (c)(1)(E) adopted, paragraphs (c)(2) and (c)(3) amended, and paragraph (c)(4) adopted July 27, 2006 to be effective September 1, 2006; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; subparagraph (c)(1)(C) amended July 16, 2009 to be effective September 1, 2009; subparagraph (c)(1)(E) amended December 20, 2010 to be effective immediately; (additional notes to be included with any changes adopted by the Supreme Court).

B. Rule 4:64-1

4:64-1. [Uncontested Judgment: Foreclosures] Foreclosure Complaint, Uncontested Judgment, Other than In Rem Tax Foreclosures

(a) Title Search; Certifications.

(1) Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which R. 4:64-7 does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.

(2) In actions for the foreclosure of a "residential mortgage" as defined by N.J.S.A. 2A:50-55, ~~all residential foreclosure actions, plaintiff's attorney, its loan servicer, or other authorized representative, shall annex to the complaint a certification stating of diligent inquiry stating~~

(A) ~~that the individual executing the certification the attorney has personally reviewed the initial complaint and confirmed the following based on a review of business records: communicated with an employee or employees of the plaintiff who (a) personally reviewed the documents being submitted and (b) confirmed their accuracy;~~

and

- (i) the mortgagor(s) name;
- (ii) property address;
- (iii) date of mortgage;
- (iv) original principal balance;

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(v) the date of default;

(vi) that the default remains uncured; and

(vii) that a pre-foreclosure notice, if required by the Fair Foreclosure Act, was mailed at least thirty days prior to filing of the complaint; and

(B) the name(s), title(s), and responsibilities in those titles of the plaintiff's

employee(s) with whom the attorney communicated pursuant to paragraph 2(A) of this rule and title of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the certification shall provide a description of the relationship between plaintiff and the employer.

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(3) Plaintiff's attorney shall also annex to the complaint a certification, executed by the attorney, attesting that the complaint and all documents annexed thereto comport with the requirements of Rule 1:4-8(a).

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

(f) ...no change.

(g) ...no change.

(h) ...no change.

(i) ...no change.

Note: Source — R.R. 4:82-1, 4:82-2. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted

July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as subparagraph (a)(1), and new subparagraphs (a)(2) and (a)(3) added December 20, 2010 to be effective immediately; (additional notes to be included with any changes adopted by the Supreme Court).

C. Rule 4:64-2

4:64-2. Proof, Affidavit

(a) ...no change.

(b) ...no change.

(c) ~~...no change.~~ Time; signatory. The affidavit prescribed by this rule shall be

sworn to not more than ~~120~~ 60 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made on personal knowledge by the plaintiff, its loan servicer, or other authorized representative of plaintiff or its transferee, and the individual executing the certification shall confirm

(i) that he or she is authorized to make the affidavit on behalf of plaintiff or its transferee;

(ii) that the affidavit is made based on a personal review of business records maintained in the ordinary course;

(iii) that the financial information contained in the affidavit is accurate; and

(iv) that the default remains uncured.

The affidavit shall also include the name and title of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the certification shall provide a description of the relationship between plaintiff and the employer. of all the facts recited therein, and if the affiant is not the plaintiff, it shall also state that the affiant is authorized to make the affidavit.

~~(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating (1) that~~

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~~the attorney has communicated with an employee or employees of the plaintiff who (A) personally reviewed the documents submitted and (B) confirmed their accuracy; (2) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated pursuant to this rule; and (3) that the documents comport with the requirements of Rule 1:4-8(a).~~ Plaintiff's attorney shall also annex to the motion for entry of judgment, a certification, executed by the attorney, attesting that the motion for entry of judgment and all documents annexed thereto comport with the requirements of *Rule 1:4-8(a)*.

Note: Source — *R.R. 4:82-3*. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; text amended and designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2008 to be effective September 1, 2008; caption amended and new paragraph (d)(1) and (2) added December 20, 2010 to be effective immediately; (additional notes to be included with any changes adopted by the Supreme Court)

EXHIBIT 2

“CLEAN” VERSION OF PROPOSED CHANGES TO RULES 1:5-6, 4:64-1 AND 4:64-2

A. Rule 1:5-6

1:5-6. Filing

(a) ...no change.

(b) ...no change.

(c) Nonconforming Papers. The clerk shall file all papers presented for filing and may notify the person filing if such papers do not conform to these rules, except that

(1) the paper shall be returned stamped “Received but not Filed (date)” if it is presented for filing unaccompanied by any of the following:

(A) the required filing fee; or

(B) a completed Case Information Statement as required by R. 4:5-1 in the form set forth in Appendices XII-B1 or XII-B2 to these rules; or

(C) in Family Part actions, the affidavit of insurance coverage required by R. 5:4-2(f), the Parents Education Program registration fee required by *N.J.S.A. 2A:34-12.2*, the Confidential Litigant Information Sheet as required by R. 5:4-2(g) in the form prescribed in Appendix XXIV, or the Affidavit or Certification of Notification of Complementary Dispute Resolution Alternatives as required by R. 5:4-2 (h) in the form prescribed in Appendix XXVII-A or XXVII-B of these rules;

(D) the signature of an attorney permitted to practice law in this State pursuant to R. 1:21-1 or the signature of a party appearing pro se, provided, however, that a pro se

appearance is provided for by these rules; or

(E) a certification of title search as required by R. 4:64-1(a)(1) and the certifications required by R. 4:64-1(a)(2) and (3).

(2) If a paper is returned under this rule, it shall be accompanied by a notice advising that if the paper is retransmitted together with the required signature, document or fee, as appropriate, within ten days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date. If an answer is presented by a defendant against whom default has been entered other than in a mortgage or tax foreclosure action, the clerk shall return the same stamped "Received but not Filed (date)" with notice that the defendant may move to vacate the default.

(3) a demand for trial de novo may be rejected and returned if not filed within the time prescribed in R. 4:21A-6 or if it is submitted for filing by a party in default or whose answer has been suppressed.

(4) a paper shall be returned stamped "Received but not Filed (date)" if it does not conform to the requirements of R. 1:4-9 with notice that if the document is retransmitted on conforming paper within 10 days after the date of the clerk's notice, filing will be deemed to have been made on the stamped receipt date.

(d) ...no change.

(e) ...no change.

Note: Source — R.R. 1:7-11, 1:12-3(b), 2:10, 3:11-4(d), 4:5-5(a), 4:5-6(a) (first and second sentence), 4:5-7 (first sentence), 5:5-1(a). Paragraphs (b) and (c) amended July 14, 1972 to be effective September 5, 1972; paragraph (c) amended November 27, 1974 to be effective April 1, 1975; paragraph (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (b) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended November 26, 1990 to be effective April 1, 1991; paragraphs (b) and (c) amended, new text substituted for paragraph (d) and former paragraph (d)

redesignated paragraph (e) July 13, 1994 to be effective September 1, 1994; paragraph (b)(1) amended, new paragraph (b)(2) adopted, paragraphs (b)(2), (3), (4), (5) and (6) redesignated paragraphs (b)(3), (4), (5), (6) and (7), and newly designated paragraph (b)(4) amended July 13, 1994 to be effective January 1, 1995; paragraphs (b)(1),(3) and (4) amended June 28, 1996 to be effective September 1, 1996; paragraph (b)(4) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraphs (c)(1) and (c)(3) amended July 28, 2004 to be effective September 1, 2004; subparagraph (c)(1)(E) adopted, paragraphs (c)(2) and (c)(3) amended, and paragraph (c)(4) adopted July 27, 2006 to be effective September 1, 2006; paragraph (b) amended June 15, 2007 to be effective September 1, 2007; subparagraph (c)(1)(C) amended July 16, 2009 to be effective September 1, 2009; subparagraph (c)(1)(E) amended December 20, 2010 to be effective immediately; (additional notes to be included with any changes adopted by the Supreme Court).

B. Rule 4:64-1

4:64-1. Foreclosure Complaint, Uncontested Judgment, Other than In Rem Tax Foreclosures

(a) Title Search; Certifications.

(1) Prior to filing an action to foreclose a mortgage, a condominium lien, or a tax lien to which *R. 4:64-7* does not apply, the plaintiff shall receive and review a title search of the public record for the purpose of identifying any lienholder or other persons and entities with an interest in the property that is subject to foreclosure and shall annex to the complaint a certification of compliance with the title search requirements of this rule.

(2) In actions for the foreclosure of a "residential mortgage" as defined by N.J.S.A. 2A:50-55, plaintiff, its loan servicer, or other authorized representative, shall annex to the complaint a certification stating

(A) that the individual executing the certification has personally reviewed the initial complaint and confirmed the following based on a review of business records:

- (i) the mortgagor(s) name;
- (ii) property address;
- (iii) date of mortgage;
- (iv) original principal balance;
- (v) the date of default;
- (vi) that the default remains uncured; and
- (vii) that a pre-foreclosure notice, if required by the Fair Foreclosure Act, was mailed at least thirty days prior to filing of the complaint; and

(B) the name and title of the individual, and the name of his or her employer.

If the employer is not the named plaintiff in the action, the certification shall provide a description of the relationship between plaintiff and the employer.

(3) Plaintiff's attorney shall also annex to the complaint a certification, executed by the attorney, attesting that the complaint and all documents annexed thereto comport with the requirements of *Rule 1:4-8(a)*.

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

(f) ...no change.

(g) ...no change.

(h) ...no change.

(i) ...no change.

Note: Source — *R.R. 4:82-1, 4:82-2*. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as subparagraph (a)(1), and new subparagraphs (a)(2)

and (a)(3) added December 20, 2010 to be effective immediately; (additional notes to be included with any changes adopted by the Supreme Court).

C. Rule 4:64-2

4:64-2. Proof; Affidavit

(a) ...no change.

(b) ...no change.

(c) Time; signatory. The affidavit prescribed by this rule shall be sworn to not more than 120 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made on personal knowledge by the plaintiff, its loan servicer, or other authorized representative of plaintiff or its transferee, and the individual executing the certification shall confirm

- (i) that he or she is authorized to make the affidavit on behalf of plaintiff or its transferee;
- (ii) that the affidavit is made based on a personal review of business records maintained in the ordinary course;
- (iii) that the financial information contained in the affidavit is accurate; and
- (iv) that the default remains uncured.

The affidavit shall also include the name and title of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the certification shall provide a description of the relationship between plaintiff and the employer.

(d) Affidavit. Plaintiff's attorney shall also annex to the motion for entry of judgment, a certification, executed by the attorney, attesting that the motion for entry of judgment and all documents annexed thereto comport with the requirements of *Rule 1:4-*

8(a).

Note: Source — *R.R. 4:82-3*. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; text amended and designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2008 to be effective September 1, 2008; caption amended and new paragraph (d)(1) and (2) added December 20, 2010 to be effective immediately; (additional notes to be included with any changes adopted by the Supreme Court).

EXHIBIT 3

COMMENTS TO PROPOSED RULE CHANGES

The current Rules as amended on December 20, 2010 require, as a condition of access to the courts, that foreclosure counsel attest to his/her communication with an employee of plaintiff concerning the accuracy of the information in the complaint and in the affidavit of indebtedness submitted in support of the final judgment. This requirement has a potential impact on the attorney-client relationship, and its objectives can be achieved in a way that alleviates that concern. In particular, the requisite confirmations can be provided by the client directly. A client certification would provide a higher quality of evidentiary value and be less prone to error, because the individual signing the certification has access to the books and records upon which the confirmation must necessarily be based. Notwithstanding, we propose that counsel continue to certify that the pleadings and filings are in compliance with R. 1:4-8.

Additionally, we propose an expansion of the language requiring that the review be performed by an "employee of plaintiff" because often times the plaintiff is not servicing the loan and does not maintain the business records upon which the review must be based. Further, we propose that clarity be given to exactly which facts should be confirmed, rather than any submission to the Court being generally deemed "factually accurate," because there are many parts to pleadings and other submissions that are not derived from the business records of plaintiff, its loan servicer, or other authorized representative.

I. Client certification in lieu of attorney certification

As noted above, the attorney certification raises issues concerning the attorney-client relationship, confidentiality, and the lawyer as a witness.

A. Attorney-Client Privilege

Among the basic tenets of the legal system is the right of the client to privileged and confidential consultation with counsel. Pursuant to R.P.C. 1.6(a) a "lawyer shall not reveal information relating to representation of a client..." New Jersey statutes as well as the Rules of Evidence also demonstrate the high protections that our State has placed on the

confidentiality of communications between an attorney and client. See, N.J.S.A. 2A:84A-20; and N.J.R.E. 504. However, the December 20, 2010 Amendments to Rule 4:64-1(a)(2) create a conflict with R.P.C. 1.6(a) and require a client to waive the privilege and have its attorney disclose confidential communications with the client before the plaintiff can avail itself of our judicial system.

We recognize that the certification process was designed to give a heightened accountability for any errors which may occur in a given foreclosure action. However, the only way the certification could be useful is through damage to the attorney-client privilege. It is foreseeable that errors in foreclosure filings will occur notwithstanding the confirmation process established by the Rules. The attorney who signed the certification would be taken to task about his/her execution of the certification and would thereby be placed into a conflict with the client. The attorney would be placed in the untenable position of being required to disclose the content of the communication with the client that gave rise to the certification in order to establish his/her own compliance. In order to protect the attorney-client privilege, the communications with the client would have to be preserved, which would effectively eliminate any value to the confirmation requirement. Therefore, the only way to achieve the Court's goals and also protect the attorney/client privilege is to require the plaintiff to provide the certification, as we have proposed.

B. Lawyer as a witness

As a corollary to attorney confidentiality concerns expressed above is the potential that the certifying attorney could be forced into a witness role if an error is later discovered in a foreclosure. R.P.C. 3.7(a) provides, absent certain exceptions inapplicable to the foreclosure context, that "[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be necessary witness."

If an error was discovered in the foreclosure process, the certification requirement of the amended rule not only places the counsel who signed the certification into a witness role, but one potentially adverse to his or her own client.

In light of these very serious concerns as to the tension between the ethical obligations of foreclosure counsel and the ability to appropriately

represent their clients, and because the Court's goal of accurate filings is more appropriately achieved by certification from someone with direct access to the relevant business records, we believe that the Judiciary's goals would better be accomplished through a client certification.

II. It is literally impossible to comply with the "employee of plaintiff" requirement

In the current version of the Rule, the supplier of the information to support the foreclosure is defined as the "employee of the plaintiff." However, there are a variety of reasons why a given plaintiff might not have any employees, or why an "employee of the plaintiff" may not have access to, and may not be able to personally review, relevant business records and loan information.

The plaintiff may be, and often is, a securitized trust or other entity that is not responsible for the daily servicing of the subject mortgage loan. If the plaintiff is a trust entity, it may not even have any employees. Even if a given plaintiff does have employees, those employees may not have access to, or personal knowledge of, the relevant loan information and other business records, unless the plaintiff is also the servicer. Daily account activity and information, such as acceptance/application of mortgage payments, providing payoff and reinstatement figures, distribution of taxes, etc., are the duties of the mortgage servicer and such "loan-level" information is within the exclusive possession of the servicer.

Rules 4:64-1(a)(2) and 4:64-2(d), as currently drafted, presume that the requisite information must be within the control of plaintiff, and confirmable only by plaintiff, in order for the foreclosure to proceed. However, in no other area of practice does New Jersey jurisprudence require that a plaintiff be the only party able to provide or confirm the evidence needed to establish the elements of a claim. For example, property managers often provide testimony and verify complaints on behalf of the landlords they have a contractual or other agency relationship with. As another example, in a personal injury case stemming from a car accident, plaintiff is permitted to allege that in the complaint that defendant ran a red light – even if plaintiff did not see defendant run the light – if there are other competent witnesses available to testify to that fact.

Therefore, rather than limiting the factual review to an “employee of the plaintiff” as the Rule currently does, we propose the broader language of “plaintiff, its loan servicer, or other authorized representative.” This proposed definition will encompass any number of persons who maintain the relevant business records, and who have the ability to personally review and competently certify to same.

III. The confirmation of specific data points

As presently drafted, the December 20, 2010 Rules require that the “accuracy” of “documents submitted” be “confirm[ed]”. We propose more specific language and confirmation of data points in lieu of this broader and potentially vague requirement.

The phrase “documents submitted” may include documents or information outside the control of plaintiff or its servicer, and information that, as a non-lawyer, the employee is not able to confirm. For example, the Rules as they exist require plaintiff’s counsel to review a title search prior to filing a complaint and based on that title search, to make decisions as to the joinder of defendants. Under the December 20, 2010 Rule as presently drafted, plaintiff’s employee would have to confirm that information concerning the title search and joinder of parties was correct. However, the plaintiff’s employee may have no ability to make that determination.

Moreover, it is both broad and vague to require the employee to generally review unspecified documents and confirm their accuracy. The proposed amended language meets the Court’s overarching concern that foreclosure complaints contain accurate factual information concerning specific material data points, including the debt, the borrower(s), and the right to foreclose, such that foreclosures are not improvidently filed.

IV. Name and title of person/employer, responsibilities in those titles

We have proposed changes to Rule 4:64-1(a)(2)(B) and 4:64-2(d) to clarify the identifying information concerning the person who is personally reviewing the relevant business records and certifying as to the accuracy of specific facts. For those instances where the person providing the information is not an employee of the named plaintiff, but rather a loan servicer or other authorized representative, the proposed new language provides a direct link between the provider of the information and the

plaintiff. Our proposed revision provides transparency and should supply the Court with a comfort level that a sufficient nexus exists between plaintiff and the person providing the information that supports the foreclosure.

Additionally, our proposal eliminates the requirement that “responsibilities” in the affiant’s title be described. Not only is this requirement somewhat vague, but it is not relevant what a person’s “responsibilities” are, so long as that person has personal knowledge of the relevant facts and has personally reviewed and confirmed the appropriate business records.

EXHIBIT 4

COMMENTS REGARDING THE FACTUAL ACCURACY OF EXISTING FILES AND THE SUPREME COURT ORDER OF DECEMBER 20, 2010

Concomitant with the Court seeking public comment to the emergent Rule changes of December 20, 2010 by Supreme Court Order and a Notice to the Bar, both dated January 31, 2011, was the suspension of the Second and Third Paragraphs of the Supreme Court Order issued on December 20, 2010 (the "Order"). These paragraphs provide:

It is FURTHER ORDERED that in all uncontested residential foreclosure cases pending entry of judgment as of December 20, 2010, (1) within 60 (sixty) days, plaintiff's counsel shall file a certification, which shall be served on all defendants, stating (a) that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents submitted to the court thus far and (ii) confirmed their accuracy; and (b) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated; (2) plaintiff's attorney shall also file a certification attesting that the complaint and all documents subsequently filed with the court comport with the requirements of Rule 1:4-8(a). And

It is FURTHER ORDERED that in all uncontested residential foreclosure cases in which judgment has been entered but no sale of the property has occurred as of December 20, 2010, (1) within 45 (forty-five) days, plaintiff's counsel shall file a certification, which shall be served on all defendants, stating (a) that the attorney has communicated with an employee or employees of the plaintiff who (i) personally reviewed the documents submitted to the court thus far and (ii) confirmed their accuracy; and (b) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) with whom the attorney communicated; (2) plaintiff's attorney shall also file a certification attesting that the complaint and all documents

subsequently filed with the court comport with the requirements of Rule 1:4-8(a).

It is respectfully submitted that the goals to be achieved by these requirements can be reached under a more narrowly tailored process. The recommendations set forth herein will make the process more efficient for all involved, particularly the Office of Foreclosure and the Superior Court Clerk's Office. Moreover, for the reasons outlined in Exhibit 3, Comments to our proposed Rule changes, we believe a more appropriate mechanism for confirming the factual accuracy of existing files is a client certification, rather than an attorney certification of diligent inquiry.

For the sake of convenience, we will refer herein to any certification required of plaintiff's counsel pursuant to the Order as an "Attorney Certification of Diligent Inquiry" and any certification required of the plaintiff, its loan servicer, or other authorized representative pursuant to our proposed Rule revisions as a "Client Certification."

A. The Second Paragraph of the Order

The Second Paragraph of the Order deals with currently active foreclosures in which final judgment has not yet been entered. The Order treats all such pending actions the same, and requires that an Attorney Certification of Diligent Inquiry be filed within 60 days of December 20, 2010, which was February 18, 2011. As noted, this requirement was suspended by the Court on January 31, 2011 pending the public comment period concerning the emergent Rule changes.

We respectfully suggest that rather than requiring these "interim" Attorney Certifications of Diligent Inquiry – which will tax judicial resources in the processing of approximately 100,000 documents to be filed at or around the same time, both overburdening the staff of the Clerk's Office, the Office of Foreclosure and the JEFIS system – the paramount goal of ensuring that no final judgments are improvidently entered can be achieved in a much less onerous fashion.

We propose splitting active pre-judgment cases into two categories: 1) no judgment application as of yet; and 2) judgment application pending.

For those matters where no judgment application has been submitted as of yet, no additional filings should be immediately required. Rather, at the time plaintiff applies for final judgment, plaintiff will follow the new Rule 4:64-2. In addition to the information to be certified to by the plaintiff, its loan servicer, or other authorized representative as required under our proposed Rule 4:64-2, the Client Certification shall also confirm the factual accuracy of the specific data points set forth in our proposed revision to Rule 4:64-1(a)(2)(A)(i) through (vii).

By proceeding in this fashion, the Court can be assured that no final judgments will be entered for presently existing pre-judgment cases until the salient facts in both the complaint and affidavit of indebtedness have been confirmed by the plaintiff, its loan servicer, or other authorized representative, after personal review of the applicable business records.

For those matters where judgment has not been entered yet, but an application for final judgment is pending in the Office of Foreclosure, plaintiff shall be permitted to proceed with one of two options: 1) file a replacement affidavit of indebtedness in compliance with the safeguards we recommend for Rule 4:64-2, which includes a Client Certification, in which the confirmation of facts in the complaint described in the preceding paragraph herein shall also be included; or 2) file a Client Certification confirming the accuracy of the specific data points in the complaint and affidavit of indebtedness described in Rule 4:64-1(a)(2)(A) and Rule 4:64-2(c). If the affidavit of indebtedness contains an error in the borrower's favor and the plaintiff wishes to waive its right to recovery of those certain sums, the Client Certification should identify the error and plaintiff's waiver, and plaintiff should be permitted to proceed without the need for a replacement affidavit.

Under this proposed procedure, the Court can be assured that no final judgments will be entered for presently existing pre-judgment cases until the salient facts in both the complaint and affidavit of indebtedness have been certified to by the plaintiff, its loan servicer, or other authorized representative, after personal review of the applicable business records.

B. The Third Paragraph of the Order

The Third Paragraph of the Order deals with currently active foreclosures in which final judgment has been entered but no sheriff's sale

has occurred. The Order requires that an Attorney Certification of Diligent Inquiry be filed within 45 days of December 20, 2010, which was February 3, 2011. As noted, this requirement was suspended by the Court on January 31, 2011 pending the public comment period concerning the emergent Rule changes.

Rather than requiring that any document be filed by a date certain, we submit that a more efficient process would be to simply require that a Client Certification be filed before the sheriff's sale can take place. The facts to be confirmed should be limited to the specific data points in the complaint and affidavit of indebtedness described in the proposed amendments to Rule 4:64-1(a)(2)(A) and Rule 4:64-2(c). If the affidavit of indebtedness contains an error in the borrower's favor and the plaintiff wishes to waive its right to recovery of those certain sums, the Client Certification should identify the error and plaintiff's waiver, and plaintiff should be permitted to proceed to sheriff's sale without the need for any further filings.

As an alternative to the Client Certification, plaintiff can request the entry of an amended final judgment supported by an affidavit of indebtedness pursuant to amended Rule 4:64-2, which includes a Client Certification, which should also include confirmation of the facts in the complaint set forth in newly amended Rule 4:64-1(a)(2)(A).

Under this proposed procedure, the Court can be assured that no sheriff's sales will take place in post-judgment/pre-sale matters until the salient facts in both the complaint and affidavit of indebtedness have been confirmed and certified to by the plaintiff, its loan servicer, or other authorized representative, after personal review of the applicable business records.

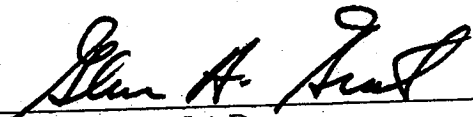
NOTICE TO THE BAR

RESIDENTIAL MORTGAGE FORECLOSURE RULES – AMENDMENTS TO RULES 4:64-1 AND 4:64-2; REVISED FORM CERTIFICATIONS/AFFIDAVITS

A January 31, 2011 Notice to the Bar sought comments on the December 20, 2010 emergent amendments to the residential mortgage foreclosure rules. After reviewing the comments received, the Supreme Court has adopted further amendments to Rules 4:64-1 and 4:64-2. Published with this notice (as Attachment A) are the Court's June 9, 2011 Order and those amendments, which are effective immediately. The Court's Order also contains instructions for counsel in all pending residential mortgage foreclosure actions.

A January 7, 2011 Notice to the Bar promulgated the model form certifications of diligent inquiry required to be annexed to residential mortgage foreclosure complaints and to notices of motion for judgment and to be filed in pending mortgage foreclosure actions pursuant to the Court's December 20, 2010 Order. Accompanying this Notice are model forms that supersede those previously promulgated forms effective immediately. The new model forms promulgated by this Notice are as follows: (1) Certification of Diligent Inquiry to be Annexed to Residential Mortgage Foreclosure Complaints Pursuant to Rules 1:5-6(c)(1)(E) and 4:64-1(a)(2) and (a)(3) (Attachment B); (2) Affidavit of Diligent Inquiry to be Annexed to Notices of Motion for Judgment in Residential Mortgage Foreclosure Actions Pursuant to Rule 4:64-2 and That Must be Submitted in Actions Pending Judgment or Sale as of June 9, 2011 (Attachment C); and (3) Affidavit of Amount Due to be Annexed to Notices of Motion for Judgment in Residential Mortgage Foreclosure Actions Pursuant to Rule 4:64-2 and That Must be Submitted in Foreclosure Actions Pending as of June 9, 2011 (Attachment D).

Questions concerning these rule amendments and the revised certification and affidavit forms may be directed to Kevin M. Wolfe, Assistant Director for Civil Practice Division, at (609) 292-8470 or Kevin.Wolfe@judiciary.state.nj.us.


Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: June 9, 2011

Attachment A

SUPREME COURT OF NEW JERSEY

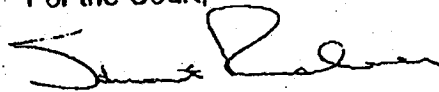
It is ORDERED that the attached amendments to Rules 4:64-1 and 4:64-2 of the Rules Governing the Courts of the State of New Jersey are adopted to be effective immediately.

It is FURTHER ORDERED with regard to residential mortgage foreclosure actions pending as of the date of this Order, that before entry of judgment, plaintiff's counsel shall be required to file an affidavit, which shall be served on the parties identified in *Rule 4:64-1(d)(1)(A)* as those required to be served with the notice of motion for judgment (a) stating that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer (1) who personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage, and recorded assignments, if any, submitted to the court, and (2) who confirmed the accuracy of those documents; (b) setting out the date and mode of communication employed; (c) setting out the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated; and (d) attesting that the complaint and all subsequent documents filed with the court comport with the requirements of Rule 1:4-8(a).

It is FURTHER ORDERED that in all residential mortgage foreclosure actions in which judgment has been entered but no sale of the property has

occurred as of the June 9, 2011 date of this Order, plaintiff's counsel before the sale of the property shall be required to file an affidavit, which shall be served on the parties identified in *Rule 4:64-1(d)(1)(A)* as those required to be served with the notice of motion for judgment (a) stating that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer (1) who personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage, and recorded assignments, if any, submitted to the court, and (2) confirmed their accuracy; (b) setting out the date and mode of communication employed; (c) setting out the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated; and (d) attesting that the complaint and all subsequent documents filed with the court comport with the requirements of *Rule 1:4-8(a)*.

For the Court,



Chief Justice

Dated: June 9, 2011

4:64-1. Foreclosure Complaint, Uncontested Judgment Other Than In Rem Tax Foreclosures

(a) Title Search; Certifications.

(1) ...no change.

(2) In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry [stating]:

(A) confirming that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer (i) who [(i) personally reviewed the documents being submitted and (ii) confirmed their accuracy; and] personally reviewed the complaint and confirmed the accuracy of its content, as mandated by paragraphs (b)(1) through (b)(10) and (b)(12) through (b)(13) of this Rule, based on business records kept in the regular course of business by the plaintiff or the plaintiff's mortgage loan servicer, and (ii) who, if employed by the plaintiff's mortgage loan servicer, (a) identified the relationship between the mortgage loan servicer and the plaintiff, and (b) confirmed the authority of the mortgage loan servicer to act on behalf of the plaintiff; and

(B) stating the date and mode of communication employed and the name(s), title(s) and responsibilities in those titles of the plaintiff's or plaintiff's mortgage loan servicer's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

(3) ...no change.

(b) ...no change.

(c) ...no change.

(d) ...no change.

(e) ...no change.

(f) ...no change.

(g) ...no change.

(h) ...no change.

(i) ...no change.

Note: Source — *R.R. 4:82-1, 4:82-2*. Paragraph (b) amended July 14, 1972 to be effective September 5, 1972; paragraphs (a) and (b) amended November 27, 1974 to be effective April 1, 1975; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (c) adopted November 1, 1985 to be effective January 2, 1986; caption amended, paragraphs (a) and (b) caption and text amended, former paragraph (c) redesignated paragraph (e), and paragraphs (c), (d) and (f) adopted November 7, 1988 to be effective January 2, 1989; paragraphs (b) and (c) amended and paragraph (g) adopted July 14, 1992 to be effective September 1, 1992; paragraphs (e) and (f) amended July 13, 1994 to be effective September 1, 1994; paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraph (f) caption and text amended July 12, 2002 to be effective September 3, 2002; new paragraphs (a) and (b) adopted, and former paragraphs (a), (b), (c), (d), (e), (f), and (g) redesignated as paragraphs (c), (d), (e), (f), (g), (h), and (i) July 27, 2006 to be effective September 1, 2006; paragraph (b) caption and text amended September 11, 2006 to be effective immediately; paragraphs (d) and (f) amended October 10, 2006 to be effective immediately; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; text of paragraph (d) deleted, new subparagraphs (d)(1) and (d)(2) captions and text adopted, and paragraph (f) amended July 23, 2010 to be effective September 1, 2010; caption amended, paragraph (a) caption amended, text of former paragraph (a) renumbered as paragraph (a)(1), and new subparagraphs (a)(2) and (a)(3) added December 20, 2010 to be effective immediately; subparagraphs (a)(2)(A) and (B) amended June 9, 2011 to be effective immediately.

4:64-2. Proof, Affidavit

(a) ...no change.

(b) ...no change.

(c) Time; signatory. The affidavit prescribed by this rule shall be sworn to not more than 60 days prior to its presentation to the court or the Office of Foreclosure.

The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, [on personal knowledge of all the facts recited therein, and if the affiant is not the plaintiff, it shall also state that the affiant is authorized to make the affidavit] on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records kept in the regular course of business. In the affidavit the affiant shall confirm:

(1) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;

(2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;

(3) that the financial information contained in the affidavit is accurate; and

(4) that the default remains uncured.

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer who (A) personally reviewed the [documents] affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and [(3)] (4) that the aforesaid documents comport with the requirements of R.1:4-8(a).

Note: Source — R.R. 4:82-3. Caption amended and paragraph (b) deleted July 7, 1971 to be effective September 13, 1971; amended November 27, 1974 to be effective April 1, 1975; amended November 7, 1988 to be effective January 2, 1989; amended July 13, 1994 to be effective September 1, 1994; text amended and designated as paragraph (a), paragraph (a) caption adopted, new paragraphs (b) and (c) adopted July 9, 2008 to be effective September 1, 2008; caption amended and new paragraph (d) added December 20, 2010 to be effective immediately; paragraphs (c) and (d) amended June 9, 2011 to be effective immediately.

ATTACHMENT B

CERTIFICATION OF DILIGENT INQUIRY TO BE ANNEXED TO
RESIDENTIAL MORTGAGE FORECLOSURE COMPLAINTS PURSUANT
TO RULE 1:5-6(c)(1)(E) AND RULE 4:64-1(a) (2) and (a) (3)

_____, Esq., of full age, hereby certifies and says:

1. On *[insert date]*, I communicated by *[insert mode of communication]* with the following named employee(s) of *[insert the plaintiff's name or insert the plaintiff's mortgage loan servicer's name]*, who stated that he/she personally reviewed the complaint to be filed with the court and that he/she confirmed compliance with Rule 4:64-1(b)(1) through (b)(10) and (b)(12) through (b)(13).

2. The name, title and responsibilities of the plaintiff's employee(s) or plaintiff's mortgage loan servicer's employee(s) with whom I communicated are: *[insert the employee's name]* *[insert the employee's title]* *[insert the employee's responsibilities]*.

3. *[If an employee of the plaintiff's mortgage loan servicer]* The above-named employee(s) stated that the relationship between his/her employer and the plaintiff is: *[insert description of the relationship]*, and confirmed that his/her employer is authorized to act on behalf of the plaintiff in this action.

3/4. Based on my communication with the above-named employee(s) of plaintiff or plaintiff's mortgage loan servicer, as well as my own inspection of the loan information supplied by the plaintiff or the plaintiff's mortgage loan servicer and other diligent inquiry, I execute this certification to comply with the requirements of Rules 1:4-8(a), 1:5-6(c)(1)(E), and 4:64-1(a)(2) and (a)(3).

4/5. I am aware that I have a continuing obligation under Rule 1:4-8 to amend this certification if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support for any factual assertions proffered by plaintiff in any court filings or documents in this case.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

[Insert Name of Law Firm]

By: _____
Attorney sign above and type/ print name below

ATTACHMENT C

AFFIDAVIT OF DILIGENT INQUIRY TO BE ANNEXED TO NOTICES OF MOTION
FOR JUDGMENT IN RESIDENTIAL MORTGAGE FORECLOSURE ACTIONS
PURSUANT TO RULE 4:64-2 AND THAT MUST BE SUBMITTED IN ACTIONS
PENDING JUDGMENT OR SALE AS OF JUNE 9, 2011

Name of Law Firm
Law Firm Address
Telephone Number
Attorney for Plaintiff

Superior Court of New Jersey
Chancery Division _____ County
General Equity

[Insert Plaintiff's Name],

Plaintiff,

v.

[Insert First Defendant's Name], et al,

Defendant.

Docket No: F

CIVIL ACTION
RULE 4:64-2(d) AFFIDAVIT OF DILIGENT
INQUIRY AND ACCURACY OF
FORECLOSURE DOCUMENTS AND
FACTUAL ASSERTIONS

_____, Esq., of full age, being duly sworn according to
law, depose and say:

1. I am an attorney at law duly licensed to practice in the state of New Jersey and am affiliated with the law firm of [insert law firm name], attorneys of record for the plaintiff in the above-captioned residential mortgage foreclosure action. I am responsible for this mortgage foreclosure action and am fully familiar with the pleadings and documents filed in this action and the facts set forth in this affidavit.

2. On [insert date(s)], I communicated by [insert mode of communication] with the following named employee(s) of [insert the name of the plaintiff or the name of the plaintiff's mortgage loan servicer], who informed me that he/she personally reviewed

the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, about to be submitted to the court; and that he/she confirmed the accuracy of those documents:

Name of the employee(s):

Title of the employee(s):

Responsibilities of the employee(s):

3. Based on my communication with the above-named employee(s) of the plaintiff or the plaintiff's mortgage loan servicer, as well as my own inspection of the documents about to be filed with the court and other diligent inquiry, I execute this affidavit to comply with the requirements of Rule 4:64-2(d) and Rule 1:4-8(a).

4. I am aware that I have a continuing obligation under Rule 1:4-8 to amend this affidavit if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support for any factual assertion proffered by the plaintiff in any court filings and documents in this case.

[Insert Name of Law Firm]

By: _____
Attorney sign above and type/print name below

Sworn to and Subscribed before me, this
_____ day of _____, 20____

[NOTARY SEAL]

Notary Public of the State of _____
My Commission Expires: _____

ATTACHMENT D

AFFIDAVIT OF AMOUNT DUE TO BE ANNEXED TO NOTICES OF MOTION FOR JUDGMENT IN RESIDENTIAL MORTGAGE FORECLOSURE ACTIONS PURSUANT TO RULE 4:64-2 AND THAT MUST BE SUBMITTED IN FORECLOSURE ACTIONS PENDING AS OF JUNE 9, 2011

Name of Law Firm
Law Firm Address
Telephone Number
Attorney for Plaintiff

Superior Court of New Jersey
Chancery Division _____ County
General Equity

[Insert Plaintiff's Name],

Plaintiff,

v.

[Insert First Defendant's Name], et al,

Defendant.

Docket No: F

CIVIL ACTION
PROOF OF AMOUNT DUE
AFFIDAVIT AND SCHEDULE

_____, of full age, being duly sworn according to law, depose and say:

1. [If by an employee of the plaintiff] I, [insert the affiant's name], am employed by the plaintiff at its [insert the city/state location where the affiant works] office as a [insert the affiant's title/position]. My responsibilities in this position are [insert affiant's responsibilities]. I am authorized to make this affidavit on the behalf of the plaintiff.

1. [If by an employee of plaintiff's mortgage loan servicer] I, [insert the affiant's name], am employed by [insert the plaintiff's mortgage loan servicer's name] at its [insert the city/state location where affiant works] office as a [insert the affiant's title/position]. My responsibilities in this position are: [insert affiant's responsibilities]. Said mortgage loan servicer is authorized to service and handle mortgage transactions on behalf of the plaintiff involving the borrowers named in the plaintiff's complaint. The plaintiff has not revoked said mortgage loan servicer's authority and, as such, I have the authority to make, on behalf of the plaintiff, the amount due computation presented in the attached schedule of amount due.

2. I have thoroughly reviewed [insert the plaintiff's or plaintiff's mortgage loan servicer's] books and business records concerning the note and mortgage loan described in the plaintiff's complaint.

3. Said books and business records indicate that the default of the defendants-borrower(s), _____, remains uncured and there is due to the plaintiff in this action the sum of \$ _____, as set forth in the Proof of Amount Schedule annexed hereto. I have reviewed all entries and calculations, and they are correct. *Per diem* interest, as set forth in the annexed schedule, will accrue on the principal from _____, 20__.

4. The property described in the complaint in this action cannot be divided and should be sold as a single tract.

5. There are no just debts, set-offs, credits or allowances due or to become due from the plaintiff to the defendant-borrower(s), other than those set forth herein.

6. The plaintiff is the owner/ holder of the aforesaid note and mortgage.

7. I understand that the court will rely upon this affidavit in support of the plaintiff's application for a foreclosure judgment in the within action.

Sign Above and Type or Print Name Below

Sworn to and Subscribed before me, this
____ day of _____, 20__

[NOTARY SEAL]

Notary Public of the State of _____
My Commission Expires: _____

[Attach Court Rule Appendix XII-J Proof of Amount Schedule]



EDWARD J. DAUBER

March 18, 2011

VIA E-MAIL AND REGULAR MAIL

Hon. Mary C. Jacobson, P.J. Ch.
Mercer County Civil Courthouse
210 South Broad Street, 5th Floor
P.O. Box 8068
Trenton, New Jersey 08650

**Re: In the Matter of Residential Mortgage Foreclosure
Pleading and Document Irregularities
Docket No.: F-059553-10**

Dear Judge Jacobson:

Pursuant to Your Honor's Order to Show Cause, entered in the above-referenced matter on December 20, 2010, this office was appointed "to respond to the submissions made to the court by the Foreclosure Plaintiffs and to appear before the court on the return date" of the Order to Show Cause "to present argument supporting the appointment of a Special Master and the suspension of foreclosure processing for complaints filed by the Foreclosure Plaintiffs." Please accept this letter, brief and the enclosed Recommended Stipulation in lieu of our response to the Respondents'¹ written oppositions to the Order to Show Cause, since we have been able to reach agreement with Respondents on a proposed stipulation to resolve this matter.

¹ While Your Honor's December 20, 2010 Order to Show Cause refers to the six entities to which it is directed as the "Foreclosure Plaintiffs," we shall refer to them in the instant submission as the "Respondents," since the entities are Respondents to the Order to Show Cause

BACKGROUND AND PROCEDURAL HISTORY

The December 20th Order to Show Cause

On December 20, 2010, this Court entered an Order to Show Cause directed at: Bank of America, d/b/a BAC Home Loan Servicing, LP; Citibank, N.A. and Citi Residential Lending, Inc.; GMAC Mortgage, LLC; JPMorgan Chase Bank, N.A. and Chase Home Finance LLC, OneWest Bank, FSB; and Wells Fargo Bank, N.A. (collectively, "Respondents").

The Order to Show Cause was a response to growing concern that documents submitted by foreclosure plaintiffs, and relied upon by the Judiciary, in uncontested foreclosure proceedings did not comply with New Jersey law requiring affiants to possess personal knowledge of the facts to which they attest. This practice has been generally labeled "robo-signing."²

As described by the Honorable Glenn A. Grant, J.A.D., Administrative Director of the Courts, "[r]obo-signers' are mortgage lender/services employees who sign hundreds – in some cases thousands – of affidavits submitted in support of foreclosure claims without any personal knowledge of the information contained in the affidavits. 'Robo-signing' may also refer to improper notarizing practices or document backdating." Admin Order 01-2010 at 3 n 1

² Contemporaneously, the Supreme Court adopted emergency amendments to Rules 4:64-1 and 4:64-2 concerning filings in uncontested residential mortgage foreclosure actions, designed to address the "robo-signing" problem. The emergency amendments to Rules 4:64-1 and 4:64-2 require additional certifications and affidavits of diligent inquiry by the attorney handling the uncontested residential mortgage foreclosure action to ensure that filings to the Superior Court at both the complaint and final judgment stage are accurate ("the Rule Amendments"). The Court later opened a public comment period concerning these emergency Rule Amendments, which closed on February 28, 2011. As of the date of this letter, no further revision to Rules 4:64-1 or 4:64-2 has issued as a result of the public comment period.

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On November 4, 2010, Legal Services of New Jersey submitted a Report and Recommendations to the New Jersey Supreme Court Concerning False Statements and Swearing in Foreclosure Procedures ("LSNJ Report").³ The LSNJ Report documented a variety of execution and notarization irregularities in the foreclosure process nationwide, providing a wealth of materials documenting that these irregularities had occurred. Among the irregularities described by the LSNJ Report, and identified as part of the "robo-signing" problem, were:

Lack of personal knowledge of an affiant whose certification states that s/he has personal knowledge;

Failure to review documents or other evidence on which the certification is based and which it may generally reference;

False identification of signatory (e.g., an employee of a servicer will be identified as a vice president, or similar title, of the foreclosing mortgagee);

Forged signatures; [and]

Execution outside the presence of a notary, who nevertheless notarizes the signature

LSNJ Report at 2.

The Six Respondents were selected specifically for the Order to Show Cause for two reasons. First, the Six Respondents account for a large majority of the foreclosure actions in the New Jersey courts. Any Judiciary-wide correction of the "robo-signing" issue in the State of New Jersey must logically begin with these Six Respondents. Second, the Six Respondents were selected for inclusion in the Order to Show Cause because there has been deposition testimony and/or other materials forming a public record in various jurisdictions across the United States indicating that each of the Six Respondents have encountered "robo-signing" problems concerning their foreclosures in the past. See Order to Show Cause at 2-3. Using this public record as a starting

³ <http://www.lsnj.org/keyRecentDevelopments/Foreclosure/materials/LSNJReport.pdf>

point, the Judiciary entered the Order to Show Cause directed at the specific Six Respondents as a means of beginning the process of reestablishing integrity and confidence in the submissions made in all uncontested residential mortgage foreclosure actions

As noted above, the Order to Show Cause appointed this office to respond to Respondents' opposition, if any, to the Order to Show Cause and to argue in support of the proposed relief and procedures contained in the Order to Show Cause in any subsequent proceedings.

The Six Respondents' January 5th Submissions

Each of the Six Respondents submitted papers in opposition to the Order to Show Cause on January 5, 2011. In their opposition papers, the Respondents made various procedural arguments against the Order to Show Cause itself, as well as against the proposed substantive relief outlined in the Order to Show Cause. Specifically, five of the Six Respondents argued that this Court could not appoint a Special Master for one of several posited reasons. First, several Respondents argued that the appointment of a Special Master to review Respondents' mortgage foreclosure practices exceeded this Court's jurisdiction and was preempted by federal banking laws. Further, Respondents argued that the federal Office of the Comptroller of the Currency ("OCC") has exclusive oversight authority over federally chartered financial institutions as their primary regulator. Respondents also argued that appointment of a Special Master exceeded the Court's authority under the New Jersey Court Rules and case law concerning such appointments

Additionally, all Six Respondents argued in their January 5th submissions that the appointment of a Special Master, the suspension of Respondents' foreclosure proceedings, and the levying of sanctions against Respondents would all be Constitutionally problematic. Specifically,

Respondents argued that the appointment of a Special Master would violate the Supremacy Clause of the U.S. Constitution. Respondents argued that the suspension of foreclosure proceedings would constitute unconstitutional takings and interference with the right of contract. Finally, Respondents argued that the fact that the Order to Show Cause singles out these specific banks and mortgage loan servicers is a violation of the Six Respondents' due process and equal protection rights.

Finally, and significantly, all Six Respondents provided affidavits and certifications attesting that Respondents have undertaken substantial efforts to correct document execution and notarization irregularities and describing those efforts. In short, while Respondents acknowledged that there had been document irregularities in the past, Respondents stated that such problems were corrected and safeguards are now in place to ensure that such irregularities and "robo-signing" would not occur again.

Other Efforts Nationwide to Address the "Robo-Signing" Issue

As noted above, in preparing its report, LSNJ described reports of document signing irregularities nationwide. Because the "robo-signing" issue and the mortgage crisis generally are national issues, they are being addressed on many fronts. Numerous executive agencies across the country, including all fifty state Attorneys General, numerous United States Attorney's Offices, as well as the investigative branches of various federal regulatory agencies, are investigating all aspects of the nation's current mortgage crisis.

Specifically, in Fall 2010, the Attorneys General of all fifty states announced a joint investigation, led by Iowa Attorney General Tom Miller, into home foreclosures and the practices of mortgage lenders and mortgage loan servicers. Similarly, since Fall 2010 and the revelation of

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the "robo-signing" problem, a task force of federal bank regulators led by the Office of the Comptroller of the Currency has been reviewing the foreclosure practices and internal controls of the fourteen largest mortgage servicers, including all six of the Respondents in this matter. Similarly, the Consumer Financial Protection Bureau, newly created by the July 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act, is also currently undertaking a comprehensive investigation concerning all aspects of the mortgage process, both lending and foreclosure. These investigations are wide-ranging in scope and could result in a variety of remedies, both remedial and punitive.

Likewise, legislative bodies around the nation, both state and federal, are considering various issues and concerns relating to the mortgage industry and foreclosure process generally. On February 25, 2011, the House Committee on Oversight and Government Reform requested various information from eleven mortgage servicers and foreclosure specialists, five of which are among the Six Respondents in this matter, including information concerning a special review of servicer abuse claims and the actions of law firms that specialize in foreclosures. Similarly, the U S Senate Committee on Banking, Housing, and Urban Affairs has been holding hearings investigating problems in the mortgage servicing industry since November 2010.

Thus, it was with an awareness of these other efforts to address the "robo-signing" issues that this office commenced discussions with the Respondents to determine whether the primary concern of the Judiciary - ensuring the integrity and transparency of its processes and the submissions to it - could be met without the necessity of protracted litigation of the legal and factual issues raised by Respondents in opposition to the Order to Show Cause. Put another way, the issue addressed in this

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office's negotiations was what could be done to provide comfort that once uncontested residential mortgage foreclosure proceedings recommenced, the certifications and affidavits that are being submitted are going to be executed and notarized by affiants with personal knowledge of the facts they contain

Settlement Negotiations with Court Appointed Counsel

Acting as court appointed counsel in this matter, this office began by meeting with each of the Six Respondents individually to discuss each Respondent's individual situation vis-a-vis the Order to Show Cause. This office also held several settlement meetings and negotiation sessions with counsel for all Six Respondents collectively through January and early February 2011

During this same time period, this office also met with personnel at the Office of Foreclosure, the Administrative Office of the Courts, and the Superior Court Clerk's Office to gain an understanding of the procedural and logistical mechanics of New Jersey's foreclosure process

Throughout this settlement process, this office's position with the Six Respondents was to find a way to ensure the accuracy and transparency of the foreclosure process that had been called into question by the revelation of the "robo-signing" practices, both with respect to Respondents' pending uncontested residential mortgage foreclosure filings and new residential mortgage foreclosures to be filed in 2011 and beyond

While the Order to Show Cause did not order an immediate suspension of foreclosure processing for the Respondents, *de facto* there has been such a suspension, either because Respondents or some of them had earlier ceased processing foreclosures in New Jersey on their own while attempting to address the "robo-signing" issue or because the effect of the Rule Amendments.

as worded in the December 20th emergency revisions, was to make it impractical or unfeasible for Respondents to pursue foreclosures. The result of this *de facto* suspension has been that tens of thousands of properties as to which there are uncontested foreclosure proceedings in New Jersey are in limbo. All concerned recognized that an efficient, fully functional, accurate, transparent, and normalized foreclosure process is in the interests of the Judiciary, New Jersey citizens and communities, the residential housing market, and the broader economy.

These considerations undergirded the settlement discussions as this office and Respondents sought to find a practical process that would both satisfy the Judiciary's concerns regarding document execution practices while at the same time permit the residential mortgage foreclosure process to function efficiently in the State of New Jersey. The result of these negotiations is the attached Recommended Stipulation, agreed to by all parties. The centerpiece of the Recommended Stipulation is the now agreed to appointment of a Special Master, who will have to be satisfied that an adequate *prima facie* showing has been made that Respondents have in place a process that will ensure that information set forth in affidavits submitted to the Judiciary is based on both the personal knowledge of the signatory and on the accurate business records of the appropriate entity before Respondents are allowed to resume processing of their pending portfolios which they are servicing. The Special Master will also have the further power, for a period of twelve months, to verify that the Respondents continue to adhere to the processes they described in order to satisfy the *prima facie* showing.

I. THE RECOMMENDED STIPULATION

The crux of the Recommended Stipulation is the appointment of a Special Master. Respondents consent to the appointment of a Special Master to perform the services described in the Recommended Stipulation. See Rec. Stip. ¶ 2. In addition, Respondents have agreed to bear the costs of the Special Master as well as the costs of court appointed counsel, who will continue as Special Counsel to the Special Master. See Rec. Stip ¶ 14.

A. The Appointment of the Special Master

Rule 4:41 permits a judge of the Superior Court, with the approval of the Assignment Judge, to refer the hearing of a matter or portion of a matter to a Special Master. The State Supreme Court has noted the utility of a *Rule 4:41* reference, stating that “[t]he use of such Special Masters, sometimes called ‘hybrid’ masters, is not uncommon in litigation resulting in some form of institutional change.” So. *Burlington Cty N.A.A.C.P. v Mount Laurel Twp*, 92 N.J. 158, 281-82 (1983) (setting forth process for appointing Special Master to assist municipal officials in developing constitutional land use and zoning regulations)

“These impartial experts use their skills to help the parties formulate a remedy that will comply with the trial court’s order and supply information that the parties may not have available to them.” *Id.* at 282. “They differ from traditional masters, whose roles are usually limited to serving as fact-finders and supervising procedural tasks in that Special Masters work with the parties to devise a remedy that will meet with the court’s approval.” *Id.*; see also *Abbott v. Burke*, 199 N.J. 140 (2008) (Special Master appointed to develop an evidential record concerning the constitutionality of provisions of the New Jersey School Funding Reform Act of 2008); *State v.*

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Chun, 194 N.J. 54 (2008) (Special Master appointed to conduct a plenary hearing on the reliability of Alcotest breath test instruments).

This office understands that the person being considered to be appointed as Special Master in this matter is the Honorable Richard J. Williams, retired Superior Court Judge and former Administrative Director of the Courts. Judge Williams has served the State of New Jersey for nearly forty years. Beginning in 1972, Judge Williams served in the Atlantic County Prosecutor's Office until 1981, when Judge Williams was appointed to the Superior Court. From 1983 until 1985, Judge Williams served as Presiding Judge of the Family Division in the Atlantic and Cape May Vicinage and from 1985 until 1999, Judge Williams served as Assignment Judge in that same vicinage. On August 1999, Judge Williams was assigned to the Appellate Division and appointed the Acting Administrative Director of the Courts, which position he held until September 2004.

As Administrative Director of the Courts, Judge Williams obtained extensive experience in the workings and mechanics of the New Jersey State Judiciary, including the Office of Foreclosure. Thus, Judge Williams has a keen understanding of the practical difficulties facing the New Jersey court system in the face of an increasing volume of uncontested residential mortgage foreclosure cases. These difficulties are significantly compounded when, as caused by the "robo-signing" crisis, the Judiciary can no longer rely on the integrity of the documents submitted to it. Judge Williams's decades of experience on the bench and as a judicial administrator make him eminently suited for tasks charged to the Special Master in this case. This office strongly recommends Judge Williams's appointment as Special Master.

B. The Special Master's Recommended Role and Scope of Inquiry

The Recommended Stipulation envisions a two-step inquiry by the Special Master which will consist of: (1) a preliminary prima facie showing by the Respondents concerning their respective document execution processes; and (2) a subsequent performance review by the Special Master to ensure that those processes are in fact being employed (collectively, "the Special Master Process")

Importantly, the Special Master Process will concern the respective Respondents' participation in the residential mortgage foreclosure process in their capacity as servicer. This office and the Judiciary recognize that in most cases, it is the servicer that either has the information or has direct access to the information that is required to be provided under the Rules of Court governing residential mortgage foreclosures. Servicers manage, maintain, and handle the accounting for the mortgages that they service and, as such, in the case of default or non-payment on the part of a mortgagor, it is the servicer, and not necessarily the mortgagee or named plaintiff in the resulting mortgage foreclosure action, that either has the information or has direct access to the information concerning the default or non-payment.

The Six Respondents, acting as servicers, account for a majority of the residential mortgage foreclosure matters pending in the Courts of the State of New Jersey, both contested and uncontested. Thus, the Respondents' participation in the Special Master Process as servicers will both: (1) ensure that the entity with the most knowledge is reviewed by the Special Master; and (2) actively address a large majority of the foreclosures in the State Judiciary.

We provide the following description of the two-step Special Master Process, which this office recommends as the means by which the Judiciary can most effectively address the issues

raised in the December 20th Order to Show Cause.

1. A Prima Facie Showing

The Special Master Process envisions two steps, the first of which requires each Respondent to make a Prima Facie Showing in answer to the following two questions:

A. Does the servicer have processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certification submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of records made in the regular course of business and it was the regular practice of that business to make it?,

and

B. Is the Respondent prepared to follow these processes and procedures upon the resumption of residential mortgage foreclosure activities in New Jersey?

Rec Stip. ¶ 4

In summary, what the Prima Facie Showing is designed to do is have the Respondent present evidence and information which on its face satisfies the Special Master that the Respondent's processes are designed to prevent any current or future "robo-signing" or other activity that does not ensure the reliability of its sworn submissions to the Judiciary. The sort of information the Special Master will look for during the Prima Facie Showing stage will include information concerning Respondents' authority to act for the mortgagee, an accurate and up-to-date record keeping system; case processing steps that include personal review of documents and records; training programs of Respondents' employees; quality assurance procedures; and processes for effective communication between Respondent and the attorneys handling the foreclosure action. See Rec. Stip ¶ 4(a)-(g).

It is envisioned that this Prima Facie Showing will be made primarily via written submissions to the Special Master, by way of certifications or affidavits. If needed, however, the Special Master will be able to request additional information beyond that initially submitted by each Respondent. The Special Master will also be able to request an in-person presentation by any Respondent if the Special Master deems such necessary. Rec. Stip. ¶ 6.

Once the Special Master determines that any individual Respondent has made the required Prima Facie Showing, the Special Master will convey the same to Your Honor and recommend that Your Honor permit that individual Respondent to resume prosecution of its pending uncontested residential mortgage foreclosure proceedings.⁴ At that time, Respondent will also be required to submit to the Special Master a certification that all uncontested residential mortgage foreclosures prosecution of which are to resume will be prosecuted under the processes outlined in the Prima Facie Showing. Upon approval by Your Honor, the Respondent will then be permitted to resume prosecution of its pending uncontested residential mortgage foreclosure actions. See Rec. Stip. ¶ 6.

2. Subsequent Performance Review

The second step of the recommended Special Master Process is a performance review. See Rec. Stip. ¶ 7. After the resumption of each Respondents' prosecution of its pending uncontested residential mortgage foreclosure actions, the Special Master will be able to review a reasonable sample of files from the Respondents' foreclosure actions, either those pending or newly filed, as

⁴ As part of the Prima Facie Showing, each Respondent will submit a "Servicer Portfolio," which shall list by docket number all of that Respondent's residential mortgage foreclosure matters pending in the Superior Court as of December 20, 2010. Rec. Stip. ¶ 5. The Servicer Portfolio shall indicate whether each matter is contested or uncontested, as defined by Rule 4:64-1(c). See *id*

the Special Master deems necessary ("the Performance Review"). See Rec. Stip. ¶ 7. It is recommended that the Special Master's Performance Review last for twelve (12) months from the date of the respective Respondents' resumption of prosecuting its pending uncontested residential mortgage foreclosure actions.

The purpose of the Special Master's Performance Review will be to confirm that the processes described by each Respondent in its Prima Facie Showing are being followed. If the Performance Review gives the Special Master a reasonable concern that the processes outlined in the Prima Facie Showing are not being followed, the Special Master shall ask Respondent to address those concerns and may, if needed, request additional information from the Respondent. Ultimately, if the Special Master determines that the processes outlined in the Prima Facie Showing are not being followed, the Special Master may recommend to Your Honor that the Court suspend the particular Respondent's prosecution of uncontested residential mortgage foreclosure matters until the Respondent confirms to the Special Master's satisfaction that the processes are in place and operational.

This office believes that this recommended two-step Special Master Process, as described in detail in Paragraphs 4 through 7 of the Recommended Stipulation, serves the goals of the December 20, 2010 Order to Show Cause, while at the same time also permitting the efficient functioning of the foreclosure process, a process necessary for a healthy housing market and the broader economy. First, as outlined above, the Prima Facie Showing will ensure that the Respondents have appropriate processes and checks and balances in place to prevent any future "robo-signing" or other document execution irregularities. Second, the Performance Review will

allow the Judiciary, through the Special Master, to ensure that those processes are being followed
Thus, this office recommends that Your Honor approve the attached Recommended Stipulation and
the Special Master Process set forth therein

II. FURTHER RELIEF OUTLINED IN THE DECEMBER 20TH ORDER TO SHOW CAUSE IS NOT NEEDED AT THIS TIME

Your Honor's December 20, 2010 Order to Show Cause envisioned the possibility of several additional modes of relief beyond the appointment of a Special Master and the payment of fees. Specifically, the Order to Show Cause requested response as to a potential blanket suspension of the processing of pending uncontested residential mortgage foreclosure actions, suspension of the issuance of writs of execution or writs of possession, and the blanket stay of all pending Sheriff's sales of properties where one of the Six Respondents was involved in the mortgage or foreclosure Dec 20, 2010 Order to Show Cause at ¶ 1 A - 1 C. Additionally, the Order to Show Cause included the possibility of broad-based sanctions on the Six Respondents. *Id* ¶ 1 D.v As described below, this office recommends against these additional measures as part of this Order to Show Cause proceeding

A. A Blanket Suspension of Uncontested Residential Mortgage Foreclosure Proceedings is Not Necessary

This office recommends against the necessity of imposing a blanket suspension of Respondents' uncontested residential mortgage foreclosure proceedings, either those pre-final judgment or those post-final judgment and awaiting Sheriff's sale. As noted above, there has been a *de facto* suspension with regard to Respondents by virtue of their own actions and the Rule Amendments. Going forward, the resumption of processing of the Respondents' pending mortgage

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foreclosure portfolios will be governed by the Special Master Process described above. New foreclosures will be subject to the requirements of the Rule Amendments. Additionally, both pending and new foreclosures of the Respondents will be subject to the Special Master's Performance Review as well.

Given these protections, any further order of suspension for these Respondents will serve no purpose. To the contrary, an efficient and normalized mortgage foreclosure process is essential to the health of the New Jersey housing market. Properties tied up in a lengthy and protracted uncontested foreclosure process can potentially remain off the market for well over a year or even longer. This is particularly problematic considering that as much as a quarter of properties in uncontested residential mortgage foreclosure are unoccupied and are thus contributing to blight in New Jersey communities. Thus, it is as important for New Jersey's residential mortgage foreclosure process to function as it is for that process to be based on accurate and legally compliant documents.

B. Broad-based Sanctions Targeted at the Six Respondents Are Unneeded

This office recommends against the imposition of broad-based sanctions on the Six Respondents at this time. First, as noted above, numerous executive and legislative investigations into the residential mortgage foreclosure system are taking place all over the country. If any monetary penalties or other sanctions are appropriate, they are best left to these comprehensive investigations.

Second, court-imposed sanctions are generally designed to address specific misconduct in particular cases. *See, e.g.,* R. 1:10-1, 1:10-2 (sanctions for contempt of court), R. 4:14-7- (sanctions for conducting or defending a deposition in bad faith); R. 4:23-1 (sanctions for failure to make

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discovery) In this context, this office recommends that sanctions would be more tailored and more effective if imposed by individual judges in individual residential mortgage foreclosure cases, should they be warranted.

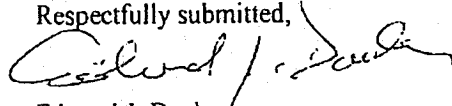
Finally, as provided in the Recommended Stipulation, the Six Respondents have agreed to pay for the services and expenses of the Special Master and this office during the course of the Special Master Process. See Rec Stip ¶¶ 2, 14. Thus, the Six Respondents will be paying the costs incurred in assuring the Judiciary of the integrity of Respondents' filings and the expense of the Judiciary's oversight of Respondents' document execution processes during the tenure of the Special Master. For these reasons, this office believes that further punitive sanctions are not needed and recommends against such broad-based sanctions.

CONCLUSION

In conclusion, this office submits the enclosed Recommended Stipulation for Your Honor's consideration and review. We believe that the process set forth in the Recommended Stipulation achieves the goals of the December 20th Order to Show Cause of ensuring the integrity and accuracy of documents filed with the Judiciary in uncontested residential mortgage foreclosure proceedings, while at the same time, permitting the efficient and normalized function of the residential mortgage foreclosure process. Your Honor has scheduled a hearing on the Order to Show Cause for March 29, 2011 at 2:00 p.m., at which I will be prepared to address any questions Your Honor should have about the foregoing or the enclosed Recommended Stipulation.

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Respectfully submitted,



Edward J. Dauber

EJD/tbs
Encls.

cc: Via Facsimile:

Thomas R. Curtin, Esq
Brian Boyle Esq
Gerald Krovatin, Esq
Theodore V. Wells, Jr, Esq
Joyce S. Huang, Esq.
Richard P. Haber, Esq.
Jami Wintz McKeon, Esq.
Phillip R. Sellinger, Esq.

Brian P. Brooks. Esq
Elizabeth L. McKeen, Esq.
Andrew Frackman. Esq.
Mark Melodia, Esq
Ian S. Marx, Esq.
Diane Bettino, Esq
Rosemary Alito, Esq.
Robert R. Maddox, Esq.

WHEREAS the judiciary undertook additional actions on December 20, 2010, including the issuance of Administrative Order 01-2010, amended on January 31, 2011 (the "Administrative Order") and the Order of the Supreme Court, amended on January 31, 2011, adopting amendments to Rules of Court 1:5-6, 4:64-1, and 4:64-2 (the "Rule Adoption Order"),

WHEREAS the Supreme Court opened a period from January 31, 2011, to February 28, 2011 for comment from the public as to the amended Rules of Court 1:5-6, 4:64-1, and 4:64-2 ("the Rule Amendments"),

WHEREAS the Respondents responded to the OTSC with filings that contested both the legal and factual bases for the entry of the OTSC, including but not limited to arguments that these actions violated the Constitution of the United States of America, the Constitution of the State of New Jersey, the New Jersey Rules of Court and other federal and state laws and that the Judiciary lacked any evidentiary record to support the factual assumptions and presumptions underlying the OTSC and other judicial actions taken on December 20, 2010:

WHEREAS the Respondents each accompanied their responses with affidavits or certifications maintaining that even prior to December 20, 2010, Respondents had already strengthened their policies, procedures, training and auditing of uncontested residential mortgage foreclosure case processing, and describing the steps taken;

WHEREAS all Respondents share the goal of the Judiciary in assuring the accuracy and procedural compliance of any filings made in pending and future uncontested residential mortgage foreclosure proceedings in New Jersey;

WHEREAS the Judiciary and Respondents mutually recognize that new residential mortgage foreclosure filings are inevitable and unavoidable in 2011 and that an efficient, fully functional, accurate, transparent, and normalized foreclosure process is in the interests of the

Judiciary, the State of New Jersey and its citizens and communities, the residential housing market and the broader economy, as well as of the Respondents, so long as that residential mortgage foreclosure process moves forward consistent with all applicable laws and based upon verified facts;

WHEREAS the Judiciary will be impacted by the increase in residential mortgage foreclosure filings and supplemental filings pursuant to the Rule Amendments;

WHEREAS this Recommended Stipulation arises following a series of settlement conversations, discussions, and negotiations, between and among counsel for the Respondents and the Court appointed counsel,

IT IS THEREFORE STIPULATED and AGREED:

1. With respect to each Respondent, this Recommended Stipulation governs their participation in the residential mortgage foreclosure process in their capacities as servicer, it being recognized that in most cases, it is the servicer that either has the information or has direct access to the information that is required to be provided under the Rules. Servicers manage, maintain, and handle the accounting for the mortgages that they service and, as such, in the case of default or non-payment on the part of a mortgagor, it is the servicer, and not necessarily the mortgagee or named plaintiff in the resulting mortgage foreclosure action, that either has the information or has direct access to the information concerning the default or non-payment. The Six Respondents, acting as servicers, account for a majority of the residential mortgage foreclosure matters pending in the Courts of the State of New Jersey, both contested and uncontested. As of the date of the entry of this Recommended Stipulation, each Respondent is responsible for servicing the mortgages being foreclosed in the actions set forth in its respective Servicer Portfolio as defined in Paragraph 5 herein. This Recommended Stipulation thus docs

not apply to any residential mortgage foreclosure filed in the name of a Respondent or an affiliated entity solely in its capacity as trustee for a securitized trust, in that a securitized trust acts for the most part through its servicer and not through the trustee, whose name appears in style of the residential mortgage foreclosure action as the named plaintiff. However, nothing in this Recommended Stipulation shall diminish or affect the responsibilities of Respondents, acting in any other capacity, or otherwise as named plaintiff in any residential mortgage foreclosure action, to abide fully with all Rules of Court and other law.

2. The Parties agree to the appointment of the Honorable Richard J. Williams, Ret. as special master (the "Special Master") pursuant to New Jersey Court Rule 4.41-1 for the specific purposes set forth in this Recommended Stipulation and for a period of 12 months from the date of the respective Respondent's resumption of prosecuting pending residential mortgage foreclosure actions pursuant to Paragraph 7. The powers of the Special Master shall be limited to those powers specifically enumerated in this Recommended Stipulation and anything necessary or attendant thereto. The Special Master shall serve at the expense of the Respondents; provided however that the Master's fees and expenses shall be limited to those that are reasonable and reasonably necessary to carry out the powers specifically enumerated in the Recommended Stipulation, and the Respondents shall have the right to review and object to any fee applications submitted by the Special Master. Any objections to the Special Master's fee applications will be heard by Judge Jacobson

3. Each Respondent will participate in the Special Master process set forth in Paragraphs 4 through 7 below ("the Special Master process") in its capacity as a servicer.

4. After execution and entry of this Recommended Stipulation and on or before April April 1, 2011, each Respondent shall, through certifications or affidavits of an individual or

individuals having personal knowledge of the Respondent's foreclosure processes, answer the following two questions:

A. Does the servicer have processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certification submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of records made in the regular course of business and it was the regular practice of that business to make it ("Business Records")?

B. Is the Respondent prepared to follow these processes and procedures upon the resumption of residential mortgage foreclosure activities in New Jersey?

This prima facie showing shall include responses and information on the following issues ("Prima Facie Showing"), with regard to the Servicer Portfolio:

(a) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees,

(b) Does the Respondent have a record keeping system of Business Records that provides accurate up to date information on the payment history and status of the loan? If so, describe the system;

(c) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings;

(d) Has the Respondent established specific procedures for staff to ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is based on a personal review of Business Records? If so

- (i) Describe the procedures;
- (ii) Produce all documents evidencing establishment of the procedures;
- (iii) Produce samples of all documents or screens reviewed by staff in the affidavit/certification of indebtedness process; and

- (iv) Provide the numerical range and average of how much time is spent per loan to review the Respondent's business records and complete an affidavit/certification of indebtedness.

(e) Has the Respondent implemented a training program for its staff to review relevant Business Records and source documents and complete foreclosure affidavits/certifications based on a personal review of such materials? If so.

- (i) Describe the program;
- (ii) Produce copies of all written materials used and screen samples from any powerpoint or other presentations, and
- (iii) Produce a statement that all staff who are preparing affidavits/certifications have received this training

(f) Has the Respondent established quality assurance procedures to insure that the established procedures for review of relevant source documents and completion of foreclosure affidavits/ certifications based on a personal review of Business Records are followed in each case? If so.

- (i) Describe the procedures; and
- (ii) Produce copies of all documents evidencing establishment of quality assurance procedures

(g) Does the Respondent have a process for insuring effective and timely communication with foreclosure counsel in connection with the completion and execution of foreclosure affidavits/certifications? If so.

- (i) Describe the process; and
- (ii) Describe the procedures that will enable foreclosure counsel to comply with their duties concerning the completion and execution of foreclosure affidavits/certifications, under the Court Rules as they are finally adopted by the New Jersey Supreme Court.

In connection with the Prima Facie Showing, Respondents may incorporate by reference materials which were filed in this matter on January 5, 2011 in response to the OTSC. and additionally produce, to the extent each Respondent deems necessary: (1) written policies currently in place that govern the processes relating to uncontested residential mortgage foreclosures in New Jersey, and/or (2) the materials used to train employees in the processes

relating to uncontested residential mortgage foreclosures in New Jersey; and/or (3) samples of affidavits of indebtedness prepared using the Respondent's current process for the execution of same, together with the source documents or screen prints used to prepare and review the affidavits, and/or (4) whatever other evidence the respective Respondent wishes to submit in order to make the Prima Facie Showing.

5. At the time of the Prima Facie Showing each Respondent shall provide a list, by caption and docket number, of all of its residential mortgage foreclosure matters pending in the Superior Court as of December 20, 2010 (the "Servicer Portfolio"). The Servicer Portfolio shall indicate whether the matter is contested or uncontested, as defined by Rule 4.64-1(c). Respondent shall provide an updated Servicer Portfolio when reasonably requested by the Special Master during the time of his appointment

6. Within a reasonable time after each Respondent's written submission, or presentation if same is requested by the Special Master, if the Special Master determines that more data or information is necessary for the individual Respondent to make the required Prima Facie Showing, the Special Master may request that such additional information be provided. Within a reasonable time after receipt of all information, the Special Master shall make a determination as to whether that Respondent has made the required Prima Facie Showing. A Respondent shall be permitted to resume prosecution of the uncontested residential mortgage foreclosure proceedings included in its Servicer Portfolio (including related proceedings such as obtaining writs of execution and writs of possession and completing Sheriff's sales) after, (a) the Special Master has made a proposed determination that the Respondent has made the Prima Facie Showing; (b) such determination has been accepted by Judge Jacobson; and (c) the Respondent has filed with the Special Master a certification that all uncontested residential

mortgage foreclosures set forth in the Servicer Portfolio will be prosecuted under the processes outlined in the Prima Facie Showing. Any objections to a negative determination made by the Special Master or any other action under this Paragraph will be heard by Judge Jacobson.

7. At the time a Respondent files the certification described in Paragraph 6 herein, that Respondent will provide an updated Servicer Portfolio, irrespective of whether a Servicer Portfolio was previously provided. As to each Respondent, for a period of 12 months following the resumption of pending, uncontested residential mortgage foreclosure proceedings as described in paragraph 6, the Special Master may, in his discretion, review a reasonable sample of files from the Servicer Portfolio or new residential mortgage foreclosure filings made by that Respondent, as he deems necessary. The sole purpose of such sampling will be to satisfy the Special Master that the processes described by any particular Respondent in the Prima Facie Showing are being followed. If that sampling gives the Special Master a reasonable concern the processes outlined in the Prima Facie Showing were not followed, the Special Master will promptly notify the Respondent of his specific concerns and may request supplemental information from the Respondent to address those concerns; such supplemental information may include, at the Respondent's expense, the presentation in New Jersey of individuals who have personally reviewed the Business Records of the case(s) about which the Special Master has raised an issue. Should the Special Master determine that the results of his sample review and the additional information from the Respondent establish that the foreclosure affidavit execution processes described by the Respondent in the Prima Facie Showing have not been implemented as promised, the Special Master may recommend to Judge Jacobson that the Respondent's prosecution of uncontested residential mortgage foreclosure matters be suspended until the Respondent confirms to the Special Master's satisfaction that the processes are in place and

operational. Any objections to the Special Master's determinations or actions under this Paragraph will be heard by Judge Jacobson.

8. During the process described in Paragraphs 4 through 7, each Respondent will be operating independently of the others. More specifically, no Respondent's timetable for its written submission and/or presentation to the Special Master and its ability to resume prosecution of pending uncontested residential mortgage foreclosures pursuant to Paragraph 6, will be dependent upon or tied to the performance of any other Respondent.

9 All documents, materials and other information provided by Respondents under this Recommended Stipulation and to which no claim of confidentiality is being made, shall be filed with the Acting Clerk of the Superior Court, P.O. Box 971, 25 Market Street, Trenton, New Jersey 08625, with a copy to the Special Master, Richard J. Williams, JAD (Ret.) and a copy to the Special Counsel, Edward Dauber, Esquire. With regard to any materials to which any Respondent is making a claim of confidentiality, that Respondent shall not submit the materials to the Special Master or Special Counsel, but shall first move on short notice and on an expedited basis before Judge Jacobson for an Order to seal such materials in accordance with Court Rule 1:38-11. Should Judge Jacobson grant the motion to seal, such materials shall be separately submitted only to the Special Master and to the Special Counsel, Mr. Dauber, and shall be marked "confidential" and treated as such by the Special Master and the Special Counsel, Mr. Dauber. Should Judge Jacobson deny the motion to seal, the Respondent may choose whether to file the materials with the Acting Clerk of the Superior Court, with a copy to the Special Master and a copy to Special Counsel, or whether to proceed with an attempt to make the Prima Facie Showing without the information and materials which Respondent considers confidential, but for which the motion to seal has been denied

10 Nothing in this Recommended Stipulation will be deemed to prevent any one of the Respondents or its affiliates from making independent judgments concerning the best interests of its customers, shareholders and employees, without regard to those of its competitors, and nothing in this Stipulation shall be taken as evidence of any agreement or decision to act in concert.

11 Nothing in this Recommended Stipulation shall be construed to be an admission of liability or wrongdoing on the part of any Respondent

12. Except as herein provided, nothing in this Recommended Stipulation shall constitute consent or an agreement by any or all of the Respondents or their affiliates to be the subject of examination, general oversight, inspection, regulation, supervision, enforcement, prosecution, requests for the production of documents, or other visitorial powers, including but not limited to the visitorial powers listed at 12 C F R 4.7000 (collectively, "Visitorial Powers"), regardless of whether the attempted invocation of Visitorial Powers is undertaken by the legislative, judicial or executive branches of New Jersey's state government and regardless of form or name given to the invocation, or attempted invocation, of Visitorial Powers. Furthermore, the Respondents and their affiliates do not waive, and expressly reserve, every procedural and substantive right and mechanism available under State and Federal law, but not limited to, the applicable rules of court and applicable rules of civil procedure, to challenge the invocation, or attempted invocation, of Visitorial Powers, whether such challenge is presented by any or all of the Respondents or their affiliates in State or Federal Court, or This reservation of rights includes, but is not limited to, the right of any or all of the Respondents and their affiliates to assert that actions by, or conduct of, the State of New Jersey, any of its branches of government, any State official, State governmental body, or State agent are

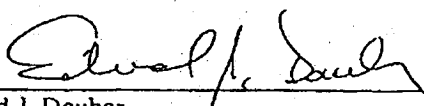
preempted, expressly preempted, and/or completely preempted by the National Bank Act, Home Owners Loan Act, Title 12 of the United States Code of Federal Regulations, interpretive case law, or other federal law

13. Upon entry of an Order adopting this Recommended Stipulation as a resolution of the OTSC, the Court retains jurisdiction solely to enforce the terms of this Recommended Stipulation and the Order adopting same

14. The Respondents shall pay the reasonable attorneys' fees and costs incurred through the date of the entry of this Recommended Stipulation by Edward J. Dauber, Esq., and the law firm of Greenberg Dauber Epstein & Tucker in connection with their duties performed as the Court appointed counsel. Mr. Dauber and the law firm of Greenberg Dauber Epstein & Tucker shall remain as Special Counsel to the Special Master, and the Respondents shall pay the reasonable attorneys' fees and costs incurred by Mr. Dauber and the law firm of Greenberg Dauber Epstein & Tucker in connection with their duties as Special Counsel to the Special Master. The Respondents shall have the right to review and object to any fee application submitted by Mr. Dauber or the law firm of Greenberg Dauber Epstein & Tucker

GREENBERG, DAUBER, EPSTEIN & TUCKER, P.C.

BY


Edward J. Dauber

Court Appointed Counsel

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By: _____

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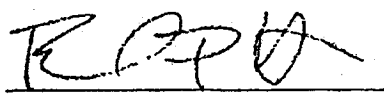
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PREPARED BY THE COURT **MAR 29 2011**

Scott E. Regan
S: E REGAN
DEPUTY CLERK OF SUPERIOR COURT

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION -
GENERAL EQUITY PART
MERCER COUNTY

**IN THE MATTER OF
RESIDENTIAL MORTGAGE
FORECLOSURE PLEADING AND
DOCUMENT IRREGULARITIES**

DOCKET NO. F-59553-10

CIVIL ACTION

**ORDER APPROVING THE
RECOMMENDED STIPULATION
AND APPOINTING SPECIAL
MASTER**

The court having entered an Order to Show Cause on December 20, 2010, directing the six foreclosure plaintiffs identified in the order (referred to hereinafter as "Respondents" to the Order to Show Cause) to respond to the Order to Show Cause and establishing a schedule for the filing of papers, and appointing Edward Dauber, Esquire, Greenberg, Dauber, Epstein & Tucker as counsel to support the proposed relief outlined in the Order to Show Cause; and the foreclosure plaintiffs having filed their oppositions to the relief sought in the Order to Show Cause on January 5, 2011; and Mr. Dauber having requested and received several extensions of time to respond to the oppositions in order to explore with the foreclosure plaintiffs the possibility of their agreeing to the appointment of a Special Master and their agreeing to a process for reviewing their foreclosure document preparation procedures for accuracy, reliability, and compliance with applicable laws, court rules, and the business record requirements of the New Jersey Rules of Evidence; and Mr. Dauber having reported the success of those negotiations to this court in a letter of March 18, 2011; and Mr. Dauber having submitted a fully executed Recommended Stipulation to the court for review on March 18, 2011; and the court having

scheduled a review hearing for the Recommended Stipulation for March 29, 2011, at 2 P.M.; and the court having reviewed the Recommended Stipulation and the letter of Mr. Dauber of March 18, 2011; and the court having heard oral argument regarding the Recommended Stipulation on March 29, 2011; and the court also having heard oral argument from proposed interveners whose motions to intervene have been addressed in separate orders; and for good cause shown, for the reasons set forth on the record on March 29, 2011:

IT IS on this 29th day of March, 2011, HEREBY ORDERED that:

1. The Recommended Stipulation is approved and shall be referenced as the "Stipulation of Settlement" or "Stipulation." The Respondents are directed to fulfill their responsibilities under the stipulation and cooperate with the Special Master and Special Counsel.
2. The court appoints the Honorable Richard J. Williams, J.S.C. (retired), as the Special Master, with the consent of the Respondents, to undertake the responsibilities of the Special Master set forth in the Stipulation. Judge Williams shall have the powers enumerated in the Stipulation and any power necessary or attendant to the powers explicitly set forth in the Stipulation to achieve the goals set forth in that document.
3. The process set forth in the Stipulation shall address only uncontested cases. Nothing in the Stipulation shall be construed as altering or interfering with the right of any party to a foreclosure action to contest the foreclosure by filing a contesting answer, by challenging an amount due on a mortgage in default submitted to the Office of Foreclosure with a final judgment package, or pursuing any right guaranteed by law or court rule to a party contesting a foreclosure. Nor shall anything in the Stipulation, or any action taken by the Special Master, be construed as altering or interfering with

the discretion of any Superior Court Judge of the State of New Jersey to adjudicate all issues raised by the parties in contested foreclosure matters.

4. The court refers to the Special Master for his consideration the papers filed by Legal Services of New Jersey and The Seton Hall Law School Center for Social Justice in support of their motions for intervention, which motions have been denied by separate orders.
5. The court refers to the Special Master for his consideration the documents submitted to the court and to Mr. Dauber by individuals who lodged the documents with the court out of concern for promoting the integrity of the foreclosure process. Attached to this order is a list of the individuals who filed papers with the court and the dates of their submissions.
6. This Order resolves the Order to Show Cause entered by this court on December 20, 2011. The court retains jurisdiction to enforce the terms of the Stipulation and the terms of this Order.
7. Mr. Dauber shall provide a copy of this order via facsimile to the attorneys on the attached service list and the order shall be filed in the electronic case jacket of the JEFIS system for foreclosure matters maintained by the Office of Foreclosure in the Superior Court Clerk's Office.


MARY C. JACOBSON, P.J. Ch.

Date Received	Filed By
12/23/10	William Pinilis
12/28/10	Ted Peterson & Madeline Ferreri
12/29/10	Rosa Sands
12/30/10	Jeffrey Lichtenstein
1/11/11	Lauri Gordon
1/11/11	Kerry Scott Lane, M.D.
1/11/11	Anthony D'Amato
1/12/11	Michael f. Olenick
1/12/11	Lisa Epstein
1/13/11	James McGuire
1/18/11	Janet-Linda Beddini
1/24/11	Anonymous
1/31/11	Ellen E. Nevins
2/10/11	Kevin M. Hurley
2/14/11	Harold Goldman, Esq. (Ansell, Grimm & Aaron)
2/22/11	Steve & Dawn Hodges
3/1/11	Katherine S. Galaida
3/1/11	Anthony D'Amato
3/9/11	Tracy T. Wilson
3/15/11	Collins Elumogo

Many Foreclosures, Few Listings

By ANTOINETTE MARTIN

PRICES are down across the board so far this year in urban, suburban, rural and shore areas, in both northern and southern New Jersey — everywhere except areas close to Manhattan commuter train service, and in all price categories except, surprisingly, the uppermost.

What is perhaps scarier, market analysts say, is that mass foreclosure actions, which could further hurt home values, have yet to make their presence felt.

"The floodgates have been opened" on foreclosures, said Bill Flagg, a foreclosure specialist with ERA. Queen City Realty in Scotch Plains. "Still, we are seeing just a trickle of listings."

In August, after an investigation into lending practices at five big banks, a state Supreme Court judge removed what had been a de facto moratorium on judicial approvals of foreclosures.

In some other states, banks are still in the process of "recertifying" their lending practices, after evidence of "robo-signing" and careless processing of loans came to light. In New Jersey, however, that is officially done and over. "We don't know for sure why the banks continue to hold back" on foreclosure listings, Mr. Flagg said.

New Jersey has almost 30,000 homes stuck at different points in the foreclosure "pipeline," according to court records. Their owners are months to years delinquent on mortgage payments, and lenders have gone to court, at least to begin proceedings to seize their properties, as is required in this state.

On average, the process was taking 708 days, or nearly two years, while the moratorium was in effect in New Jersey. After it lifted in August, new foreclosure filings did increase: there were 1,190, up from 859 in July. But that was a small rise when seen in context, said Jeffrey G. Otteau, the president of the Otteau Valuation Group in New Brunswick.

As of the end of August, there had been 68 percent fewer foreclosure filings than in the same period of 2010, with just 0.05 percent of homeowner households receiving a first-time notice of default. That equates to five foreclo-



RICHARD PERRY/THE NEW YORK TIMES



FRED R. CONRAD/THE NEW YORK TIMES

FIRE SALES A colonial on Cooper Avenue in Montclair, top, which sold for \$1.1 million five years ago, is listed as a short sale for \$699,000. A foreclosed house on William Street in Englewood lists for \$176,000; it sold for \$276,000 in 2009.

sure filing notices for every 1,000 homeowners.

So when will the foreclosure wave finally show up? "This situation," Mr. Otteau wrote in an e-mail, "reminds me of the recent BP Gulf oil spill, where we were all waiting for the oil to hit the beaches," and the quantities that did arrive were smaller than expected. "I'm still wondering where it went — probably sitting on the ocean floor in enormous pools of coagulation, much like the shadow inventory in the foreclosure markets."

Eventually those failed loans will have to "rise to the surface," Mr. Otteau said. He predicts that when foreclosures do start coming fast and furious, the impact

will be highly uneven around the state — just as the pain is unevenly dispersed now.

Mr. Otteau produced a map showing rates of foreclosure in all 21 counties. Essex County, home to the state's largest city, Newark, had the highest rate: 0.7 percent of all home loans being foreclosed. Morris County's foreclosure rate was 0.2 percent, or less than a third that in Essex.

He says the most "urbanized" counties as well as the most "exurban," or rural, are the ones that have seen the biggest drops in home values. As ever, though, he and other real estate professionals said, not everything goes according to pattern.

In a lovely section of suburban

Montclair, for example, a five-bedroom colonial on Cooper Avenue is currently listed as a short sale, for \$699,000. Five years ago, the current owners bought it for \$1.1 million.

Mr. Otteau reported these general price trends for the first three quarters of 2011:

¶ In rural areas, the median price is down 11.2 percent when compared with the same period in 2010.

¶ In urban areas, the median price declined 6.9 percent.

¶ Along the Hudson, the decline was 4.3 percent, and in shore communities, 3.3 percent.

¶ Suburban home values were down 3.2 percent.

¶ Along rail lines, prices were down by 0.7 percent overall. Near Manhattan commuter stations, prices were up by 4.9 percent.

¶ Median prices for "luxury" homes, priced at \$1.2 million and above, increased by 2.4 percent.

Mr. Otteau explained this one contrary number: "In those communities with higher income, higher levels of education and employment, there is less urgency to sell your home."

Maria Guillermina Chau, the president of the Mortgage Bankers Association of New Jersey, says that short sales represent about 90 percent of transactions now being handled by her bank, First Residential Mortgage Services Corporation, in Englewood Cliffs. (In a short sale, a bank agrees to allow a sale for less than what is owed on a mortgage.) "At least some property is moving," she said, "but the prices are down, down, down."

Also, Mr. Otteau said that although sales pace remained weak over all, the hiatus in foreclosure listings at least meant that the supply of homes on the market shrank for a time rather than continuing to balloon.

Furthermore, he said, in September mortgage rates steadily went down, with a new record low for a 30-year fixed-rate mortgage posted on Sept. 22 — 4.06 percent, a full percentage point below what the average New Jersey mortgage holder pays now.

"Something has to get things going," Mr. Flagg, the foreclosure broker, commented about the historically low rates. "Doesn't it?"

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, GENERAL EQUITY
MERCER COUNTY, NEW JERSEY
DOCKET NO. F-059553-10
A.D. # _____

IN THE MATTER OF) TRANSCRIPT
RESIDENTIAL MORTGAGE)
FORECLOSURE PLEADINGS) OF
AND DOCUMENTS)
IRREGULARITIES,) HEARING
)

Place: Mercer County Courthouse
210 South Broad Street
Trenton, NJ 08625

Date: March 29, 2011

BEFORE:

THE HON. MARY C. JACOBSON, P.J.Ch.

TRANSCRIPT ORDERED BY:

FLEMING WARE, ESQ. (Reed Smith, LLP)

APPEARANCES:

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Appointed Counsel

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Colloquy

5

1 THE COURT: Good afternoon, everybody.
2 THE ATTORNEYS: Good afternoon, Your Honor.
3 THE COURT: You may be seated. This is the
4 hearing on the recommended stipulation In The Matter of
5 Residential Mortgage Foreclosure Pleading and Document
6 Irregularities. It's Docket Number F-059553-10. If I
7 could have the appearance on behalf of appointed
8 counsel, please.
9 MR. DAUBER: Thank you, Your Honor. Good
10 afternoon, Your Honor. Edward J. Dauber of the law
11 firm of Greenberg, Dauber, Epstein & Tucker. Along
12 with me is Thomas Slocum of our office as court
13 appointed counsel in this matter.
14 THE COURT: If I could have appearance on
15 behalf of BAC Home Loan Servicing.
16 MR. CURTIN: Good afternoon, Your Honor, I'm
17 Thomas Curtin from Graham, Curtin on behalf of BAC.
18 MR. ADAMS: John Adams from McGuire Woods on
19 behalf of Bank of America.
20 THE COURT: And Citi Residential Lending.
21 MR. KROVATIN: Good afternoon, Your Honor,
22 Gerald Krovatin, the firm of Krovatin, Klingeman. And
23 I'd like to introduce to the Court our lead counsel
24 from the firm of Paul Weiss, Joyce Huang.
25 MS. HUANG: Good afternoon, Your Honor.

1 THE COURT: Welcome. The appearance on
2 behalf of JP Morgan, Chase Bank and Chase Home Finance.

3 MR. HABER: Good afternoon, Your Honor,
4 Richard Haber of McElroy, Deutsch, Mulvaney & Carpenter
5 for JP Morgan, Chase Bank and Chase Home Finance.

6 THE COURT: The --

7 MS. McKEON: Good afternoon, Your Honor --

8 THE COURT: Okay.

9 MS. McKEON: -- Jami McKeon from Morgan,
10 Lewis & Bockius for Chase and Chase Home Finance.

11 THE COURT: Welcome. Appearance on behalf of
12 One West Bank.

13 MR. DiLELLO: Good afternoon, Your Honor,
14 Anthony DiLello, from O'Melveny & Myers on behalf of
15 One West Bank.

16 THE COURT: And appearance of Wells Fargo
17 Bank, Wells Fargo Financial New Jersey, Wells Fargo
18 Financial America.

19 MR. MELODIA: Good afternoon, Your Honor,
20 Mark Melodia from Reed Smith in Princeton here on
21 behalf of Wells Fargo.

22 MS. ALITO: Rosemary Alito from K&L Gates
23 also on behalf of Wells.

24 THE COURT: And, Mr. Melodia, you will be
25 presenting the argument in opposition to the motions to

1 intervene, is that correct?

2 MR. MELODIA: I will speak first for all
3 banks and others may follow, but that's the -- that's
4 fine.

5 THE COURT: Okay. And we're going to use the
6 podium for the argument, as I guess it's obvious. But
7 I'm sorry we didn't have room at counsel table for
8 everyone. If I could have the appearance on behalf of
9 Proposed Intervenor Legal Services of New Jersey on
10 behalf of the individuals names in their pleadings.

11 MS. JUROW: Margaret Jurow for Edward and
12 Patricia Vernon, Barbara and Quinton McKinsey, John
13 Seandra (phonetic), Vivian Gadowsky (phonetic), Wayne
14 and Deborah Macken (phonetic), Marilyn Crocker, Judith
15 Gannon (phonetic), and Oscar Garita (phonetic).

16 MS. SCHORE: Rebecca Schore, S-c-h-o-r-e, on
17 behalf of the same parties.

18 THE COURT: If I could have the appearance on
19 behalf of Seton Hall Law School Center for Social
20 Justice.

21 MS. FISHER: Good afternoon, Your Honor,
22 Linda Fisher for Seton Hall Center for Social Justice.
23 And my colleague Kyle Rosenkrans.

24 THE COURT: Welcome. The appearance on
25 behalf of Proposed Intervenor Jyll S. Jakes.

1 MR. POTTER: Yes, good afternoon, Your Honor,
2 my name is Bill Potter of the firm of Potter & Dickson.
3 And with me is Mark Malone, co-counsel with the firm of
4 James F. Villere. It's pronounced Villere. Thank you.

5 THE COURT: Okay, Villere. Thank you. I
6 also wanted to acknowledge that the -- I have invited
7 today to be with us Judge Williams is the proposed
8 Special Master recommended in the recommended
9 stipulation. He's sitting here in the witness stand.
10 Welcome. Thank you for coming. Also I have invited to
11 be here today Kevin Wolfe. He's the Assistant Director
12 for Civil Practice who oversees the Office of
13 Foreclosure in the Administrative Office of the Courts.
14 And Kevin is sitting right here. Yes?

15 MR. MARX: Your Honor, I hate to interrupt
16 but I represent GMAC Mortgage, LLC. We're one of the
17 six respondents.

18 THE COURT: And I just skipped right over
19 you. It's on my list.

20 MR. MARX: Well, we're happy to, you know,
21 leave --

22 (Laughing)

23 MR. MARX: But by way of introduction I'm Ian
24 Marx from Greenberg, Traurig and together with Wendell
25 Allen from Bradley, Arant, Boult & Cummings, we

1 represent GMAC Mortgage.

2 THE COURT: Well thank you for the levity and
3 thank you for addressing my mistake.

4 This afternoon is the time that's set aside
5 for a hearing on the recommended stipulation to resolve
6 the order to show cause entered by this Court against
7 the six parties named earlier who bring a large
8 percentage of all the foreclosures filed in the state
9 of New Jersey. Court Rule 1:34-6 established an Office
10 of Foreclosure within the Administrative Office of the
11 Courts and made the office responsible for recommending
12 the entry of orders or judgments in uncontested
13 foreclosure matters subject to the approval of the
14 Superior Court Judge designated by the Chief Justice.

15 I am the Judge given that responsibility, and
16 therefore I was the Judge that the Office of
17 Foreclosure turned to when serious questions arose
18 about the propriety of documents submitted to the
19 Office of Foreclosure in uncontested cases. You're
20 going to hear a lot today about the difference between
21 contested and uncontested foreclosure matters.
22 Contested foreclosure matters are those cases where
23 defendants file contesting answers to challenge the
24 foreclosure. And all of those cases are handled by
25 Judges in the vicinages where the property is located.

1 I, for example, handle all contested foreclosures for
2 properties in Mercer County,.

3 Whenever a case is contested the defendant,
4 typically a homeowner in default or a homeowner alleged
5 to be in default, has all of the rights accorded under
6 the Court Rules and Procedures to challenge the relief
7 sought against them. Their interests are litigated
8 before a Judge, typically, and most commonly a General
9 Equity Judge, also called a Chancery Judge like myself
10 in each vicinage, but these days also augmented by
11 other Judges in some vicinages assigned to assist with
12 the high volume of foreclosure cases. And these Judges
13 render decisions in each case with the full panoply of
14 due process protection afforded to the litigants.

15 Uncontested cases on the other hand, which
16 make up the vast majority of the foreclosures in New
17 Jersey, proceed through the process based on the
18 uncontested filing of documents by the plaintiffs who
19 are seeking to foreclose the properties in question.
20 And the paperwork submitted by the parties including
21 paperwork submitted by the six respondents here today
22 is reviewed by the Office of Foreclosure.

23 So when credible claims arose that
24 affidavits, certifications, assignments, notarized
25 documents -- and notarized documents affecting property

1 rights submitted to the Office of Foreclosure were
2 suspect due to improper practices by the entity
3 submitting those documents this Court determined that
4 it had to act and so I issued an order to show cause
5 directing the six parties named in the order to explain
6 why I should not appoint the Special Master to report
7 to the Court on the conformance to Court Rules and
8 relevant law of the documents submitted to the Office
9 of Foreclosure and anticipated in the future to be
10 submitted in uncontested cases.

11 And I also directed them to explain why I
12 should not impose a moratorium on the processing of
13 claims until the Special Master reported to me that the
14 processes in place would produce documents that would
15 conform to Court Rule and applicable law. And again,
16 for contested cases each vicinage Judge is going to be
17 examining documents and reviewing claims by both
18 plaintiffs and defendants.

19 In regard to the order to show cause I
20 appointed Mr. Edward Dauber as the attorney to support
21 the interest of the Court and the Office of the
22 Foreclosure in this proceeding.

23 I just want to note that this order to show
24 cause and this proceeding is only one part of a three
25 prong effort by the judiciary to address the issues

1 that had been raised by the alleged document in
2 proprieties. There was an emergency rule that was also
3 promulgated back in December of 2010 that addresses the
4 certifications that -- to be filed by attorneys
5 involved in foreclosure action. That rule has now been
6 subject to public comment, and I was informed that
7 Legal Services among others provided comment to that
8 rule. So that's another ongoing effort to address the
9 issues affecting foreclosure in New Jersey.

10 And there's also an administrative directive
11 that you may hear me refer to that was issued by our
12 current administrator director -- administrative
13 director of the courts Judge Grant which establishes a
14 review procedure that's under the direction of Judge
15 Barrasonic regarding additional servicers and other
16 parties to foreclosure cases who filed fewer
17 foreclosures than the parties here on the most part,
18 but whose processes are also being vetted to him in a
19 somewhat different proceeding, but related proceeding.

20 The six respondents who are represented here
21 today opposed appointment of the Special Master and the
22 imposition of a moratorium in filings that they made on
23 January 5th. They raised constitutional and other
24 issues about this Court's power to order the relief
25 outlined in the order to show cause. But in each

1 opposition the respondent acknowledged the existence of
2 problems and set forth an array of actions that they
3 had taken already to remedy them. Their presentations
4 essentially started the process that led to the
5 recommended stipulation before the Court today which
6 was crafted by Mr. Dauber, assisted by Kevin Wolfe here
7 on behalf of the AOC and the Office of Foreclosure, and
8 also involving representatives of all of the
9 respondents.

10 In that stipulation the respondents have
11 agreed to this Court's appointment of retired Judge
12 Richard Williams, a Superior Court Judge with more than
13 20 years' experience and also former director of the
14 Administrative Office of the Courts which oversees the
15 Office of Foreclosure. They agreed to his appointment
16 as Special Master. They've also agreed to the process
17 by which the Special Master will review their
18 foreclosure document creation processes to assure the
19 compliance of those documents with law.

20 Following the filing of the recommended
21 stipulation and a letter from Mr. Dauber explaining it
22 in much more detail than my brief summary the Court
23 received three motions for intervention which I
24 accepted under a process called short notice allowing
25 them to be briefed and argued today so that they could

1 be -- so that we could hear them today before I make
2 any decision regarding the recommended stipulation.
3 And we have motions to intervene that were filed by
4 Legal Services of New Jersey, the Seton Hall Law School
5 Center for Social Justice, and Jyll S. Jakes.

6 And so we're going to move now to the
7 argument portion of today's proceeding. And I'm
8 actually going to start with Mr. Dauber. I have
9 questions about the recommended stipulation and how and
10 why he believes it adequately and appropriately
11 addresses the concerns contained in the Court's order
12 to show cause. Then I'm going to turn to the motions
13 for intervention and hear arguments first from Legal
14 Services, then from Seton Hall, and then from counsel
15 for Jyll Jakes. And then I will hear the respondents
16 on their opposition to the motions to intervene. And
17 finally, I'll give Mr. Dauber a chance to address any
18 concerns he has about the motions to intervene. So
19 we're going to start first, as I said, and I'll call
20 upon Mr. Dauber.

21 MR. DAUBER: Thank you, Your Honor.

22 THE COURT: And the order to show cause was
23 prompted by circumstances set forth in the
24 administrative directive issued by Judge Grant which
25 was incorporated into the order to show cause. And

1 when you read the depositions that were cited in the
2 order to show cause there's -- a disturbing picture
3 appears regarding some employees of the companies that
4 provide mortgage default servicing. There were
5 affidavits, many, thousands probably of affidavits
6 signed without personal knowledge. At times some case
7 law establishes that signatures were forged. And there
8 seemed to be a somewhat common practice of notaries
9 signing documents outside the presence of the person
10 whose signature was being notarized. And so one gets
11 the sense that there was a corporate culture gone awry.
12 And of course that had direct implications for the
13 documents that were being filed in court. How is the
14 stipulation going to address these concerns?

15 MR. DAUBER: The way it's going to address
16 it, Your Honor, is by providing that before these
17 respondents can proceed with any of the uncontested
18 foreclosure matters pending before the Court or new
19 ones to be filed they are going to have to make a prima
20 facie showing to the satisfaction of Judge Williams who
21 as Your Honor said is a very experienced jurist with
22 more than 20 years' experience. He was an assignment
23 Judge, he was director of the Administrative Office of
24 the Courts. Before he went on the bench he was at the
25 Atlantic County Prosecutor's Office for a number of

1 years.

2 They are going to have to convince and show
3 to Judge Williams that their processes that they have
4 been put in place have cured the problems that Your
5 Honor identified in the order to show cause and that
6 were the genesis of the other actions taken by the
7 Supreme Court and by Judge Grant, to wit, that the
8 information being presented by the Court which they are
9 asking the Court to rely on is being done based on
10 personal knowledge, is being done based on credible
11 evidence, and is being done by people who are swearing
12 to the affidavits or submitting the certifications
13 through personal review of the records that they have
14 conducted in a way that meets the business records'
15 test that the Courts traditionally apply to these
16 matters.

17 In addition to that, Your Honor, they are
18 going to have to convince Judge Williams before he
19 makes any recommendation to Your Honor to allow any of
20 these respondents to proceed with these uncontested
21 foreclosures that they are prepared to implement these
22 processes and procedures that they show.

23 Now the way they are going to do this, Your
24 Honor, is set forth in detail in the proposed
25 stipulation. Initially they have to present him with

1 information that shows that the mortgages that are
2 sought to be foreclosed on, that the person who is
3 seeking or the entity that's seeking to foreclose on
4 them has authority to act, that their processes in
5 place will ensure that.

6 Secondly, that they have a record keeping
7 system, a business record. That has to provide
8 accurate up-to-date information both about the history
9 -- the payment history and the status of the loan.

10 THE COURT: Now we know from the Seton Hall's
11 submission they were very concerned about the computer
12 programs. They got into quite some detail with an
13 affidavit by one of the former employees of a default
14 mortgage servicing company. Do you expect that Judge
15 Williams will be getting into the underlying computer
16 systems to any extent?

17 MR. DAUBER: I think that to the extent that
18 Judge Williams needs to dig deeper beyond what is
19 presented by way of affidavit or certification because
20 he does not feel that that adequately covers the
21 showing that needs to be made that this is being done
22 based on personal knowledge, and the personal review of
23 the business records meeting the test of business
24 records as we know it evidentially. That he certainly
25 will have the ability and has the power to go beyond

1 that to interview people to do it in whatever way that
2 he deems it's appropriate.

3 We provide in Section 2 of the recommended
4 stipulation that he has the authority to have whatever
5 powers are necessary in attendant to what he has to
6 accomplish in here. In addition, he has the right
7 under the agreement to seek supplemental information to
8 interview personnel. Essentially to be sure that the
9 prima facie showing that was made is one that he would
10 accept similar to the rulings that he made for many
11 years as a sitting judge and similar to the rulings
12 that any judge who is sitting has to make when they are
13 acting as the fact finder.

14 But he has the further authority, Your Honor,
15 in that if he is not satisfied then he will not make a
16 recommendation to Your Honor that that respondent has
17 made the prima facie showing. And that respondent will
18 have the right to object to that, to try to convince
19 Your Honor that they have, or to provide the additional
20 information that does satisfy it.

21 But I think that the Seton Hall concern is
22 misplaced on two grounds. One is that they assume in
23 the submission that they made, first of all, that the
24 business record test did not have to be met.
25 Explicitly we provide that there are business records

1 and we define it in the same way as the rule of
2 evidence assigned it. Secondly, Your Honor, they did
3 not -- at least they don't state that they appreciate
4 the full extent of the authority that Judge Williams
5 will have under the recommended stipulations.

6 THE COURT: One of the things that I was
7 concerned about is how the stipulation will address
8 cases in the pipeline. If the -- Judge Williams in the
9 next few weeks will be making decisions about the
10 processes that are in place now, but we have many
11 hundreds and probably thousands of cases that have been
12 backed up in the pipeline. And how does the
13 stipulation address those uncontested cases?

14 MR. DAUBER: So Your Honor all pending
15 uncontested cases pending as of December 20th when Your
16 Honor's order went into effect, and actually, Your
17 Honor, it would apply to ones substantially probably
18 before that, but most of the respondents, because many
19 of the respondents because of the various
20 investigations and other issues that were out there
21 ceased on their own processing these uncontested
22 foreclosures in the state of New Jersey.

23 But at the very least as of December 20th
24 whatever was pending is going to be part of the
25 servicer portfolio that is on hold until such time as

1 Judge Williams makes his recommendation to Your Honor
2 that they should be able to go ahead. Until such time
3 as Your Honor has approved that recommendation, and
4 until such time as they have filed, the respondents
5 filed a further certification that they are following
6 all of the procedures that have been so approved with
7 regard to everything in their service portfolio, or any
8 of the ones that they want to move forward on. So
9 that's number one.

10 Number two, Your Honor, when they make their
11 filings with regard to these cases that are in the
12 pipeline they are going to have to comply, of course,
13 with the amended Supreme Court's ruling. They are
14 going to have to be making amended or supplemental
15 findings - supplemental filings, excuse me, with regard
16 to each and everyone of the cases that they choose to
17 go forward with. And those will have to be in
18 accordance with the rules then in effect by the Supreme
19 Court.

20 As Your Honor noted the Supreme Court adopted
21 emergency amendments to the rules on December 20th.
22 They've since provided a comment period for those rules
23 and whether they maintain the amended -- the currently
24 existing amended rules, or they further amend them,
25 whatever is going to be filed is going to have to

1 comply with those rules. So in terms of each
2 individual case it will have to meet, not only pass the
3 muster of the Special Master process in terms of the
4 general processes of the respondent, but will have to
5 meet in each individual case the new rule requirement
6 of the Supreme Court. Beyond that, Your Honor, of
7 course any homeowner will have, as Your Honor noted,
8 all the rights and remedies available to it under the
9 rules. So even though a case may presently be
10 uncontested to the extent that a homeowner decides to
11 contest it they can do so in accordance with the rules
12 of court.

13 THE COURT: I know there's been a lot of
14 concern, I think, by each of the intervenors that
15 somehow this process could interfere with individual
16 homeowner rights, and especially in contested cases.
17 And that's not what's envisioned in the stipulation.

18 MR. DAUBER: Not at all, Your Honor. In
19 fact, we have -- the stipulation does not in anyway go
20 to individual cases. It deals with assuring the Court
21 in accordance with the order to show cause that Your
22 Honor entered and in accordance with the statements
23 that Judge Grant made that the process that's being
24 followed by the respondents is one that is credible
25 enough that we will not have a repetition of the --

1 what's been colloquial referred to as the robo-signing
2 problem or other problems that make it not credible for
3 the Court -- for the Office for Foreclosure and then
4 the Court to rely on what is submitted.

5 The process -- the Special Master process is
6 not designed to deal with anybody's individual case.
7 Not only have we said that, not only does the
8 recommended stipulation not apply to them, but the
9 banks, the respondents, in answering the motions for
10 intervention -- or the applications for intervention
11 have also stated that. That nobody use this as
12 applying to any individual case. And we had suggested
13 that if Your Honor wishes in an order which we hope
14 Your Honor will enter implementing the recommended
15 stipulation to make that even clearer, that is fine and
16 appropriate. So, it should not be anticipated that
17 this will affect any one individual case
18 (indiscernible) all the rights to take whatever steps
19 they otherwise could take. And, in fact, some of the
20 cases cited by the proposed intervenors, our case is
21 exactly of that nature where people have pursued their
22 individual rights and some cases have prevailed, other
23 cases they may not have prevailed.

24 THE COURT: One of the things that was
25 striking about the depositions that I reviewed that

1 were cited in Judge Grant's administrative directive
2 was that there'd be individuals working for servicing
3 companies, servicing the default mortgages who would
4 sign affidavits for many different companies, and they
5 do different titles for different companies. Is there
6 anything in the stipulation and the process envisioned
7 by the Special Master that at least would address that
8 issue?

9 MR. DAUBER: Yes, Your Honor, in several
10 ways. First of all as I mentioned the respondent is
11 going to have to show the specific authority that it is
12 the respondent that has to act. It is also going to
13 have to show who is executing these affidavits and
14 certifications on behalf of respondent. The numerical
15 range and average of how much time they're spending on
16 them, what the training program is, what the quality
17 assurance procedure is. All of this will be within the
18 ambit of the Special Master to be satisfied that the
19 person who is doing it is someone who is representing
20 the respondent and to acting on behalf of respondent,
21 who has personal knowledge, who is responsible, and has
22 the information.

23 So I think that the idea that someone is just
24 sitting down and executing thousands of affidavits as
25 was the genesis of this problem or hundreds of

1 affidavits or whatever without going in and number (1)
2 having the authority to do so, and number (2) having
3 the information, the personal information to do so is
4 exactly what Judge Williams will be checking on and
5 needing to satisfy himself about.

6 And we haven't talked, Your Honor, about the
7 second portion of this.

8 THE COURT: Well that's what I was going to
9 ask because the monitoring that is provided in the
10 stipulation to be done by the Special Master has been
11 criticized by the intervenors as insufficient.

12 MR. DAUBER: Yes. I think again that they
13 misunderstand the scope of what Judge Williams will
14 have the authority to do under the monitoring process.
15 The monitoring process begins, Your Honor, once the
16 respondents or a respondent, because it certainly may
17 be different for the particular respondents, once a
18 respondent is permitted to begin processing these
19 uncontested foreclosures as I said first of all they're
20 going to have to do an additional filing because
21 they're going to have to meet the rules of court such
22 as they are at the time.

23 Once that happens the Office of Foreclosure,
24 of course, will perform its traditional role which Your
25 Honor described is that they review in order to protect

1 the loaner, each and every such filing to make sure
2 that it complies with the rules of court that are in
3 effect at the time and to see if they see any other
4 problems or defects. And as Your Honor pointed out
5 they call this information to the attention of the
6 Court.

7 But in addition to that review process that
8 the Office of Foreclosure will be undertaking on each
9 and every case Judge Williams will have the -- has the
10 authority for 12 months from the time that they
11 commence to check on in the way that he sees
12 appropriate samplings of the filings to follow up on
13 that. Again, he has all necessary and attendant powers
14 to that to ask for supplemental information, to
15 interview personnel, and if he has a concern that
16 cannot be satisfied with regard to the fact that --
17 from the response that he feels that the respondent is
18 not or may not be following the processes that have
19 allowed them to commence again he can recommend to Your
20 Honor that they be suspended and Your Honor then based
21 on what's presented will either decide to do that or
22 not do that.

23 So I think there's plenty of teeth and plenty
24 of authority in what the Special Master can do during
25 what we've been calling performance review process even

1 once the respondents are permitted to recommence
2 prosecution of the uncontested foreclosures.

3 THE COURT: One of the things contemplated in
4 the order to show cause was the possibility of imposing
5 penalties on the respondents and the stipulation does
6 not do that. And yet you're recommending it. And can
7 you explain why?

8 MR. DAUBER: Yes, Your Honor. Your Honor
9 undoubtedly is aware of the fact that the actions taken
10 by the judiciary of New Jersey are not the only actions
11 being taken with regard to this issue. This issue is
12 one of national scope. Indeed even before the
13 judiciary here took action on December 20th there were
14 many investigations that were begun around the country
15 with regard to this problem. In fact, some of the
16 incidences cited in the Legal Services of New Jersey
17 November 4th report and some of the evidence which
18 Judge Grant relied on in his order relate to activities
19 outside of the state of New Jersey, not just in New
20 Jersey.

21 For example, all 50 attorney generals of the
22 50 states have been conducting an investigation
23 relating to this issue. A couple of congressional
24 committees have been conducting investigations. The
25 Office of the Controller of the Currency which is the

1 federal agency which has regulatory authority
2 concerning these banks has been conducting
3 investigations. The new consumer agency that was
4 created under the administration -- under the current
5 Obama administration has been conducting
6 investigations. Various United States Attorney's
7 Offices throughout the United States have been
8 conducting investigations. And I am sure there are
9 others.

10 They are conducting very broad based
11 investigations. They are investigative or regulatory
12 agencies. They have the tools to do so. They have the
13 resources to do so. The judiciary in our separation of
14 power system is not charged with the investigative or
15 executive function. The judiciary is not well designed
16 to do this, does not necessarily have the resources to
17 do it and perhaps should not be doing it, because the
18 judiciary in the end has to rule on things that may be
19 protected. So in terms of broad based penalties or
20 sanctions I think, number one it would be duplicative
21 and unnecessary given all these other investigations
22 that are being conducted, and number two would be
23 problematic from both a practical and other point of
24 view for the judiciary to engage in it.

25 This is not to say that if sanctionable

1 conduct is found as a result of a proceeding before a
2 particular court in a particular manner whether it be a
3 class action matter or whether it be an individual
4 action that the Court could not under traditional
5 principles of jurisprudence impose sanctions.

6 So sanctions may be able to be imposed, but I
7 don't think that this order to show cause that Your
8 Honor then which is forward looking and looking to
9 assure the judiciary of the integrity of the process
10 report is the place to get into an adversarial process
11 of how sanctions which undoubtedly would delay being
12 able to move forward, and as I say may not be -- may be
13 problematic from a number of points of view and totally
14 unnecessary.

15 THE COURT: And why do you believe that the
16 stipulation is in the public interest?

17 MR. DAUBER: Your Honor, I believe it's in
18 the public interest because I think the public has a
19 couple of -- has multiple interest here. But number
20 one, the public certainly has an interest which is the
21 main interest of the judiciary to make sure that what
22 is presented to the judicial system and what the
23 judicial system is acting on especially when it is
24 acting unilaterally for the most part in uncontested
25 foreclosure cases is reliable. And that goes to the

1 heart of our judicial system. We have to be able to
2 rely on sworn statements, testimony and other evidence
3 presented to the Court, and the Special Master process
4 which by the way, no intervenor -- proposed intervenor
5 objects to the crux of this recommend stipulation which
6 is having a Special Master process. And so they raise
7 the other points that we've discussed, whether there's
8 enough authority, whether there's -- whether it's
9 robust enough, et cetera, and I think I've addressed
10 those.

11 But I think the idea, and Your Honor's idea
12 in the order to show cause of having a Special Master
13 of the stature of Judge Williams impose with regard to
14 this process to make sure that the Court is getting
15 valid presentations is, number one, essential. Number
16 two, it has been months, Your Honor, at least since
17 December 20th, but really before, since there has been
18 movement with regard to these foreclosure matters.

19 There are now tens of thousands of them in
20 the pipeline. This means that nothing is happening
21 with those properties. Some of those properties, I
22 can't give you an exact number, but it's been estimated
23 20 to 30 percent may be vacant, and therefore could run
24 the risk of imposing some blight under neighborhoods or
25 other problems that we're all aware of with regard to

1 vacant houses.

2 But even for those that are not vacant it
3 certainly has a -- I won't call it necessarily
4 depressing, but an effect on the economy that is not a
5 positive one of not being able to have these properties
6 being moved.

7 Thirdly, Your Honor, I think it's in the
8 public interest because not only does it in no way harm
9 any individuals or impinge on any of the homeowners'
10 rights as we said before, but, Your Honor, actually by
11 having Judge Williams engage in this process with these
12 banks and having Judge Barrasonic engage in the process
13 that he's engaging with the other 24, and having the
14 new court rules it creates greater protection for each
15 and every homeowner who has a mortgage and who may be
16 subject to foreclosure. So I think at least for all
17 those reasons, for those three reasons, Your Honor,
18 that it's clearly in the public interest and I think to
19 the public interest that we make this process move
20 ahead now as expeditiously as possible.

21 THE COURT: Okay, thank you. I will call
22 upon Ms. Jurow.

23 MS. JUROW: Thank you, Your Honor. Your
24 Honor, I'll try to address Mr. Dauber's comment.
25 First, this is our motion to intervene. We're here on

1 behalf of 11 individual homeowners both as individually
2 and as representatives of homeowners in general. And,
3 you know, I was happy to hear that Mr. Dauber
4 interprets the recommended stipulation as not affecting
5 individual homeowners' rights, but at the same time I'm
6 perplexed as to why then he opposes our intervention
7 and the relief that we requested. The relief that we
8 requested is really not -- doesn't interfere with and
9 it's contemplated by the recommended stipulation. I'm
10 not sure why the opposition. I think that the
11 opposition belies the fact that we are asking for
12 something that is different and is certainly not
13 encompassed in the recommended stipulation.

14 And I would note that, and I don't -- not
15 expecting to say this, but I recall that in the
16 administrative order Judge Grant put forth a number of
17 homeowners who filed an answer and then the numbers
18 that were characterized as uncontested. And my
19 recollection is there was something on the order of
20 7,000 answers that had been received, but denominated
21 as uncontested. And so -- and I'm sure Your Honor
22 knows and many people in this room understand
23 uncontested is not the same thing as necessarily in
24 default. Uncontested isn't the same thing as saying I
25 don't disagree with what's happening here.

1 We are intervening on behalf of homeowners to
2 protect their individual rights to individual justice.
3 The concern that we have, and the reason that we
4 interposed this motion is that, one, I don't see that
5 in the recommended stipulation there is -- and if I
6 missed it I'm happy to have missed it, but that there
7 is notice to individual homeowners that their case is
8 one that involves a, what we're calling I guess a
9 document irregularity at sometimes and a robo-sign
10 document at other times.

11 It's not clear to me, and in fact it was
12 clear -- it seemed to me that the anticipation was that
13 they would not receive this. And I did hear that we
14 can have a discussion about the process that doesn't
15 involve the homeowner. That we can have a discussion
16 that involves the plaintiff and the Court, but not the
17 homeowners. And our processes are for -- when we read
18 affected parties in Your Honor's order to show cause
19 that this order to show cause is about the rights of
20 the affected parties, when we read that on December
21 20th we read that as including plaintiffs and
22 defendants, not as including only plaintiffs as being
23 the affected parties, or only the Office of the Court
24 as being an affected -- yeah, Office of Foreclosure as
25 being an affected party.

1 Quite candidly my colleague Rebecca and I had
2 -- were invited to a meeting with the Conference of
3 Chancery Judges, I guess their called, in late
4 September about the GMAC disclosure that they had come
5 forward to the Court to say that they had documents
6 that were improper. We still don't know, aside from
7 GMAC I think submitted a list of cases I think towards
8 the end of October after that meeting what cases --
9 what homeowners are involved. But at that time the
10 Court didn't know, we don't know.

11 Are our clients people who have these
12 documents in them? Are our clients? I know only as of
13 these 11 Edward and Patricia Vernon, because they
14 appeared on the GMAC list. But to the best of my
15 knowledge there's no way to tell from the public docket
16 which homeowners' case involves Chase or involves Wells
17 Fargo, or involves anyone where these documents may
18 have been filed. And what we're here to do is to
19 protect that when the documents get changed it's not
20 only to just be a smoking mirrors or a slip, you know,
21 here, take this one and give me back that one in terms
22 of changing the document.

23 But, that the homeowners are going to have an
24 opportunity to be told that their case was affected and
25 to come forward and to have a hearing on what they

1 think the relief should be in their individual case
2 rather than what we have -- what we're concerned that
3 we have here which is a procedure by which a quote, a
4 prima facie case is made that then washes over and
5 legitimizes the filings in every case so that a sample
6 then becomes substituted for individual justice. And
7 we don't think that's appropriate and we're asking Your
8 Honor, to -- when you enter an order, a final order
9 after the order to show cause to make that clear.

10 We've asked, we think, you know, as I listen
11 to Mr. Dauber's argument, as I said before, maybe
12 there's less space between us than each of us thinks.
13 Because I didn't hear him object to any particular
14 request that we've made to be added to this order in
15 addition to the stipulation. So I don't hear that
16 there's any objection to providing a full list of the
17 cases involving these foreclosure plaintiffs and that
18 that be made public.

19 Legal Services -- when the Court came out
20 with the mortgage mediation program Legal Services
21 stepped up to the plate and operated the mortgage
22 foreclosure hotline. We have thousands of people who
23 call us looking for assistance. Some of them qualify
24 for free legal services, some of them only get referred
25 to housing counselors. But the fulcrum of where people

1 call for help when they get their mortgage. But we
2 can't help any one of those people.

3 If Your Honor called me today and said Peggy
4 I need help with my mortgage I wouldn't be able to look
5 anywhere and know whether Your Honor's case was caught
6 up in this. And that's a big problem for us, because
7 you could talk about that we have -- that homeowners
8 have the individual rights to move and to do X, Y, and
9 Z, but it's very, very complicated stuff. I don't
10 think there's anyone in this room who would suggest
11 that this is not a complicated material.

12 The focus on -- respondent's focus has been
13 on saying that nobody's being sued who isn't in
14 default. But, in New Jersey we have the Fair
15 Foreclosure Act and that says very different than other
16 places around the country. Because pursuant to the
17 Fair Foreclosure Act starting in 1995 homeowners have
18 the right to cure up through judgment. So unlike other
19 states the mortgage is not accelerated by virtue of an
20 individual default. So the accuracy of the arrearage
21 so that the homeowner can exercise the cure is crucial.
22 And it's crucial to success in the Court's own
23 mediation program.

24 Moreover, the -- you need two things to be
25 able to effectively be in a mortgage mediation program,

1 to have a meaningful mediation program; (1) is know how
 2 much the right to cure is, and (2) be talking to the
 3 right person. And the robo-signing issues and document
 4 irregularities that are chronicled and Legal Services
 5 report dated November 4th, 2010 and repeated and
 6 supplemented frankly in the administrative directive of
 7 Judge Grant implicate both of those things.

8 And, Your Honor, we in reply today faxed to
 9 Your Honor provided to the respondent a brief
 10 supplement -- a brief reply to include what quite
 11 frankly shocked me and I think probably shocked Judges
 12 Doyne and McVeigh in two unreported cases. That while
 13 Your Honor has an order to show cause going on, while
 14 we have these actions, the emergent rule, the
 15 Barrasonic matter, we have two cases, two unreported
 16 cases now where this same practice is going on.

17 So in the case before Judge Doyne, I think
 18 it's U.S. Bank v. Spencer, we have a summary judgment
 19 motion that is submitted to Judge Doyne in January,
 20 just this January with the affidavit of an associate at
 21 a law firm purporting to have personal knowledge of the
 22 note, of the mortgage, of the account history, et
 23 cetera of which of course he has none, absolutely none.
 24 And Judge McVeigh has a trial in October -- now mind
 25 you it was before these actions took place, and the

1 decision comes somewhat later, but still after the
 2 robo-signing announcements that were in the press in
 3 the fall, and bring for trial a witness from the
 4 servicer and she can't testify about standing.

5 And so I believe Judge McVeigh said something
 6 to the effect of the witness was really terrific on her
 7 case in chief, but couldn't withstand cross
 8 examination, because she didn't have personal knowledge
 9 of the documents that she was testifying about. She
 10 just wasn't qualified. And so do we have any
 11 confidence in this proceeding? We don't have
 12 confidence that respondents have changed their tune,
 13 because we see that this stuff continues and goes on.

14 And so waving the words prima facie case or
 15 business records, using these words, these legal words
 16 is not enough. And that's part of what we're trying to
 17 -- that's one reason why we want to have notice to our
 18 clients that their cases are involving this, and to be
 19 able to see what the substituted pleading is. Because
 20 I'd love to -- I would love to be wrong, but I don't
 21 believe that the substitute is going to meet the
 22 business record rule. I don't see that it will for a
 23 lot of the reasons that were set forth in the Seton
 24 Hall brief.

25 Some of these may involve substitution of

1 parties. If the plaintiff is wrong it's not
2 appropriate to just put in a new pleading, this is oh,
3 now it's a new plaintiff. A plaintiff is not a
4 placeholder for litigation for any old person. And so
5 a substitution of a party should be made by motion.

6 THE COURT: Well that issue is squarely
7 addressed by the court rule which authorizes the Office
8 of Foreclosure to enter such orders in uncontested
9 cases. So some of what you're seeking really needs to
10 be done by rule amendment applying to the civil
11 practice committee. I mean it --

12 MS. JUROW: Your Honor, --

13 THE COURT: Let me just point out it's 134-6
14 Section 4 --

15 MS. JUROW: I'm familiar with the rule.

16 THE COURT: -- which authorizes the Office of
17 Foreclosure to recommend the entry of an order in an
18 uncontested action substituting the plaintiff. So --

19 MS. JUROW: There's more to that rule, Your
20 Honor.

21 THE COURT: Yes.

22 MS. JUROW: If the plaintiff has merged or
23 changed its character in the course of the proceeding
24 --

25 THE COURT: Or assigns --

1 MS. JUROW: -- not --

2 THE COURT: -- the mortgage to another entity.

3 MS. JUROW: Or assigned it to another entity.

4 THE COURT: Right.

5 MS. JUROW: Which is different than you
6 didn't have it at the time that you filed it.

7 THE COURT: Well, that's the standing issue.
8 But my only point is that if there's -- when I read
9 your papers on that point it looked at if you wanted to
10 change that -- it looked like you wanted to change that
11 rule --

12 MS. JUROW: No.

13 THE COURT: -- which might be appropriate,
14 but you'd have to go a different mechanism. This
15 proceeding can't change rules. At best Judge Williams
16 as a result of whatever experience he has as Special
17 Master if he's appointed as a result of the proceeding
18 could make recommendations. But he can't change a
19 rule, nor can I.

20 MS. JUROW: Well, Your Honor, for example,
21 Indy Mac Bank. Indy Mac Bank was taken over by the
22 FDIC. So cases here Indy Mac Bank was plaintiff and
23 then they -- after -- and it was a portfolio loan and
24 afterwards they sold that loan to One Less Bank in an
25 uncontested matter could substitute plaintiff for One

1 West because that's something that happened afterward.
2 Indy Mac had it at the beginning, they transferred it
3 later.

4 THE COURT: Right. And that comes within the
5 rule.

6 MS. JUROW: Okay. That's different than what
7 is saying like, for example, in what appears to be the
8 case in Ford -- Wells Fargo v. Ford where there's just
9 simply nothing to show that Wells had the loan at the
10 time that the foreclosure complaint was filed. Same
11 thing with the case -- the Gleason case that Judge
12 McVeigh just decided. And that's not different in an
13 contested versus an uncontested case. Your Honor
14 doesn't want, I don't think, your signature on
15 foreclosure judgments that have the name of somebody
16 who wasn't a proper party at the time that they brought
17 the case. The proper remedy in those cases is to
18 dismiss and let the right party file. It's not to
19 substitute a plaintiff.

20 There's no other sort of lawsuit, and
21 foreclosure is not different. The rules are not
22 different for foreclosure aside from processing than
23 they are for anything else. The legislation did not
24 say foreclosure is a different -- you know, gets less
25 due process than other causes of action. And that's

1 what we're concerned is happening in the recommended
2 stipulation is that there is an effort to take
3 something and because it's denominated uncontested,
4 strip it of its due process.

5 THE COURT: All right. You know what, I
6 think in light of the number of people I have to hear
7 from if there's any other thing you want to emphasize
8 why don't you do that, and then we'll move on to Seton
9 Hall.

10 MS. JUROW: The other thing that I wanted to
11 emphasize, Your Honor, is that I think that the Stahl
12 (phonetic) case is instructive here. The Stahl case
13 was the case where the sheriff's office frankly, and
14 the lower court ordered, didn't want there to be
15 additional adjournments, that it bollixed up their
16 offices, that it caused them a lot of, for want of a
17 better word (indiscernible). And they -- and the
18 Appellate Division said the expression of public policy
19 in this state -- this comes from the Fair Foreclosure
20 Act -- since that time we now have the New Jersey
21 Mortgage Stabilization Act, but it is not to get
22 foreclosures done as quickly as possible. It is to
23 ensure that homeowners have an opportunity to cure
24 their defaults and stay in their homes.

25 Mr. Dauber talked about the problems with

1 vacant houses and that depression attendant with that.
2 But, the truth of the matter is that there is
3 depression attendant with foreclosure, in general. And
4 people staying in their homes and that is part of the
5 New Jersey Mortgage Stabilization Preamble enhances
6 neighborhoods and properties. And so we respectfully
7 request that Your Honor allow our 11 clients to
8 intervene in this matter, and that you add to the entry
9 of the recommended stipulation, the additional
10 protections for homeowners that we requested.

11 THE COURT: Thank you.

12 MS. JUROW: Thank you, Your Honor.

13 THE COURT: We'll turn now to Ms. Fisher.

14 MS. FISHER: I'd like first to thank Your
15 Honor for allowing us the opportunity to argue today on
16 such short notice.

17 (Indiscernible) justice should be allowed to
18 intervene or, in the alternative, to appear at its
19 amicus in an organizational capacity because of our
20 direct interest in low income foreclosure defendant.
21 But we, and Legal Services, cannot represent, we have
22 very limited resources and can only represent a few of
23 the (indiscernible) classes (indiscernible) and whose
24 foreclosures therefore appear perceived uncontested.
25 That's the very class of homeowners affected by the

1 order to show cause.

2 Our appearing in this proceeding is a way of
3 representing the interests of the broader class of low
4 income North Jersey urban homeowners from whom our
5 plaintiffs are chosen. We do more than just represent
6 individuals in foreclosure litigations. We advocate
7 broadly for their interests in a variety of different
8 fora as outlined in certifications accompanying our
9 intervention motions.

10 Also, I think an elephant in this room today
11 is that 94 percent of New Jersey foreclosures were
12 uncontested last year. That is a staggering number.
13 It's safe to assume that most of these defendants could
14 not afford counsel. It is extremely unlikely then, as
15 an adult, that these defendants will independently
16 challenge certifications based on faulty data. Because
17 the affected classifications in this proceeding today
18 is uncontested, this proceeding is the only realistic
19 opportunity for the issues of this class of low income
20 homeowners in uncontested foreclosures to be raised.

21 I have a great deal of respect for Mr.
22 Dauber's efforts and submissions that he has made to
23 the Court, along with the recommended stipulations yet,
24 just to echo Legal Services, uncontested foreclosure
25 defendants have not been represented, at all, in the

1 negotiations thus far. Thus, the need for seeking to
2 intervene.

3 First I will address our intervention and
4 then the merits. New Jersey courts have long supported
5 broad associational standings. While the Center for
6 Social Justice is not a membership organization, that
7 is not required to obtain associational standings. No
8 cases to our knowledge hold that as pre-condition. In
9 fact, in a case entitled New Jersey Protection and
10 Advocacy v. James, for the District -- a federal case,
11 District of New Jersey '05 available at 2005 U.S.
12 District Lexus 22749 which we did not have time to
13 include in our submission, but could include in the
14 supplemental filings if Your Honor requests, Protection
15 and Advocacy was allowed to intervene to assert the
16 rights of disabled children, a class whose interest is
17 represented as an agency, even though it was not a
18 membership organization.

19 But, similarly, the Center for Social
20 Justice, not a membership organization, does have
21 constituents; again, the low income New Jersey
22 homeowners from whom its actual clients come.
23 (Indiscernible) equivalent of members for purposes of
24 associational standing.

25 The Center for Social Justice has a direct

1 stake in this matter because our broader client
2 population will suffer a direct injury if the
3 recommended stipulation is adopted as worded. It's our
4 view that their foreclosures could go through without
5 adequate safeguard against these faulty unreliable data
6 (indiscernible) certifications. Our practical ability
7 to protect the interests of our broader client
8 population will be impeded if we are not allowed to
9 intervene and request the use of some additional
10 safeguards.

11 And finally, our motion is timely because
12 what we're responding to specifically is the
13 recommended stipulation that was not submitted until
14 last Friday. Now, I've just gone through the test for
15 mandatory intervention, but permissive intervention
16 standards would be met, as well. Our homeowner -- the
17 class of homeowners for whom we have a case share
18 common questions of law, in fact, with this proceeding,
19 namely their right to be free from wrongful foreclosure
20 based on robo-signed certifications.

21 Now then, moving on to the merits. I was
22 quite pleased to hear from Mr. Dauber today that the
23 recommended stipulation does seek to incorporate more
24 robust procedures than have been apparent from a
25 reading of it. For instance, we have -- our brief

1 relies heavily on New Jersey Rule of Evidence 803.6,
2 the business record exception and, in particular, the
3 prong that requires that the sources of information or
4 the method, purpose, or circumstances of preparation
5 indicate trustworthiness.

6 Now, my read of the recommended stipulation
7 does not reveal that this trustworthiness prong is
8 mentioned anywhere. To my knowledge, it is not
9 explicitly in the recommended stipulation at all;
10 hence, the source of our major concern. Now, again,
11 Mr. Dauber has alleviated a number of these concerns by
12 making clear this afternoon that the recommended
13 stipulation does intend to encompass every prong of the
14 business records exception, and as long as we have the
15 assurance that trustworthiness will be a major focus of
16 the Special Master's inquiry, many of our concerns
17 would be allayed. Still, we would seek to intervene as
18 the process goes on to help ensure and assist in any
19 way to make sure that that occurs.

20 Given the fundamental data integrity issues
21 that we've enumerated in our brief -- and I'm going to
22 be very quick today, so I'm relying largely on our
23 argument as set forth in our proposed brief on the
24 merits. Many data errors, mistakes, alterations do not
25 necessarily appear on the face of a computer screen

1 that's being reviewed by an employee at a default
2 subservicer. Hence, as a practical matter, there will
3 need to be further inquiry in many cases beyond just
4 what appears on a computer screen.

5 And finally -- I'm repeating myself but I do
6 want to emphasize that if the procedure, as it moves
7 forward, does include a serious inquiry into these
8 underlying issues that go to data integrity and go to
9 the accuracy of account information that's being
10 submitted in foreclosures, we would have much more
11 faith in this process and a broader class of homeowners
12 whose interests we advocate for would be more fully
13 protected. Yet, that may not be the end of the story.
14 As things develop there may be unforeseen circumstances
15 that arise and we would like to be part of that process
16 as it moves forward.

17 THE COURT: One of the things that you
18 mentioned with the affidavit from the employee who used
19 to work for one of the default servicing companies was
20 the security of the system, and you just alluded to it.
21 That's a significant concern you have, that any number
22 of people can get in and alter information that was
23 there, is that -- am I correct in seeing that as one of
24 your concerns?

25 MS. FISHER: Yes. It's a central concern.

1 And part of the problem here is too many cooks, really
2 the data as it appears on a computer screen ultimately
3 at the office of somebody who is preparing the
4 certification that will be personally reviewed by
5 counsel or a servicer employee before being signed is
6 still -- still may well have been subject to alteration
7 somewhere in the pipeline. The default subservicers
8 laws, Fidelity, LPS, have set up a process that
9 prioritizes cost, efficiency, and cutting of corners
10 over that integrity. And Mr. Watkins' certification
11 only bolsters the argument that we've made in relying
12 on a couple of bankruptcy cases; In re Diller and In re
13 Rivera.

14 THE COURT: I did look at those. Thank you,
15 Ms. Fisher. Mr. Potter?

16 MR. POTTER: Thank you very much, Judge
17 Jacobson.

18 It's a delight and a pleasure to be here in
19 this very crowded courtroom for a very important
20 purpose. Along with my co-counsel, Mr. Malone, we
21 represent the sole single individual, I think, that is
22 being -- requesting intervention, and that's Ms. Jakes.
23 We have submitted her certification in support of our
24 motion to intervene. That certification, I think, is
25 an eloquent story, a true life -- a reality story, if

1 you will, of one woman's desperate and continuing
2 efforts to save her home because once foreclosed upon
3 in 2009, and it sold at a sheriff's sale for \$100.
4 That sheriff's sale was later rescinded by order of
5 Judge Cavanaugh. She continues to seek a meaningful
6 change in her mortgage and forbearance, and that's
7 when she contacted me.

8 Now, I think what I might do is respond first
9 to the opposition papers filed by Mr. Dauber. I
10 received them this morning. I realize this is all
11 happening very quickly. He raises four or five
12 objections. Number one, he says our motion is
13 untimely, but doesn't cite any case law. We reviewed
14 the case of Warner v. Sutton, a 1994 Appellate Division
15 case. I think Your Honor is very familiar with it,
16 which basically said that intervention is permissible
17 even after there has been a stipulation signed
18 precisely because the parties who are seeking to
19 intervene are objecting to that stipulation.

20 THE COURT: There, though, in the Warner
21 case, it was pretty narrow though, wasn't it? I mean,
22 the Court said there they'd be permitted to intervene
23 to take the appeal where the issue was a legal matter
24 that -- I think the claim was that the stipulation
25 itself was somehow illegal, whereas here you're seeking

1 discovery of 450 days. You're seeking fraud claims.

2 MR. POTTER: Well, Your Honor --

3 THE COURT: I mean, at least that was
4 mentioned. I was trying to get at the purpose of your
5 intervention because you made it sound as if you wanted
6 to turn this case into -- you know, into Ms. Jake's
7 case, plus a class action on top of it.

8 MR. POTTER: Well, Your Honor, I think -- I
9 won't repeat what was said telephonically by Legal
10 Services and Ms. Fisher for Seton Hall, but there is an
11 overlap between the individual cases and this
12 prospective system-wide effort to cure and prevent the
13 robo-signing frauds.

14 Let's be clear. We're talking about massive
15 system-wide fraud, and that has happened to my client
16 and it's happened to thousands of others. And that's
17 why I refer to -- our very first objection is -- well,
18 let me answer your question more directly. We would
19 like to intervene both in the process by which Your
20 Honor determines whether or not to accept Mr.
21 (indiscernible) -- respondent's stipulation. And,
22 secondly, we want that intervention to continue in
23 whatever process proceeds with Judge Williams in the
24 future in order to protect my client's interests and
25 the interests of others who are similarly situated.

1 I think there are sort of two interventions
2 going or they're happening at the same time, so we're
3 seeking intervention in both. I'll admit this is not
4 on all fours a hundred percent with Warner v. Sutton
5 but I think it -- that case expressed the liberal view
6 of our courts in terms of intervention, especially
7 where there has been a stipulation that essentially
8 excludes the interests of some of the affected public.

9 Now, Mr. Dauber also says that our
10 intervention exceeds the scope of the order to show
11 cause. I truly disagree with that. The scope of the
12 order to show cause, Your Honor knows very well, is an
13 expansive one. It looks at past business practices of
14 the robo-signing banks and mortgage servicing
15 companies. And Paragraph D, VI, it asks the question
16 of whether or not there could be sanctions for past
17 misconduct. It asks for cures for the situation as
18 identified in Judge Grant's order. It asks for
19 remedies and, as Your Honor knows in looking at
20 remedies just as in a pollution rent remediation case,
21 you have to look at what was there, what was done. It
22 has to be extremely clear before you can figure out a
23 remedy or a cure.

24 Now, I think it was red herring by Mr. Dauber
25 to suggest that we're trying to adjudicate the unlawful

1 foreclosure for a particular home. We are not doing
2 so. We see that as representative, however, of those
3 94 percent foreclosures that were uncontested. Mr.
4 Dauber also says, well, we really don't need to look at
5 the past practices because there are all of these other
6 investigations going on. Well, I would suggest that
7 that is absolutely essential for the Special Master to
8 do so. How else are we going to know what is the
9 extent of the fraud which has occurred? How are going
10 to craft essential remedies for that fraud? Special
11 Masters, of course, have frequently inquired into past
12 practices. The Special Masters appointed in Mt. Laurel
13 cases looked very closely at what the municipality has
14 done in the past in terms of affordable housing, the
15 Special Master appointed in Evan (Indiscernible) v.
16 Burke, and so on and so forth.

17 So, I think we have to get away from this
18 sense that there's a bit of a collective amnesia
19 suggested by the stipulation. Let's ignore what
20 happened in the past, we're going to wipe the slate
21 clean and we're going to go forward and everything will
22 be fine. But, in terms of these other investigations,
23 they're not of record. Most of them are occurring out-
24 of-state. None of them are really occurring in New
25 Jersey. There's no investigation going on by this

1 Attorney General. There's no investigation by this
2 Department of Banking. There's no investigation by the
3 Division of Consumer Affairs, despite the enforcement
4 powers of the Division for the Consumer Fraud Act.

5 I would submit that this is really the only
6 act in town. That's why we're here.

7 Now, I would note that Mr. Dauber does not
8 make a claim with any prejudice from our intervention.
9 I think that's significant. I don't think that there's
10 anyone who adequately represents Ms. Jakes' interest.
11 She, in particular, opposes the prospective only
12 nature of the stipulation, and we think we think it's
13 extremely important to try to cure the past defects
14 which could include restitution or cure as part of the
15 sanctions. We strongly recommend that there be an open
16 public process to review the stipulation.

17 I would think that what Your Honor is doing
18 here is almost akin to a ruling, even though it's
19 treated as an order. We're trying to come up with a
20 system-wide method for preventing more robo-signings in
21 the future. Well, that kind of sounds like an
22 APA-type ruling. Now, recognizing that this is a court
23 and not an administrative agency, that of course, APA
24 would not apply. But, we think it would be very
25 useful, not for Your Honor to make a ruling very

1 shortly, but rather to actually ask the public to come
2 and testify in a legislative-type hearing.

3 Now, lastly, and we close this with some
4 trepidation, and absolutely without any disrespect for
5 Mr. Dauber. We think there is a conflict of interest
6 in the sense of negotiating a future fee schedule for
7 his law firm to serve as Special Master counsel. We
8 think that is not appropriate. We understand why he
9 has developed a certain expertise and so forth. But,
10 we think that that is something that at least ought to
11 be open to the Court or to Mr. Williams to later
12 appoint a special counsel from qualified applicants.

13 Finally, I'll just conclude that, as the
14 other counsel have pointed out, this State has a very
15 strong tradition of an open courthouse door for
16 interveners where there is an interest that may be
17 affected that is part of a class of affected interest,
18 and we hope that that open door would include Ms. Jakes
19 and others like her. Thank you very much.

20 THE COURT: Okay. Thank you. We'll turn to
21 Mr. Melodia.

22 MR. MELODIA: May it please the Court. My
23 name is Mark Melodia from Reed Smith in Princeton. I
24 represent Wells Fargo in this order to show cause
25 proceeding. I'm also speaking, at least initially, on

1 behalf of the six bank respondents.

2 It's a pleasure to finally be before Your
3 Honor, and I say finally because we have been hard at
4 work trying to resolve this order to show cause matter
5 that was started right before the holidays, for over
6 three months. And I say hard at work because the
7 banks, Mr. Dauber, Mr. Wolfe, Judge Williams, the court
8 system has been hard at work on this.

9 I'm not going to belabor the time limits
10 issue given that it's so late in time and that we've
11 had an hour and a half of argument by the people who
12 we've said have submitted untimely motions to
13 intervene, but I do want to preserve that issue,
14 particularly in light of what we heard today, that
15 Legal Services was actually involved in discussions
16 with the Chancery Court judges in September, that their
17 report was certainly part of what prompted all this in
18 November. And that, in December Legal Services was
19 talking about whether or not they were an effective
20 party. It seems to me everybody has been on notice.
21 If you read the paper, you've been on notice. If you
22 read the Court's website, you've been on notice.
23 However, we want to address really what's been said and
24 I agree with at least part of what Legal Services has
25 said in terms of a much narrower gap perhaps between

1 positions than might appear to exist based on the late
2 filings last week. Perhaps if we had all talked in
3 December, we would know that the gap was not so wide.

4 Where the gap is not wide is that we all want
5 a fair and a functioning foreclosure process. That is
6 the Court's goal. That is everybody's goal in this
7 courtroom. While we certainly have different interests
8 in that process, we will be across the table from each
9 other at times, but nobody, none of these banks want
10 anything but a fair and functioning foreclosure
11 process. And this order to show cause is one of three
12 parts of making that happen. It is not, as Your Honor
13 said earlier, the enter process that has been ongoing
14 since December 20th.

15 Mr. Potter just closed by talking about
16 wanting a process that is both like a rule-making and a
17 legislative type of hearing. That would seem to go
18 straight to Your Honor's questions. Mr. Dauber
19 earlier, about separation of powers, that is precisely
20 what this is not. It is an administrative proceeding.
21 It's a serious proceeding. It is one that these banks
22 have taken seriously. It is not legislative, and it is
23 not rule-making. In fact, of course, we know
24 rule-making is ongoing at the Supreme Court, sort of
25 as we speak, and that will, as Mr. Dauber summarized

1 earlier, clearly affect what we are all doing going
2 forward.

3 The banks didn't ask to be here. This is not
4 the banks' process. There is some suggestion in the
5 papers that were submitted by the interveners that
6 somehow we -- they didn't use the word, I don't think
7 -- collusion, but there was a collusion in the air
8 suggestion that somehow this was done in back rooms.
9 This is not our process. With all deference and
10 respect to Judge Williams as a Special Master, to Mr.
11 Dauber as special counsel, we didn't appoint, or
12 identify or ask for either of them to -- we enjoyed
13 spending the last three months with them, but this is
14 not a process and we're looking forward to another year
15 under the recommended stipulation of being a part of
16 this process. This is not something that the banks
17 designed. The Court designed it. The Court designed
18 it in a certain way with certain parties and with
19 certain subject matter, and our written response, which
20 I will largely rely on here, addresses the scope issue,
21 which I think is the critical issue here.

22 The scope of what the interveners would like
23 to address is clearly beyond what the Court designed in
24 this order to show cause proceeding. To the extent
25 that the important issues that have been raised by

1 Seton Hall, and Legal Services and Mr. Potter's client
2 are inside the scope of this proceeding, then I think
3 as particularly Seton Hall recognizes in their
4 argument, their concerns ought to be largely allayed by
5 the appointment of Special Master Williams and the
6 detailed discussion in the stipulation itself of what
7 that prima facie showing is going to be about and then
8 another year of being accountable to Judge Williams for
9 each of our clients to make sure that what we told him
10 and what we told the Court about our process going
11 forward is, in fact, happening.

12 THE COURT: And concerns allayed because
13 they're concerns that will be addressed.

14 MR. MELODIA: They are. I think it's clear,
15 both from what Mr. Dauber has told Your Honor in
16 response to your questions. I think they should be
17 clear also from the stipulation itself. But, to the
18 extent they're not, I will say, on behalf of my
19 clients, that they are concerns that we know are going
20 to be addressed. In fact, we are hard at work right
21 now. And, in fact, Ms. Battino who ought to be here
22 given the amount of work she did on this over the last
23 three months, is back in the office working on the
24 prima facie showing because it's due Friday. So, we
25 are all hard at work on behalf of our clients to make

1 sure that Judge Williams in the first instance and that
2 Your Honor in the second instance is comfortable that
3 we have a process that addresses the concerns that the
4 Court has raised.

5 THE COURT: What about the -- you know, each
6 one of the proposed interveners has been living through
7 instances where clients were injured by
8 robo-singing issues. They pointed to cases where the
9 courts have acknowledged that, and the -- I guess a lot
10 of those cases raise standing issues and I don't know
11 if you are able to address how the stipulation might
12 affect standing issues. I mean, we're looking at --
13 we're looking at something systemic here in terms of
14 document creation. But, are you anticipating it's
15 going to have an impact on standing issues?

16 MR. MELODIA: Standing, of course, is, as
17 Your Honor noted earlier, a judicial doctrine and, as
18 somebody noted -- I think it was Mr. Potter or one of
19 the interveners said that nobody said that foreclosure
20 cases ought to have less due process, nor do they have
21 different standing rules. So, the banks are all
22 well-aware that we need to establish standing on the
23 first instance to go forward with cases, and those
24 issues are going to be addressed, but they're going to
25 be addressed in the cases. You can't address standing

1 as a general matter.

2 THE COURT: Well, that's what -- I think
3 that's one of the points they were making, is that
4 since the uncontested cases are not addressed by a
5 judge is going to be examining each document, is there
6 any assurance that the uncontested -- that somehow the
7 plaintiff in uncontested cases is going to have
8 standing, because there isn't going to be anybody there
9 to challenge it. And I think that seems to be
10 particularly the concern of Legal Services.

11 MR. MELODIA: We recognize that and, in fact,
12 that was an issue of some serious negotiation because
13 it really was not specifically addressed in the order
14 to show cause or in Judge Grant's directive.
15 Nonetheless, the banks agreed to a lot of things in the
16 stipulation that we clearly opposed in our January 5th
17 submission, as you do in any resolution in order to get
18 on with everybody's business.

19 One of the things the stipulation I think
20 specifically calls for as part of the prima facie
21 showing is a presentation to Judge Williams on issues
22 that clearly bear on standing such as the authority to
23 be acting in any given case and the relationship
24 between servicer and the investor.

25 THE COURT: And it's going to be on a

1 systemic basis though. It's not on a case-by-case,
2 basis although his review, a Special Master's review
3 would encompass individual cases.

4 MR. MELODIA: He will be sampling. Sampling
5 was used earlier by one of the interveners as a
6 negative which I found ironic because then I believe it
7 was Legal Services then went on to point to anecdotal
8 cases as if that was evidence of widespread fraud. So,
9 sampling is going to be used by Judge Williams and, as
10 Mr. Dauber said, if he -- Judge Williams finds that we
11 are not doing what we said we were going to do in the
12 prima facie showing that allowed us to restart, to deal
13 with the pipeline issue Your Honor mentioned at the
14 beginning, then he can dig deeper and look for more
15 files or find out more about a particular case.

16 In addition, to the extent that any given
17 homeowner wants to contest, including Ms. Jakes -- I
18 mean, presumably Mr. Potter is her lawyer and can
19 contest the ongoing -- as I gather from his submission,
20 ongoing foreclosure. None of that is foreclosed by the
21 stipulation. Nobody is being silenced by the
22 stipulation. Nobody's rights are being taken away.
23 Nobody is being told that they cannot raise an argument
24 that they otherwise would raise. And the stipulation
25 itself is not, in any way, going to be used as res

1 judicata, collateral estoppel, or evidence that would
2 prohibit an individual homeowner from making the
3 arguments they would otherwise make, which is why
4 really all the interventions are somewhat baffling to
5 bank counsel at least, not in terms of the concern, we
6 understand the concerns, but in terms of it being
7 misplaced because

8 -- or perhaps a misreading of the stipulation's intent.
9 There is nothing in the stipulation that would injure,
10 as the word was used earlier in connection with the
11 standing argument -- injure New Jersey homeowners.
12 How? Not at all.

13 The only way you could believe that is if you
14 believe that Judge Williams will not do his job. That
15 is the only way you can believe that New Jersey
16 homeowners will be injured by the process outlined in
17 the stipulation.

18 THE COURT: The sense from the proposed
19 interveners is that they want to be at the settlement
20 table to represent the interest of homeowners in
21 working out what the scope of Judge Williams' task will
22 be.

23 MR. MELODIA: I understand that. I
24 understand that sort of agenda that isn't quite that
25 explicitly put forward in their papers or their

1 argument today, but I get that, too. They -- the Court
2 designed this process as I started. Legal Services was
3 obviously well-known to the Court prior to this process
4 starting. Legal Services, Seton Hall, Mr. Potter,
5 anybody else was not a made a party, for better or
6 worse. My client and the other five banks who were
7 made parties. The parties negotiate settlements, and
8 that's what we've done.

9 THE COURT: And intervention at this point,
10 what are your concerns if it's granted?

11 MR. MELODIA: My concern is we'll be back in
12 January 5th, Your Honor.

13 THE COURT: And why is that of significance
14 to you? I heard Mr. Dauber's concerns about the
15 housing market generally, but why is it of concern to
16 you and the other respondents?

17 MR. MELODIA: Well, first of all, we share
18 that public interest. We share the concern about the
19 New Jersey housing market. I'll speak for myself. I
20 certainly share it, and all New Jersey homeowners share
21 the crisis and the vacant property problem that we have
22 right now with the stalled unfunctioning foreclosure
23 system. The banks though share that concern, too. The
24 banks have a significant economic interest in the
25 performing mortgages in New Jersey and want the value

1 of homes to be as good as they can be under the current
2 economic scenario.

3 In addition, the banks have an interest, a
4 secured interest, in the homes that are being
5 foreclosed upon and we have a right and access to the
6 courts as any other entities and persons do to move
7 forward and get the value of that security, whatever it
8 might be. So, we need a functioning foreclosure system
9 to accomplish all those things. In addition,
10 unfortunately, because of the economy and the job
11 market, not because of paper problems in the
12 foreclosure process, there is an ongoing problem with
13 foreclosures that, you know, has not yet abated or
14 stopped. Therefore, during this period of stall which
15 we have had for several months, the pipeline is -- you
16 know, is getting worse, not better. And I think the
17 foreclosure office and many others, the State is going
18 -- the court system, itself, is going to have a
19 significant problem processing the foreclosures that
20 are going to be coming as a result of the delay that
21 has already occurred, a delay that will occur if we
22 actually have to litigate this matter, as we assumed we
23 would on January 5th it will be much, much more
24 significant.

25 THE COURT: Anything else?

1 UNIDENTIFIED SPEAKER: Your Honor, we'll rest
2 on the papers, unless any of my co-counsel have
3 anything to add.

4 THE COURT: Anyone else want to speak on
5 behalf of the respondents?

6 (No audible response)

7 THE COURT: No? Okay. Mr. Dauber?

8 MR. DAUBER: Thank you, Your Honor. I'll be
9 brief.

10 I just want to bring things back to what I
11 think is the main focus and the main purpose of the
12 order to show cause. When Your Honor issued the order
13 to show cause, you explicitly stated that the purpose
14 of the order to show cause was, and I'll quote, to
15 protect the integrity of the judicial foreclosure
16 process in New Jersey and to assure that public -- that
17 the process going forward would be reliable, unquote.
18 That was Your Honor's purpose, and we took that, as
19 counsel appointed by the Court, as our mission in
20 either litigating or in resolving the order to show
21 cause.

22 The proposed interveners -- and if it wasn't
23 clear, we certainly do object to the interventions --
24 but the proposed interveners have many different
25 interests. I'm sure they are interested that the

1 judicial process is protected. But, they also have
2 many other avenues, including individual litigation,
3 class action litigation, dealing with the various
4 regulatory and enforcement bodies, et cetera, to pursue
5 those interests.

6 We are here because of the judiciary's
7 interest, and this process is designed to address that.
8 And I think that some of the things that we heard from
9 the proposed interveners about wanting to either
10 advance or protect the individual interests of
11 homeowners, while that may be laudable, that maybe
12 needs to be done. Judge Williams, or this process, or
13 the order to show cause was not designed to deal with
14 each and every one of tens of thousands of individual
15 cases in order to see that justice is done. There are
16 other avenues for that to be done.

17 This was designed to assure the Court -- and
18 the Court does this unusual step, because it felt that
19 its processes were being abused. And so the Special
20 Master process is designed to ensure that the
21 processes, to the extent possible, are not being abused
22 and it is being -- it is set up in the way that the
23 judiciary normally deals with this. There has to be a
24 credible showing, what we've called a prima facie
25 showing, that convinces not one but two respected

1 jurists, one as a Special Master, and Your Honor that
2 the processes, at least from what is being presented,
3 seem to now be credible where the Court can rely on it.
4 It does not take away -- it does not impede in any way.
5 Ms. Fisher said that she wants to -- that she's
6 concerned that the population will somehow be impeded
7 if they're not permitted to intervene. It does not do
8 that in any way. It takes away no rights of anyone.
9 It is not the only game in town, as Mr. Potter said.

10 This Court cannot, as Mr. Malodia said, turn
11 itself into a legislative-type body or a rule-making
12 body. Those are left to others to do that. In terms
13 of the judicial rules, as Your Honor pointed out, that
14 is being addressed by the Supreme Court, has been
15 addressed and is continuing to be addressed by the
16 Supreme Court.

17 In terms of trustworthiness, the whole
18 process, all of the standards that are set forth in
19 terms of the prima facie showing and the information
20 that has to be submitted, all as set forth in Paragraph
21 4 of the recommended stipulation, are all aimed at
22 trustworthiness, and I won't repeat what I said about
23 the powers that Judge Williams has.

24 In terms of Mr. Rose (phonetic), a concern
25 about how do we know what is being dealt with? How

1 does someone know that their case in terms of the
2 process -- not their individual case but in terms of
3 the process...

4 (Tape CI-81-11 ends, tape CI-82-11 begins)

5 MR. DAUBER: ...every filing except those as
6 to which application has been made to Your Honor and
7 granted in terms of confidentiality, every other filing
8 has to be filed with the clerk of the court so this
9 information will be available.

10 Your Honor, the -- Ms. Fisher talked about
11 the need for accuracy of the account data. Your Honor
12 brought up the question of data integrity and security
13 which was raised in their papers. Again, the
14 information that Judge Williams will be reviewing and
15 considering provides explicitly that there has to be a
16 showing of accurate up-to-date information, the system
17 for dealing with that, quality assurance procedures and
18 other provisions. This can all be examined and will be
19 examined by Judge Williams and he presumably will not
20 make his recommendation to this Court that the
21 suspension be relieved until such time as he is
22 persuaded and then, of course, the Court has to adopt
23 that if it sees fit that these showings have been made.

24 So, I think, Your Honor, the focus is on what
25 the judiciary needs to feel comfortable that the Office

1 of Foreclosure in making its review of every single one
2 of these cases is having information that has the
3 indicia of reliability that we talked about.

4 Your Honor, we would respectfully request
5 that you deny the motions to intervene. The
6 intervenors, the process is designed going forward as
7 Your Honor knows for each bank independently, each
8 respondent independently, to make the presentation to
9 Judge Williams, Judge Williams to make his findings
10 with regard to that. It is not designed to have other
11 parties raising other issues at the table. He is
12 well-aware when Mr. Potter says, you have to be aware
13 of what's gone on in the past. I think everybody is
14 well-aware of a lot the past issues.

15 We've said that to the extent that this
16 information has been presented to the Court we have no
17 problem and meaning, of course, he's heard it all, we
18 have no problem in being -- it being forwarded to Judge
19 Williams for him to look at it, for him to consider it
20 as part of his thinking process and what he's going to
21 require from respondents.

22 I think we have a robust process. We have a
23 Special Master with unique talents that is being
24 recommended to the Court, and I urge the Court -- and
25 also as was said, the settlement was negotiated on that

1 basis. I think -- I urge the Court to enter the order
2 to deny the motions to intervene and to permit this
3 process to go forward of the benefit of all.

4 THE COURT: Thank you very much.

5 MR. DAUBER: Thank you.

6 THE COURT: We're going to take a brief
7 recess and perhaps around four o'clock or a little bit
8 after I will plan to come out and give you my decision
9 on the applications before the Court. Thank you.

10 (Audio off)

11 THE COURT: First I wanted to thank all the
12 attorneys that submitted papers to the Court for their
13 written argument and also for the oral argument that I
14 heard today. It certainly helped to clarify the issues
15 before the Court. The first thing I'm going to do is
16 to address the intervention motions.

17 Intervention as of right, which I believe
18 each of the proposed intervenors sought, is governed by
19 Rule 4:33-1 and there are four criteria that the Court
20 has to review to determine if the applicant has shown
21 those criteria. They have to claim an interest
22 relating to the property or transaction which is the
23 subject of the action. They have to show that the
24 proposed intervenor is situated so that the disposition
25 of the action may, as a practical matter, impair or

1 impede that person's ability to protect that interest.

2 They must demonstrate that the applicant's
3 interest is not adequately represented by existing
4 parties, and they must make a timely application to
5 intervene, and the case law has informed the
6 application of that rule. And one of the cases I
7 relied on is Chesterbrooke Limited Partnership v.
8 Planning Board of the Township of Chester at 237 N.J.
9 Super. at 118, an Appellate Division case from 1989.
10 Intervention as of right is not discretionary if the
11 criteria is met, the application must be approved by
12 the Court and the application should be liberally
13 construed.

14 Here, I think all of the proposed intervenors
15 fall in regard to obtaining intervention as of right
16 based upon the ability to protect interests and the
17 claim that their interests are not adequately protected
18 by this proceeding. They -- the intervenors or
19 proposed intervenors claim that the individuals -- the
20 rights of the individuals that they represent will be
21 negatively affected if this stipulation is entered, but
22 as I -- I think it's become clear through the
23 proceeding this afternoon and is clear from my order to
24 show cause the aim of this proceeding was a systemic
25 one. It was not a -- not one to take a case-by-case

1 analysis of individual homeowners involved in the
2 foreclosure process, not to analyze their cases, but to
3 look at the process that generated the improper
4 documents that were submitted to the courts.

5 As I said in the order to show cause itself
6 it was sort of a blending of the supervisory powers of
7 the court over me, the judge, over the Office of
8 Foreclosure because of the designation given to me by
9 the Chief Justice and an adjudication in terms of the
10 directing the respondents to explain to me why I
11 shouldn't take action to protect the integrity of the
12 judicial process.

13 It was interesting to me that when the
14 oppositions came in from the respondents they objected
15 to the relief that I was seeking to impose upon them,
16 appointment of the Special Master and a process for
17 review, in part because it wasn't a typical case or
18 controversy. And today we heard Mr. Potter asking for
19 me to employ a legislative process, Mr. Melodia saying,
20 this is clearly not a legislative process, and I agree
21 with Mr. Melodia, it is not a legislative process.

22 While not a typical administrative procedure
23 I think the respondents have categorized it as part of
24 the Court's administrative function, and I think to a
25 large extent that's true which is one of the reasons

1 that the Court is very grateful that Judge Williams has
2 agreed to serve as Special Master because he was, in
3 fact, the administrative director of the courts and
4 understands that role, as well as he understand what it
5 means to produce documents that will meet the business
6 records exception.

7 So, because of the unusual nature of this
8 proceeding, this order to show cause proceeding, the
9 individual rights of the various proposed intervenors,
10 the clients of Legal Services, Ms. Jakes, the clients
11 of Seton Hall, their interests are not directly
12 affected. Of course, they are affected to the extent
13 that the systemic issues, the procedure for producing
14 documents by the respondents affects them, but that
15 interest is going to be very well protected by Judge
16 Williams and this process.

17 And the -- because of some of the arguments
18 made by the proposed intervenors the Court in its order
19 will address -- will make it absolutely clear that
20 nothing in the stipulation shall affect the rights of
21 individual homeowners to contest any foreclosure matter
22 or the right of any general equity judge or any other
23 judge sitting in a foreclosure case to apply his or her
24 discretion in deciding any particular case that comes
25 before that particular judge.

1 I know that one of things that was of concern
2 to Legal Services was the amount due at the final
3 judgment stage, the amount due for arrearages. And
4 even if a case is uncontested at that point, the
5 homeowner will still have the opportunity to object to
6 the amount due that's put forth in any certification or
7 affidavit filed with the court in a case otherwise
8 uncontested. So, you can have a case that's been
9 uncontested all the way up to final judgment, and yet
10 the homeowners will have the right to challenge the
11 amount due. Of course, that's always been their right
12 and it will be their right going forward and nothing in
13 the proposed stipulation takes away that right to
14 object to any amount due that is -- that's going to be
15 submitted by any of the respondents in this case. But,
16 I do think as a result of this process the Court is
17 going to include -- make it crystal clear, as I said,
18 in my order that this process under the order to show
19 cause will not affect the individual rights of any
20 foreclosure defendant that wishes to contest the
21 proceeding at any step of the process.

22 In terms of Ms. Jakes' motion, she, you know,
23 she particularly focuses on fraud and I think you heard
24 Mr. Potter mention the word "fraud" repeatedly and they
25 -- he and co-counsel are apparently proceeding in -- to

1 protect her own interests and to vindicate or try to
2 vindicate her interests in whatever contested matter
3 that they have. But, as I mentioned it's -- this is
4 not a legislative process. It was designed to address
5 the integrity of documents provided to the judiciary,
6 generally, and to the Office of Foreclosure -- actually
7 Office to Foreclosure, as part of the judiciary.

8 The concern about fraud though underscores
9 some of the claims that may be made against some of the
10 respondents here. They were very concerned in their
11 submissions to me opposing the relief that I proposed,
12 that they were not going to be adequate protections for
13 them. I mean -- and if we had a fraud case and if
14 there were to be sanctions based upon fraud, there's no
15 way that we could proceed and address the issues of the
16 Office of Foreclosure in an expeditious and efficient
17 way and, so, I think that any claims of fraud are going
18 to have to be addressed in individual cases and that
19 will be up to prosecutors to do. It was not within the
20 scope of this proceeding.

21 Again, I don't view the rights of the
22 individual homeowners or those who represent them to be
23 impaired by the recommended stipulation, and so I don't
24 think that they can make that aspect of the test for
25 intervention as of right.

1 In terms of timeliness I'm not going to fault
2 the proposed intervenors. They waited to see what
3 would be contained in the recommended stipulation and I
4 know that we've heard from the other parties that --
5 there has been argument certainly in the briefs that
6 these motions were untimely. They certainly came at
7 the last minute, but as they pointed out, the
8 recommended stipulation was filed on March 18th and
9 they responded as quickly as they could and thankfully
10 the -- Mr. Dauber and the respondents to the order to
11 show cause were able to file replies with the Court and
12 argument today, and I appreciate all the hard work that
13 went into those things, but the timeliness in terms of
14 intervention really gets into the delay that could be
15 caused by reopening the stipulation at this point in
16 time and that's of significant concern to the Court
17 which -- but, I'll address that in terms of the
18 standard for permissive intervention.

19 The plaintiff, the proposed intervenors, have
20 brought up their own standing, and I don't want to
21 spend a lot of time on that because you need to meet
22 each of the criteria to get intervention as of right
23 and since they don't meet the second and third criteria
24 I'm not going to belabor standing.

25 New Jersey courts do view standing quite

1 broadly and while they're -- we don't have member
2 associations -- membership associations before us, I
3 think it's crystal clear how Legal Services and Seton
4 Hall have been involved in the foreclosure issue in the
5 various ways that they've stated in their briefs, and
6 certainly in the knowledge of the issues that they
7 showed in their argument today and, so, I'm not going
8 to find that they would lack standing.

9 So, they haven't met the standard for
10 intervention as of right and -- but, the Court also has
11 to analyze their applications under permissive
12 intervention under Rule 4:33-2. And that rule provides
13 that upon timely application anyone may be permitted to
14 intervene in an action if his claim or defense in the
15 main action have a question of law in common. In
16 exercising its discretion the Court shall consider
17 whether the intervention will unduly delay or prejudice
18 the adjudication of the rights of the original parties.
19 This -- a Court's determination of a permissive
20 intervention motion is subject to the abuse of the
21 discretion standard. That's made clear in Asbury Park
22 v. Asbury Park Towers 388 N.J. Super. 1, an Appellate
23 Division case from 2006.

24 And the -- some factors that the Court should
25 consider include the promptness of the application,

1 whether or not granting it will result in further undue
2 delay, whether or not the granting of the application
3 will eliminate the probability of subsequent litigation
4 and the extent to which the grant of the motion and
5 allowing the intervention will further complicate
6 litigation, which is already complex. The Court has to
7 consider the public interest in the litigation as
8 another factor.

9 In the case I think it was referenced by Mr.
10 Potter, Warner v. Sutton 270 N.J. Super. 658, the
11 Appellate Division allowed a party to intervene at --
12 after a final judgment was entered for the purpose of
13 taking an appeal and it really focused the attention on
14 the purpose for which intervention is sought. And in
15 the Warner case because intervention was sought for the
16 sole purpose of taking an appeal to challenge the
17 legality of the settlement that had been entered, the
18 Court allowed it and even at the stage of
19 post-judgment, in fact, to take an appeal. In the
20 colloquy I had with Mr. Potter it sort of underscored
21 my concern looking at the Warner case because it was
22 something that was -- had facts that at least involved
23 the settlement, and so, it was of interest to me.

24 What's proposed here is not to challenge the
25 settlement at the appellate stage, it's asking the

1 Court to reopen the settlement and to allow three
2 attorneys representing various parties, homeowners, at
3 various stages of the foreclosure process, to come to
4 sit at the table and to promote the interests of those
5 homeowners and the -- my concern about doing it at this
6 stage is that it does go beyond the scope of the -- of
7 this proceeding.

8 The scope of this proceeding is not to look
9 at individual rights, not to look at individual cases.
10 It's to look at the problem -- at the source of the
11 document creation -- the document creation process, and
12 it's really to require the parties that are presenting
13 these documents to the Court to prove to Judge
14 Williams, and then to me, that these documents were
15 created based upon a process that conforms with law and
16 is trustworthy to the extent that they meet the
17 business records exception. Does it mean there will
18 never be mistakes in the future? No. The computer
19 screens, the computer technology that's relied upon by
20 the various servicing entities they're operated by
21 humans. Everything's going to subject to human error.

22 But, what we want is to assure that there's a
23 process that makes sure that robo-signing is a thing of
24 the past, that makes sure that certifications submitted
25 to the Court are based upon personal knowledge of the

1 individual signing those documents, that makes sure
2 that any notary that notarizes a document submitted to
3 the Court that affects property rights is signing that
4 document in the presence of the person who has
5 represented information to be true in that document and
6 that can identify themselves to that notary, and that's
7 the focus of this process. And to reopen it at this
8 time after we've already had several months of
9 negotiations to reach the recommended stipulation I
10 believe would hinder the public interest and not
11 support the public interest.

12 We have issues that have been raised, for
13 example, there are issues raised by the parties that
14 really get to rule making issues that may go beyond the
15 scope of the current rule making that's being
16 entertained by the Supreme Court, but are looking for
17 particular requirements to be imposed upon the
18 foreclosure process and that seems to me to go beyond
19 the scope of this case which is focused on the
20 integrity of the documents.

21 And the -- you know, Mr. Potter for his
22 client has mentioned wanting to pursue fraud, wanting
23 to pursue penalties, talking about the number of days
24 for discovery of a civil case of 450. I think
25 obviously that those kind of issues, those kind of

1 concerns don't belong in this process. We want to get
2 the Office of Foreclosure back and operating as quickly
3 as possible knowing that the documents they're
4 receiving meet the requirements of court rule and
5 applicable law.

6 And so, I think it would be a disservice, as
7 I said, to the public to further delay the process,
8 especially when Judge Williams has agreed to act as
9 Special Master, and where these respondents have agreed
10 to submit to the Special Master process. I don't think
11 this was done lightly. I read the briefs that they
12 filed and that raised various constitutional and other
13 issues about this Court's jurisdiction and, yet,
14 through the process, with Mr. Dauber's assistance,
15 they've come to agree to submit to the Special Master
16 and to the process and to one year of monitoring.

17 All of this was negotiated back and forth
18 with the Office of Foreclosure at the table there
19 representing the interests of the judiciary and, so, I
20 think to delay it further in unknown ways -- what would
21 happen to bring three additional parties with their
22 very genuine interests, but vested interests to the
23 table? There's no way to predict how long the
24 foreclosures would be delayed and how long the Office
25 of Foreclosure processes would, you know, would be

1 affected. So, in my discretion I am going to deny the
2 application for permissive intervention.

3 I'm also satisfied that the proposed
4 intervenors have many other avenues to continue to
5 raise the concerns that they've raised here. First of
6 all I am going to direct in my order that all of their
7 papers be referred to Judge Williams. I had a chance
8 to speak to Judge Williams before coming in today and
9 because of the JEFIS electronic system he was able to
10 access all your filings just as the public was, he'd
11 already read them. So, you know, and I asked him to
12 come today so that he'd hear each one of the proposed
13 intervenors, and the respondents and Mr. Dauber telling
14 me what they felt was really important in terms of this
15 process. And, so, I have great confidence in Judge
16 Williams, and his role has certainly been informed by
17 his presence here today and by the papers that he has
18 already reviewed. I don't think he's reviewed Mr.
19 Potter's papers, but we'll make sure that he gets
20 those, as well, because there were issues that I think
21 need to be considered, and I'm directing them to him.

22 I also wanted to note that throughout these
23 proceedings my chambers has received submissions from
24 the public at large and we have logged them all in and
25 I will be referring those documents, as well, to Judge

1 Williams, and attaching a list of the names of the
2 people who gave me those documents to the order.

3 The other avenues that the proposed
4 intervenors have are the rule making avenue, not only
5 the rule that's under review now, but they can propose
6 rules to the Civil Practice Committee based upon their
7 experience. Perhaps the strongest impact they're going
8 to have though is on these individual cases where
9 they're representing homeowners because they are
10 contributing to making the law and making the law with
11 the other chancery judges who sit on foreclosure cases,
12 with the Appellate Division and ultimately with the
13 Supreme Court.

14 And in any individual case with all the
15 guarantees of due process to both sides that's -- I
16 think that's where their impact may be felt the most,
17 and if they decide to go class action route, fine. I
18 mean, there were two parties, two proposed intervenors,
19 that proposed somehow turning this procedure into a
20 class action procedure with all the requirements of a
21 class action procedure. Again, the kind of delay that
22 would be caused by -- if I were to do that would mean
23 that the Office of Foreclosure would be out of business
24 probably for about two years for the vast number of
25 foreclosures in the State of New Jersey.

1 When I was working with the Administrative
2 Office of the Courts in determining what the
3 judiciary's response would be, we were very concerned
4 about the impact that we might have, anything that we
5 would do would have on the housing market. The
6 respondents will tell you that when they received an
7 order on December 20th telling them to respond by
8 January 5th, right in the middle of the holiday season,
9 it created an enormous strain on them, but one of the
10 reasons that we made such a quick return date was
11 because of our concern for the impact of the housing
12 market. It was a very unusual thing for the judiciary
13 to have done, to issue this order to show cause, and as
14 a result of the participation by Mr. Dauber it looked
15 as if there would be chances to -- a possibility to
16 resolve the matter based upon the respondents' consent
17 to really what's the essence of the -- was in the order
18 to show cause.

19 But, timeliness has always been -- you know,
20 has been a concern, and a major concern because of the
21 processing of foreclosures through the Office of
22 Foreclosure, and that's another one of the reasons why
23 I'm going to deny the application of the proposed
24 intervenors for permissive intervention. I think the
25 process has to move forward and I believe that there

1 are adequate protections in place to -- particularly
2 now that their major concerns have been known to Judge
3 Williams, so that their interests will be adequately
4 protected by this -- you know, by this process. So,
5 for those reasons I'm going to deny the -- all the
6 applications for intervention.

7 In terms of the stipulation that's been
8 submitted to the Court, the focus of this Court and the
9 Office of Foreclosure throughout this process has been
10 to gain assurance that the documents submitted to the
11 Office of Foreclosure in uncontested cases meets some
12 absolutely fundamental requirements of the Court Rules.
13 That affidavits be based on personal knowledge of the
14 person swearing to the truth of the information
15 presented. That records provided to the Court attached
16 to affidavits or certifications meet the rules of
17 evidence for business records, and that applicable law
18 such as the law that governs notaries involving the
19 very basic requirement that the person making the
20 statements appear in person before the notary and
21 provide proof of their identify is satisfied.

22 And the respondents in their submissions to
23 the Court in opposition to the order to show cause each
24 detail the significant revisions to their document
25 creation processes that they claimed should already

1 have satisfied the Court that the systemic
2 improprieties had been cured. But, faced with the hard
3 evidence of the robo-signing abuses as spelled out in
4 Judge Grant's administrative order and vividly
5 illustrated in the deposition transcripts that were
6 cited in that order, and these were depositions of the
7 employees of these respondents by the way, and frankly
8 also based on the evidence that I have seen in
9 contested cases before me and in the cases that have
10 been brought to my attention by the proposed
11 intervenors, specifically Ms. Fisher, I was not
12 satisfied with what they told me in their oppositions.

13 One of the things they said is, Judge, we
14 don't need a Special Master because look at all that
15 we've done since these allegations about our processes
16 came to light, and they went through and spelled out in
17 great detail, supported by certifications, everything
18 that they had done, and while I was encouraged by what
19 I saw in light of the scope of the problem I was not
20 satisfied and nor was the Office of Foreclosure
21 satisfied, nor was Mr. Dauber who'd been appointed to
22 represent the interest of the foreclosure and the
23 interest of this Court satisfied.

24 So, it was essential to me that there be a
25 review process of the new procedures that were being

1 put into place and that review process include both the
2 pending uncontested foreclosure matters looking back,
3 you know, which is what some of the proposed
4 intervenors were concerned would not happen, looking
5 back to everything in the pipeline now, everything that
6 has not gone to sheriff's sale, thousands of
7 foreclosures, that everything that has been filed and
8 cases to be filed will meet adequate document producing
9 procedures. And I believe, and I find, that the
10 recommended stipulation accomplishes these critical
11 goals, and so the Court will enter an order approving
12 the recommended stipulation.

13 I would note that there was no proposed
14 intervenor, as Mr. Dauber noted, who objected to the
15 process of submitting the Court's concerns for the
16 integrity of document production to review by a Special
17 Master. They objected to the scope, but not to the
18 process. The respondents have agreed to the
19 appointment of Judge Williams to act as Special Master,
20 and to me this agreement goes to the heart of what I
21 was seeking.

22 And I don't believe this -- I think I said it
23 in my colloquy with Mr. Melodia that I don't believe
24 their consent was given likely. I read those
25 oppositions and they were very strong, and I don't

1 think they welcomed us, with the Court looking into
2 their procedures, with open arms, as Mr. Melodia
3 suggested. He said, it's not their process, it's our
4 process that was proposed to be imposed upon them and
5 then they agreed and negotiated the terms of that
6 process with Mr. Dauber and Mr. Wolfe. And I do want
7 to thank Judge Williams for his willingness to take on
8 this important task and also to thank Mr. Dauber for
9 his representation in reaching a resolution of these
10 sensitive issues.

11 I just want to note that there has been some
12 concern raised, not so much in the oral argument today,
13 although Mr. Potter alluded to some concerns with Mr.
14 Dauber, I have a possible conflict of interest because
15 of his fees being involved, but there was also some
16 criticism in the papers to the selection of Judge
17 William. The sense I got is that because he had not
18 been -- had not decided foreclosure cases perhaps he
19 wasn't the appropriate person -- appropriate judge to
20 decide this case, but as I mentioned he was -- well, I
21 think Mr. Dauber mentioned he was the assignment judge
22 in Atlantic County for a number of years where he
23 supervised the judge that did all the foreclosures and
24 had to address the problems that arose in that
25 capacity. And then I think, most pointedly, he was the

1 Administrative Director of the Courts and the Office of
2 Foreclosure was under his purview, and I can't think of
3 anyone who'd be better for this job than Judge
4 Williams.

5 There was also some criticism of the Court's
6 selection of Mr. Dauber perhaps because he was not a
7 foreclosure attorney. I have to say that was by
8 design. When I selected Mr. Dauber I wanted someone
9 with no conflict of interest. I wanted somebody with
10 no association with either side in a foreclosure case.
11 I did want somebody who had experience with law
12 enforcement, somebody that had experience with very
13 sensitive issues and he has fit that bill. But, I did
14 want to say it was -- as I said it was by design, but
15 he's gained a huge amount of knowledge over the course
16 of the next -- over the last three months and I think
17 his continuing as special counsel will enable him to
18 use that knowledge going forward which will only be an
19 advantage to the process.

20 If there is any conflict of interest that
21 arises regarding the fees, it's something that can be
22 brought to my attention and I will have to adjudicate
23 it. But, I think it's -- I was pleased to see that the
24 respondents agreed to his continuing on the basis of
25 the -- basis of what he had learned and also the trust

1 and confidence they must have in him throughout this
2 process that they've gone through in terms of
3 negotiating this agreement.

4 While I denied the motions to intervene for
5 the reasons I gave earlier, as I said Judge Williams is
6 here and he's become very familiar with the concerns
7 that were raised today. And as Mr. Dauber went over
8 the scope of the issues before Judge Williams I have
9 confidence that the issues addressed today by the
10 intervenor, proposed intervenors, will be the ones that
11 are appropriate to the nature of this proceeding will
12 be addressed by him. And let's see -- the order that
13 I'm going to issue will resolve the order to show
14 cause, but this Court will retain jurisdiction for the
15 purposes set forth in the stipulation of settlement and
16 to enforce the stipulation.

17 In addition to thanking the attorneys I want
18 to thank my staff who assisted in the preparation of
19 this case, particularly my law clerk, Christina Duclos,
20 who's here and all of the rest of the staff who's been
21 -- Katie Wardlow is here, she's been uploading all the
22 submissions by the parties to the JEFIS system.
23 They've all put in overtime hours, as I'm sure all of
24 you have. You couldn't have gotten me those
25 submissions, all of you, so quickly without a lot of

1 overtime hours, and I really thank all of you for it.

2 We're going to be taking the next few minutes
3 to prepare the orders, and if you're willing to wait a
4 few minutes those of you who are parties in the case or
5 proposed intervenors we should have the orders I hope
6 within the next 10 minutes. I think maybe we've got to
7 do about -- it looks like about 20 copies maybe of all
8 the orders once I review and sign them, but thank you
9 to all of you.

10 MR. DAUBER: Thank you, Your Honor.

11 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

12 * * * * *

C E R T I F I C A T I O N

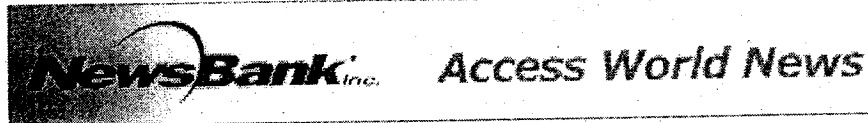
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/s/ Kimberly Upshur
KIMBERLY UPSHUR AOC #528

/s/ Cecilia Ashbock
CECELIA ASHBOCK AOC #177

/s/ Colette Meheski
COLETTE MEHESKI AOC #628cc
J&J COURT TRANSCRIBERS, INC.

DATE: October 12, 2011



N.J. banks look for relief from mountain of foreclosures

NJBIZ (New Brunswick, NJ) - Monday, August 8, 2011

Author: Andrew Kitchenman

This can be seen in cases like a pair of Ridgefield Park office buildings, the owner of which is more than 800 days past due on mortgages, according to Stanley Koreyva, senior vice president and chief operating officer for Amboy Bank.

"The tenants expressed an interest to me more than a year ago to buy the property," Koreyva said, but with the property in foreclosure limbo, he's been unable to sell it.

New Jersey is one of 23 states that require a judicial process in foreclosures. While it gives additional rights to property owners in default, the process can be drawn-out and painful for lenders.

However, there are promising signs, at least regarding commercial foreclosures. State court officials have assured bankers they have taken steps to reduce backlogs and decrease the time it takes to foreclose.

For institutions like Amboy Bank that are looking to clear foreclosures, these changes will not come a moment too soon.

"I can't sell it and get it back onto the market until we get a foreclosure," Koreyva said. "It's just working way too slow."

A foreclosure allows a property to get "back into a state of viability and allow an exit strategy, then I can re-land again to a qualified buyer. None of that can happen when it's sitting in foreclosure land for two years," Koreyva said. "All it does is stall the revitalization of the commercial market."

Empty office buildings also are vulnerable to vandalism, Koreyva said: "People come in and steal the copper pipes, or anything they can get their hands on."

While commercial foreclosures are taking more than two years, Koreyva said, this is only partly attributable to the state's judicial foreclosure process. Prior to the recession, he said, foreclosures took roughly a year. But the economy has made matters worse.

"It's very simple," Koreyva said. "You don't pay your mortgage, you can't stay."

E. Robert Levy, executive director of the Mortgage Bankers Association of New Jersey, said the increase in foreclosure delays has had a rippling effect on the economy.

"When you slow down the foreclosure process and you halt the ability of a financial institution to foreclose and sell the property to recoup its loan, obviously the bank is unable to bring the funds back in order to lend them out to other individuals," Levy said.

Another expense for banks has been devoting personnel to work on foreclosures for lengthy periods of time, Levy said.

While banks are focusing on commercial mortgages, they also are concerned with the impact of residential mortgage delays. However, bankers said they're sympathetic toward homeowners who face unemployment or income losses — Levy said banks know residential foreclosures are piling on top of other homeowner problems.

"It's not only the foreclosure issue, it's the general economic situation, the loss of jobs and reduction of salaries, the concern that people have about where the economy is headed," he said.

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John E. McWeeney Jr., president and CEO of the New Jersey Bankers Association, said banks want to take every possible step to avoid foreclosures, adding that they would rather reach an agreement with homeowners than have to maintain and sell properties.

But when it becomes clear that property owners are no longer able to make mortgage payments, it's important that the cases be resolved quickly, he said. Still, large-scale changes in the residential system are not feasible at a time when unemployment is high and residents' financial situations are precarious.

"It's a very sensitive political issue, so now is not the time to try to change the state's residential foreclosure laws," McWeeney said. Still, he said he's encouraged by the work done by the state judiciary to improve the situation: "The backlog, for the most part, has been eliminated."

McWeeney said it's important that homeowners' rights be respected, but added that in some cases, a property has been abandoned and the owner is still fighting the foreclosure. And the end of such delayed foreclosures doesn't mean an end to costs for banks, which must maintain the properties, from repairing buildings to mowing the grass.

"It has a direct negative impact on banks," McWeeney said. "That's money that could be used to extend new credit."

The Judiciary Electronic Filing and Imaging System is being used by some law firms to speed the process, and "on the commercial side, the expectation going forward is that we could be looking at something at a six- to nine-month time frame (for foreclosures), which would be a dramatic improvement over where we've been," McWeeney said.

A short-term concern is an expected surge of residential mortgages from the state's largest lenders in the coming months. There has been a virtual moratorium on residential foreclosures as a result of legal concerns about "robo signing," a term for improperly signed mortgage documents. However, court officials have assured bankers this increase shouldn't delay the speed with which commercial foreclosures are processed.

While bankers remain sensitive about criticizing those facing residential foreclosures, it doesn't mean state officials aren't aware of the problems the industry faces. Banking and Insurance Commissioner Thomas B. Considine told a group of banking executives at a New Jersey Bankers Association event that they should bring their concerns to legislators.

However, Considine said, the current economy is not the right time to lobby lawmakers. Instead, bankers should consider reaching out to legislators to reform the judicial foreclosure system once the economy is doing well, he said.

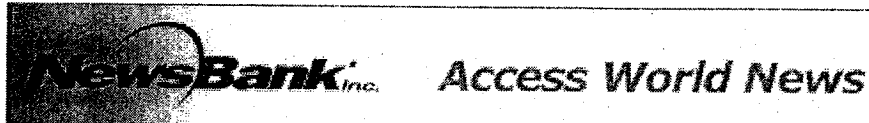
E-mail to: akitchenman@njbiz.com

Caption: New Jersey's lengthy judicial process is a major contributor to the number of properties tied up in foreclosure, said Stanley Koreyva, senior vice president and chief operating officer for Amboy Bank.

Section: Spotlight

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N.J.'s delinquent mortgages dwarf national average

NJBIZ (New Brunswick, NJ) - Monday, August 8, 2011

Author: Andrew Kitchenman

advertisement

August 08, 2011 3:00AM

N.J.'s delinquent mortgages dwarf national average

By Andrew Kitchenman

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New Jersey property owners have the fourth-highest rate in the country in being behind on their mortgage payments, according to Lender Processing Services, a Florida firm that tracks foreclosure data nationally.

In New Jersey, 7.5 percent of mortgages are delinquent, and 7.3 percent are in foreclosure, according to LPS data. The 14.8 percent of New Jersey mortgages that aren't current contrasts with a 12.27 percent national rate.

In addition, foreclosure sales in New Jersey are averaging 728 days, compared with 599 days nationally.

Al Engel, executive vice president of Valley National Bank, linked the state's delinquent mortgage rate with its dysfunctional foreclosure process.

"New Jersey now suffers one of the highest delinquency rates in the nation — not because of high numbers of new loans going into default, but because loans do not move out of default," he said.

Engel said an expeditious foreclosure process is a necessary step for a broader housing recovery.

"Unreasonable delay in clearing nonperforming homeowners from the communities will prolong the stagnation or decline of housing prices," he said.

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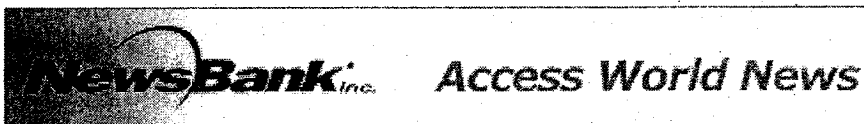
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Section: *Spotlight*

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BOTTOM LINES / Foreclosures in state now take average 849 days

Press of Atlantic City, The (NJ) - Sunday, February 13, 2011

Author: KEVIN POST Business editor

In New Jersey, more than 12,000 properties that have been repossessed have yet to sell, which drags down prices, Realty Trac says.

We have started to feel the consequences of the robo-signing controversy. There was nationwide concern that the expedited processing set up by lenders to handle record foreclosure volume does not meet normal standards and might result in an increase in unwarranted seizure of homes.

A few months ago, we were all aghast that foreclosure paperwork was being signed the same way consumers agree to the terms of service for software: without reading it and with the reasonably confident belief that everything's OK in all that legal text.

The reaction to such robo-signing was predictable, and now has come true. The processing of foreclosures has slowed greatly, especially in states such as New Jersey where foreclosure has to go through courts.

Despite a media search for responsible homeowners unfairly evicted from their homes by shoddy paperwork, next to none have been found.

But while the backlash against lenders hasn't yet turned up much harm to innocent homeowners, it has already managed substantial harm to the housing industry as well as the economy and homeowners in general.

By putting off the resolution of the foreclosure crisis and the return to a normal housing market, the robo-signing crisis has substantially extended how long housing will be a drag instead of a boost to the economy. Among builders, Realtors and analysts, the common guess I've heard is that the foreclosure mess will drag out an extra year now.

RealtyTrac, the Irvine, Calif., service which compiles and analyzes foreclosure data and helps buyers find bargains in that market, has responded to the robo-signing fiasco by tracking a new data point.

"We've actually started running, based on our data, how long it takes a property to go from the initial foreclosure notice to its repossession by the lender," Daren Blomquist, spokesman for RealtyTrac, said Thursday.

The results for New Jersey are shocking.

In the fourth quarter of 2007 -- near the beginning of the housing crisis -- the foreclosure process in New Jersey took an average 340 days.

"As of the fourth quarter 2010, it's actually taking 849 days from that initial court filing to when the REO (property repossession) occurs," he said.

And this is still the early days of the effects of the robo-signing slowdown. Not until mid-December did state Supreme Court Chief Justice Stuart Rabner order six lenders to demonstrate why the state shouldn't suspend their foreclosure actions.

"There's a lot of pressure to make sure foreclosures are not done improperly, as there should be, but it's also harmful to the market to prolong these foreclosures for such a long time," Blomquist said.

Another RealtyTrac number shows the magnitude of the problem: In New Jersey alone, there are more than 12,000 properties that already have been repossessed but have yet to sell.

Having a lot of distressed properties on the market pulls down prices, prompting potential buyers to wait for lower prices and keeping the housing industry at an artificially low level.

The great news the past week was the National Association of Realtors report that the region's median home price for the fourth quarter was 7 percent higher than the prior year, showing the housing market is starting to return to normal.

The danger is that the drawn-out foreclosure crisis could cut that rebound short and housing could take another plunge.

"It was interesting that home prices in your area are going up, but with the overhang in bank-owned properties, there's a risk of a double dip if those hit the market all at one time," Blomquist said.

RealtyTrac's report on January foreclosures showed the effects of the processing slowdown nationwide, with filings down 17 percent from the year before and up just 1 percent from December.

In states with judicial foreclosures, filings decreased 6 percent from December to January, he said, while in non-judicial foreclosure states filings increased 6 percent.

New Jersey's court-based system bucked that trend with a 13 percent increase for the month, which Blomquist said probably reflects paperwork backlogs that have slowed the state the past three years.

"When robo-signing came along, maybe it didn't have the impact on the numbers because we were already seeing delays in New Jersey," he said. "We still think procedures there are bogged down and not as many properties are making it through the foreclosure pipeline as would under normal circumstances."

Atlantic County's 271 properties in foreclosure in January was a 3 percent increase from December but a 9 percent drop from the year before.

Cape May County's 117 foreclosures were 4 percent more than January 2009 and 17 percent higher than in December.

Cumberland County filings were 29 percent higher at 102 in January, but 5 percent fewer than the year before.

In Ocean County, the 410 foreclosures in January were 11 percent more than the month before but 15 percent fewer than the year before.

RealtyTrac expects the number of U.S. foreclosures this year to be a record.

To that significant burden for the real estate industry, add a high degree of uncertainty about the future.

To a large degree, the ability of the economy to work through its excess mortgage debt and defaults is now in the hands of courts and lawyers.

This could take a while.
Contact Kevin Post: 609-272-7250 KPost@pressofac.com

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**SUPERIOR COURT OF NEW JERSEY
COUNTIES OF
ATLANTIC AND CAPE MAY**

WILLIAM C. TODD, III
Presiding Judge
Chancery / General Equity Division

1201 Bacharach Boulevard
Atlantic City, NJ 08401-4527
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September 15, 2011

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Roseland, NJ 07068

Selina Rothweiler, *pro se*
40 Franklin Avenue
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LETTER OPINION

**RE: BAC HOME LOANS SERVICING, LP ETC.
vs. SELINA ROTHWEILER, ET ALS
DOCKET NO: F-26617-10**

**DEFENDANT ROTHWEILER'S MOTION
TO DISMISS COMPLAINT**

Dear Mr. Ricigliano and Ms. Rothweiler:

This letter will deal with defendant Rothweiler's Motion to dismiss plaintiff's Complaint based upon an apparent deficiency in the Notice of Intention. That application was opposed. I have reviewed defendant's Motion, Mr. Ricigliano's response of August 25, 2011 and defendant's response of September 9, 2011. I note the Motion is based upon the Appellate Division's recent Opinion in Bank of New York v. Laks, approved for publication for August 8, 2011. I have had occasion to deal with the issues raised in Laks repeatedly over the last month. Given all the circumstances, I was satisfied the matter could be resolved without oral argument. Accordingly, the matter has been resolved based upon the materials submitted, as noted above.

For the reasons noted below, I have denied the Motion to dismiss the Complaint, on terms requiring plaintiff to give the defendant an additional opportunity to cure the default in the mortgage without the payment of attorneys' fees and costs. The balance of this letter will outline my analysis of the specific issues presented.

There are two distinct issues presented as result of the Appellate Division's Opinion in Laks. The first issue relates to a potential defect in the Notice of Intention. The issue is simple. Is a Notice of Intention issued in the name of the servicer, without identifying the lender, deficient? The second question relates to the cure which is appropriate, assuming the Notice of Intention is deficient. Is it necessary to dismiss the Complaint, requiring the plaintiff to begin the foreclosure process anew? Alternatively, is it appropriate to permit the plaintiff to cure the deficiency in the Notice of Intention by permitting defendant to cure within the pending foreclosure process, without being required to pay attorneys fees and costs? Those issues have been dealt with by the Court system in a variety of contexts over the last year or so. Prior to the issuance of the Appellate Division's Opinion in Laks, I had concluded that a Notice of Intention issued in the name of the servicer was adequate. I had also opined, in a variety of circumstances, that if the Notice was deficient a cure could be permitted in the pending foreclosure proceeding.

Prior to the issuance of the Opinion in Laks, the law was not settled on either of the two points noted. Judge Berman's Trial Court Opinion in Bank of New York Mellon v. Elghossian, 419 N.J. Super at 336 (Ch. Div. 2010) indicated that a Notice which failed to identify the lender was defective, and that that defect required the dismissal of the Complaint. The Appellate Division, however, had reached a different conclusion with respect to the adequacy of the Notice in the Unpublished Opinion in U.S. Bank v. Guillame, docket A-376-10T3, issued in April of this year. (As an aside, I have been advised in another case that a Petition for Certification has been filed in Guillame.) In essence, there was a clear conflict in the Opinions dealing with the "defect" issue. Neither of the Opinions just noted, however, were binding on me. I found the Appellate Division's reasoning in Guillame persuasive. It on that basis that I had concluded that a notice issued in the name of servicer was not defective.

There was also a split in the case law dealing with the potential for a cure within the pending foreclosure. Judge Berman's Trial Court Opinion in Elghossian held that a cure within the existing foreclosure should not be permitted. That Opinion, however, was not binding on me. There were conflicting Appellate Division Opinions dealing with the issue, albeit in somewhat different contexts. See Cho Hung Bank v. Ki Sung Kim, 361 N.J. Super. 331 (App. Div. 2003) and GE Capital Mortgage Services v. Wisman, 339 N.J. Super. 590 (Ch. Div. 2000), each allowing cures within a pending action, and EMC Mortgage Corp. v. Chaudhri, 400 N.J. Super. 126 (App. Div. 2008) requiring a dismissal of the pending proceeding and the filing of a new action to foreclose. Again, I found the reasoning in Kim and Wisman more appropriate. In that context, I had previously opined that if a Notice of Intention was defective, a cure should be permitted within the pending foreclosure proceeding.

That was the state of the law as of the time I addressed these issues as a part of the Motion for summary judgment filed by Mr. Ricigliano earlier this year. I dealt with the matter July 29, 2011. I dealt with these issues and a variety of other issues in a fairly detailed opinion that was issued from the bench. An Order was entered that same day deeming Ms. Rothweiler's Answer non-contesting and returning the matter to the Office of Foreclosure. The Opinion in Laks was issued within approximately two weeks. It is in that context that Ms. Rothweiler has filed the pending Motion to dismiss, essentially asking that I re-visit the issues based upon the Opinion in Laks. There is absolutely no question that it is appropriate for me to reconsider the matter. My prior determination was interlocutory. I am satisfied I am clearly bound by the portion of the Laks Opinion dealing with the "defect" issue. I am clearly bound to follow Laks, in the absence of any conflicting published Appellate Division Opinion. (Obviously, an entirely different situation would be presented had the Appellate Division Opinion in Guillaume been published.) For that reason, I am satisfied I must now conclude that the Notice of Intention issued in this matter was defective. I understand Mr. Ricigliano has attempted to distinguish this case from Laks. The distinctions offered are simply not viable.

Obviously, that does not end the inquiry. While I must conclude that the Notice was defective, I am not necessarily required to conclude that the Complaint should be dismissed. Again, Laks is the only published Appellate Division Opinion dealing with the "defect" issue. It is not, however, the only published Appellate Division Opinion dealing with the issue of a cure. The Laks Panel did conclude a cure was not permitted. On the other hand, a separate Panel in Kim concluded that a cure was appropriate, albeit in somewhat different circumstances. There is a conflict in the published Appellate Division Opinions dealing with the "cure" issue. Considering all the circumstances, I do not consider myself bound by the portion of the Laks Opinion dealing with that question. I am still convinced that is entirely appropriate to permit a cure in a pending foreclosure proceeding. Such a cure presumably preserves all of the defendant homeowners substantive rights. In this case, for example, Ms. Rothweiler can be given an opportunity to cure the existing default without being required to make any payment toward the plaintiff's attorneys' fees and costs. That is the precise remedy that would be available to her if the Complaint was dismissed and a new Notice of Intention was issued. It seems to me such a cure is particularly appropriate given the long delays that plaintiffs typically face in the processing of foreclosure actions in this State. It seems such a cure is all the more appropriate in cases where the parties have litigated other issues, as is the case here.

For all those reasons, I have concluded that the Notice of Intention issued in this case was defective but that the defect can be cured within the existing proceeding. That can be done by requiring the plaintiff to issue a new Notice of Intention on terms permitting Ms. Rothweiler to cure any deficiency based on that new Notice within the time contemplated by the Fair Foreclosure Act without being required to make any payment toward attorneys' fees or costs. Plaintiff would then be required to document the service of the new Notice of Intention and the defendant's failure to cure as a part of any application for the issuance of a Judgment of Foreclosure.

As noted, I have already dealt with this issue in a number of other proceedings. In at least one case I have entered a formal Order that required the new Notice of Intention to be served by a specific date. I see no reason to impose that type of a deadline here. Presumably the plaintiff will proceed promptly with the issuance of a new Notice of Intention. In any event, the Order that will now be entered will not permit the entry of judgment until the plaintiff has documented the issuance of the new Notice of Intention and the defendant's failure to cure within the time permitted by the Fair Foreclosure Act.

I have entered an Order accordingly. Copies of that Order will be forwarded with this letter. The matter will remain with the Office of Foreclosure.

Very truly yours,


WILLIAM C. TODD, III, P.J.Ch.

WCT:rb
Enc.

**BAC HOME LOANS SERVICING
L.P., F/K/A COUNTRYWIDE
HOME LOANS SERVICING, L.P.**

Plaintiff(s),

vs.

**SELINA A. ROTHWEILER, MR.
ROTHWEILER, HUSBAND OF SELINA A.
ROTHWEILER, MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. AS
NOMINEE FOR ATLANTIC COAST
MORTGAGE SERVICES, INC. and
UNKNOWN TENANTS/OCCUPANTS 1-5**
Defendant(s).

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
CAPE MAY COUNTY**

DOCKET NO. F-26617-10

Civil Action

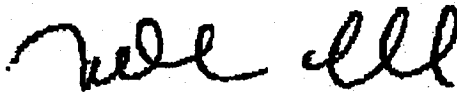
**ORDER RESOLVING MOTION
TO DISMISS BASED ON
DEFECTIVE NOTICE OF
INTENTION**

THIS MATTER coming before the Court, September 15, 2011 as a result of a Motion filed on behalf of defendant Rothweiler, defendant Selina A. Rothweiler appearing *pro se*, and Vincent Ricigliano, Esquire appearing for plaintiff, and the Court having considered the materials submitted and having issued a Letter Opinion;

IT IS ON THIS 15th day of September, 2011, ORDERED:

1. Defendant Rothweiler's Motion to dismiss plaintiff's Complaint based upon the defective Notice of Intention is denied subject to the remaining provisions of this Order requiring the issuance of a new Notice of Intention with an additional opportunity to cure.
2. As a condition of proceeding with this action to foreclose, plaintiff is hereby required to issue a new Notice of Intention pursuant to the Fair Foreclosure Act, as if that Notice was being issued prior to the institution of suit. Defendant Rothweiler shall have the right to cure any deficiency based upon the new Notice of Intention within the time contemplated by the Fair Foreclosure Act, without being required to make any payment toward attorneys fees or costs incurred by plaintiff in filing the foreclosure action.

3. This matter will remain with the Office of Foreclosure where plaintiff may proceed to request the entry of judgment on a non-contesting basis, provided that judgment may not be entered until such time as plaintiff has provided a Certification to the Office of Foreclosure confirming the service of the new Notice of Intention and defendant's failure to cure within the time contemplated by the Fair Foreclosure Act and this Order.



WILLIAM C. TODD, III, P.J.Ch.