

SUPERIOR COURT OF N.J.

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PARTY
MERCER COUNTY

IN THE MATTER OF RESIDENTIAL :
MORTGAGE FORECLOSURE :
PLEADING AND DOCUMENT :
IRREGULARITIES :
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DOCKET NO. F-059553-10

Civil Action

**RESPONSE OF CITIBANK, N.A. AND CITI RESIDENTIAL
LENDING, INC. TO ORDER TO SHOW CAUSE**

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Citibank, N.A. and Citi Residential Lending, Inc. (collectively, "Citi") respectfully submit this memorandum of law and the accompanying Affidavit of Steven M. Smith dated January 5, 2011 ("Smith Aff."), in response to the Court's 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, filed December 20, 2010 (the "Order").

Preliminary Statement

Citi recognizes that the integrity of the judicial foreclosure process is of fundamental importance to the protection of the rights of all, including borrowers and lenders alike. We share the Court's aim of ensuring that, in the event foreclosure is unavoidable, the documents submitted in connection with foreclosure proceedings in New Jersey (and nationwide) be accurate and reliable. We respectfully submit that to achieve that aim, it is both unnecessary and potentially counterproductive to impose a blanket suspension of Citi foreclosure proceedings in New Jersey or to appoint a special master to investigate Citi's foreclosure practices in New Jersey. This is so for three reasons.

First, Citi has already effectively and comprehensively addressed the concerns expressed in the Court's Order as to its active foreclosures in New Jersey. Beginning in the fall of 2009—long before the recent public focus on these issues—Citi voluntarily took substantial steps to review and strengthen its foreclosure documentation

processes. Citi has since fully implemented strengthened, robust procedures for preparing foreclosure documentation, which we describe in this memorandum and the accompanying affidavit, and which we believe the Court will agree are sound. Furthermore, upon receiving the Court's Order, we accelerated the review we had already commenced of the affidavits in our active New Jersey foreclosures that were prepared under our pre-strengthened procedures to determine whether any of those affidavits require correction. Of the 4,023 active foreclosures in New Jersey serviced by Citi, 613 involve affidavits that were prepared under our pre-strengthened processes. Based on our review of those 613 active foreclosures—which review is ongoing—Citi has determined thus far that foreclosure affidavits need to be corrected in 210 foreclosures. Of those 210 cases, a significant percentage contained errors that were actually in the borrowers' favor.

Nevertheless, Citi intends to dismiss all 210 of those foreclosure actions, and any other foreclosure actions in New Jersey we find, based on our completion of this review, to require corrections, as soon as possible. After dismissal, Citi will re-file these foreclosures pursuant to our current, enhanced foreclosure documentation procedures, while also re-initiating attempts to resolve those matters with the borrowers through loss mitigation programs if at all possible (as with all Citi foreclosures, multiple attempts to contact the borrower to participate in loss mitigation programs were made prior to referral of these cases to foreclosure). In short, for all these reasons, Citi's foreclosure documentation in New Jersey does not present issues of the kind or magnitude identified by the Court in its Order, and thus the relief proposed in the Order is not necessary as to Citi.

Second, existing judicial processes in New Jersey, as recently supplemented by the December 20, 2010 Rule Amendments, afford an added level of assurance to the Court of the accuracy of the documents submitted in pending and future Citi foreclosure proceedings in New Jersey. Under the new rules implemented on December 20, 2010, counsel must execute and file in each foreclosure action in New Jersey certifications that the attorney has communicated with an identified employee of the plaintiff who personally reviewed documents for accuracy and confirmed the accuracy of all court filings to date, and that all the filings in the case comport with all the requirements of Rule 1:4-8(a). If, in any particular New Jersey foreclosure action, the attorney certifications are not provided, the court presiding over that foreclosure, thereby notified of a potential issue, has the power to suspend proceedings in that foreclosure, inquire as to the reasons for that failure, determine if those reasons warrant imposition of sanctions and/or costs, and if so, in what amount. Thus, once again, it is unnecessary to issue a blanket suspension of foreclosure proceedings or appoint a special master to undertake a general investigation into foreclosure practices—any such suspension or investigation will be duplicative of the process that will necessarily occur going forward in every individual foreclosure case.

Third, in light of the foregoing, the blanket suspension of foreclosures and broad special master investigation proposed by the Court may have unintended adverse consequences. Existing judicial procedures permit the courts presiding over foreclosures to determine on a case by case basis whether a foreclosure suspension is necessary, and allow proper foreclosures to proceed. By contrast, an indiscriminate suspension of foreclosures, covering many foreclosures that rightfully should proceed, would result in

protracted uncertainty and costs for both borrowers and lenders, and may cause harm to the community from delays in effecting necessary foreclosures. Similarly, existing judicial procedures permit courts to assess mortgage servicers' conduct in individual foreclosure cases, in which specific actions and their consequences can be fairly assessed. But an open-ended, complete suspension of foreclosures pending an open-ended, broad investigation of a servicer's general foreclosure processes presents takings and due process concerns. Furthermore, the appointment of a special master to investigate the foreclosure practices of mortgage servicers divorced from the specific facts and circumstances of any particular case presents separation of powers concerns. These complex constitutional issues can and should be avoided in favor of the more precise, fair and effective processes already available in individual foreclosure actions in this state.

For these reasons and the reasons set forth in this memorandum, we respectfully submit that a suspension of Citi foreclosure proceedings in New Jersey need not and should not be imposed, and a special master to investigate Citi's foreclosure processes need not and should not be appointed.

Factual Background

Citi's Efforts to Assist Borrowers In Avoiding Foreclosure

As an initial matter, consistent with its belief that foreclosure should be a process of last resort, Citi¹ does everything within its power to assist borrowers facing financial challenges and to make certain that any foreclosures that do occur are unavoidable. Citi has several safeguards in place to enable as many homeowners as

¹ Citi's submission to the Court pertains to all pending foreclosures in New Jersey in which a Citi entity, including Citibank, N.A., Citi Residential Lending, Inc., CitiFinancial, Inc. or CitiMortgage, Inc., is the primary servicer, and thus is responsible for submission of foreclosure documents to the court.

possible to keep their homes and to ensure that no loan is referred for foreclosure until Citi has confirmed that the borrower is in default and given the borrower ample notice and opportunity to engage in discussions with Citi. (Smith Aff. ¶ 2) Through its participation in the federal Home Affordable Modification Program and its creation of additional, proprietary Citi loan modification programs, Citi actively identifies eligible borrowers and conducts extensive outreach to contact and guide them through the process of applying for trial and obtaining permanent loan modifications. (*Id.* ¶ 3) Specifically, in the 90 days before any foreclosure referral, Citi will have made a number of efforts to contact the borrower in order to notify the borrower of loss mitigation opportunities and give the borrower ample prior notice of any foreclosure. (*Id.* ¶ 4) By the time any borrower is referred for foreclosure, Citi will have sent the borrower at least two solicitation letters for loan modification programs and will have made at least four (and generally significantly more than four) additional attempts to contact the borrower by methods which may include phone calls, e-mails, text messages and/or in-home visitation regarding the possibility of loan modification. (*Id.* ¶ 5)

After these efforts have been exhausted, and prior to referring any loan to foreclosure, Citi subjects all loans to a review in order to determine whether the loan is eligible for foreclosure, which includes a check to confirm that the borrower is in default and determine if any loss mitigation efforts are under way. (*Id.* ¶ 6). In addition, Citi subjects a targeted set of loans to a separate foreclosure audit review, to determine whether any other issues exist. (*Id.* ¶ 7) Thus, Citi ensures that only those loans for which there is no other reasonable option ever enter the foreclosure process. (*Id.* ¶ 8)

Citi's Enhancement of its Foreclosure Procedures

Although, as discussed, Citi's first priority is to help homeowners avoid potential foreclosure, when foreclosure is unavoidable, Citi has processes in place that are designed to make sure that any foreclosures that do occur comply with all relevant state and federal laws. More than a year ago, in the fall of 2009, Citi internally undertook a voluntary review of its existing foreclosure practices and promptly initiated a series of steps to strengthen its practices and add additional resources to ensure foreclosures were being processed correctly. (*Id.* ¶ 9) These enhancements have since been fully implemented.

Under Citi's longstanding procedures, where Citi is the servicer of a mortgage loan, foreclosure documentation is prepared in the first instance by foreclosure counsel to ensure compliance with federal and state foreclosure laws. (*Id.* ¶ 10) Citi foreclosure counsel review the records and documents relevant to the mortgage loan, so that correct information will be included in the documents prepared. (*Id.* ¶ 11) Where documents, such as affidavits, are to be executed by Citi personnel, foreclosure counsel provide the documents to the servicing unit at Citi tasked with executing such documents. (*Id.* ¶ 12) Under Citi's current, enhanced foreclosure documentation processes, each such foreclosure affidavit is reviewed by a Citi employee who verifies the facts in the affidavit and then signs the affidavit in front of a notary. (*Id.* ¶ 13)

Among other enhancements currently in place:

- Citi developed and implemented enhanced training programs with respect to proper execution and notarization of foreclosure affidavits. These training programs emphasize, among other things, that the signor must have personal knowledge of the facts and must sign in the

presence of a notary. All Citi employees who sign foreclosure affidavits must annually certify that they have completed the training and attest to their understanding and compliance with the processes described. (*Id.* ¶ 14)

- Citi centralized its foreclosure operations into one unit, and added resources and staff to its foreclosure operations. These changes help ensure that all of Citi's staff members have sufficient resources and time to personally verify and properly execute all supporting documents in foreclosure actions. (*Id.* ¶ 15)
- Citi enhanced its ongoing monitoring of its foreclosure practices. Managers are required to regularly review foreclosure files to check compliance with the proper procedures. In addition, Citi increased its quality control checks to include a weekly review of a sample of affidavits, performed by trained employees who are dedicated to quality control and reporting. (*Id.* ¶ 16)
- Citi implemented policies for enhanced oversight of the law firms that handle Citi foreclosures. Before permitting any law firm to perform foreclosure work for Citi, Citi conducts extensive due diligence on the firm, which includes completion of a detailed questionnaire and searches for any complaints or lawsuits with the state bar, regulatory agencies and state and federal courts. Law firms are informed of Citi's standards and expectations with respect to affidavits and other filings submitted on Citi's behalf in foreclosure proceedings, the control

processes such firms must have in place concerning foreclosure-related documentation, and the escalation of any issues to Citi. Among other things, each law firm is required, as a condition of its representation of Citi, to follow all local, state and federal laws regarding their legal work on Citi's behalf, and to be familiar with and comply with each specific state's laws and processes regarding foreclosure. Citi also does periodic on-site legal audits to review selected files, observes default-related processes at the law firm, and reviews new legal requirements and challenges in the relevant state. In addition, if a foreclosure is contested or encounters unexpected issues, the law firm escalates the matter to Citi, and Citi may elect to direct the law firm to cease or take certain actions. (*Id.* ¶ 17)

***The Quality of Citi's Foreclosure Processes
Is Confirmed By The Results of Its Review of New Jersey Files***

As a result of these self-initiated improvements, Citi is confident in the integrity of its current foreclosure documentation processes. In addition to these improvements to its foreclosure processes, Citi has focused on ensuring that all pending foreclosures across the country, including those initiated prior to the enhancement of our foreclosure processes, meet our current standards. Citi's internal review of its active foreclosures in New Jersey confirms that our foreclosure documentation in New Jersey does not present issues of the kind or magnitude identified by the Court in its Order.

In New Jersey, as of January 3, 2011, there were 4,023 active foreclosures serviced by Citi.² (*Id.* ¶ 18) Of those, 613 involve affidavits that were prepared under our pre-strengthened processes. Based on our ongoing review of those 613 active foreclosures, Citi has determined thus far that foreclosure affidavits need to be corrected in 210 foreclosures. (*Id.* ¶ 19) Of those 210 cases, a significant percentage contained errors that were actually in the borrowers favor. (*Id.* ¶ 20)

Nevertheless, Citi intends to dismiss all 210 of those foreclosure actions, and any other foreclosure actions in New Jersey we find, based on our completion of this review, to require corrections, as soon as possible. (*Id.* ¶ 21) After dismissal, Citi will re-file these foreclosures pursuant to our current, enhanced foreclosure documentation procedures, while also re-initiating attempts to resolve those matters with the borrowers through loss mitigation programs if at all possible. (*Id.* ¶ 22)

Argument

I.

THE PROPOSED STEPS ARE UNNECESSARY AS TO CITI BECAUSE CITI HAS ALREADY EFFECTIVELY AND COMPREHENSIVELY ADDRESSED THE CONCERNS EXPRESSED IN THE COURT'S ORDER

Citi has already effectively and comprehensively addressed the concerns identified by the Court in the Order. First, Citi's current, enhanced foreclosure

² In addition, there are 747 foreclosures in New Jersey serviced by Citi that are on hold, for reasons that include potential loan modifications for the borrower. Many of these foreclosures may never restart—for example, if a loan modification occurs, the foreclosure will be dismissed—or if they do restart, they will likely require new affidavits because changes in circumstances or the passage of time has changed the relevant financial information. Citi will review the affidavits in all of these cases for accuracy in the event that, and before, any of these foreclosures do restart. (*Id.* ¶ 18) In addition, of course, all foreclosures that have not been stayed by the court are subject to the attorney certification requirements implemented by the December 20 Rule Amendments.

documentation procedures are robust. Foreclosure documentation is prepared in the first instance by foreclosure counsel to ensure compliance with federal and state foreclosure laws. (*Id.* ¶ 10) Citi foreclosure counsel review the records and documents relevant to the mortgage loan, so that correct information will be included in the documents prepared. (*Id.* ¶ 11) Where documents, such as affidavits, are to be executed by Citi personnel, foreclosure counsel provide the documents to the servicing unit at Citi tasked with executing such documents. (*Id.* ¶ 12) Each such foreclosure affidavit is reviewed by a Citi employee who verifies the information in the affidavit and then signs the affidavit in front of a notary. (*Id.* ¶ 13) In addition, Citi has implemented specific training and annual recertification of Citi employees on proper verification and notarization of affidavits, heightened monitoring and quality control checks of executed affidavits, and augmented oversight of foreclosure counsel. (*Id.* ¶¶ 14-17)

Second, of the 4,023 active foreclosures serviced by Citi in New Jersey, affidavits in only 613 were prepared prior to the strengthening of Citi's procedures. Citi's ongoing review of the affidavits in those 613 foreclosure actions has revealed thus far that 210 require correction. (*Id.* ¶ 19) Of those 210 cases, a significant percentage contained errors that were actually in the borrower's favor. (*Id.* ¶ 20) Nevertheless, Citi intends to dismiss all 210 of those foreclosure actions, and any other foreclosure actions in New Jersey we find, based on our completion of this review, to require corrections, as soon as possible. (*Id.* ¶ 21) After dismissal, Citi will re-file these foreclosures pursuant to our current, enhanced foreclosure documentation procedures, while also re-initiating attempts to resolve those matters with the borrowers through loss mitigation programs if at all possible. (*Id.* ¶ 22)

For all these reasons, because Citi's foreclosure documentation in New Jersey does not present issues of the kind or magnitude identified by the Court in its Order, the relief proposed in the Order is not necessary as to Citi.

II.

**THE PROPOSED STEPS ARE UNNECESSARY
BECAUSE THEY ARE DUPLICATIVE OF THE PROCESSES THAT WILL
NECESSARILY OCCUR IN EVERY INDIVIDUAL FORECLOSURE CASE
AS A RESULT OF THE DECEMBER 20, 2010 RULE AMENDMENTS**

The newly implemented attorney certification rules provide further assurance that the Court's concerns will be addressed in all foreclosure actions in New Jersey without the need for a blanket suspension of foreclosure proceedings or appointment of special master. The December 20, 2010 amendments to Rules 1:5-6, 4:64-1 and 4:64-2 require foreclosure counsel to execute and file in each action certifications that the attorney has communicated with an identified employee of the plaintiff who personally reviewed documents for accuracy and confirmed the accuracy of all court filings to date. These certification requirements ensure that the aims articulated by the Court in the Order—namely, that documents submitted to the Office of Foreclosure be accurate and reliable and that the integrity of the judicial foreclosure process be protected—will be achieved. Moreover, if an attorney certification is not filed, the court presiding over the foreclosure action has the power under existing rules to stay proceedings in that foreclosure, to inquire into any potential foreclosure documentation issues that may exist, and to determine whether and what sanctions and/or costs should be imposed as a result. A blanket suspension of all foreclosures and appointment of a special master to investigate mortgage servicers' general practices will only result in duplicative proceedings—a round of investigation by the special master,

and then, if and when the blanket foreclosure suspension is lifted, additional, repetitive proceedings by the courts in particular foreclosure actions if and when attorney certifications are not made. For these additional reasons, suspension of all foreclosure proceedings in New Jersey and appointment of special master are unnecessary.³

III.

THE PROPOSED STEPS MAY HAVE UNINTENDED ADVERSE CONSEQUENCES

Finally, the blanket suspension of foreclosures and broad special master investigation proposed by the Court may have unintended adverse consequences. Under existing judicial procedures, a case-by-case determination is made whether foreclosure

³ We further note that that Citibank, a federally chartered bank, is also subject to oversight by its primary regulator in accordance with applicable federal law and regulations, including but not limited to 12 C.F.R. § 7.4000 and § 34.4, which limit the examination of Citibank's books and records, and the general oversight of Citibank's banking activities, to the Office of the Comptroller of the Currency (the "OCC"). On December 2, 2010, Julie Williams, Chief Counsel and First Senior Deputy Comptroller for the OCC, Citibank's primary regulator, testified before the House Judiciary Committee about the OCC's actions to investigate the national banks' foreclosure processes. As Deputy Comptroller Williams testified, the OCC has been conducting "intensive, on-site examinations of the eight largest national bank mortgage servicers," which includes "independently testing the adequacy of governance over their foreclosure processes to ensure foreclosures are completed in accordance with applicable legal requirements and that delinquency affidavits and claims that are the basis for the foreclosure are accurate." *Foreclosed Justice: Causes and Effects of the Foreclosure Crisis – Part II: Hearing Before the H. Comm. On the Judiciary, 111th Cong. 2 (2010)* (statement of Julie L. Williams, Chief Counsel and First Senior Deputy Comptroller, Office of the Comptroller of the Currency). The OCC's investigative authority includes the review of "samples of individual loan files where foreclosures have either been initiated or completed to test the validity of bank self-assessments and corrective actions." *Id.* at 2. To the extent the OCC finds evidence of lapses in the banks' foreclosure processes, as Deputy Comptroller Williams testified, the OCC is "taking aggressive actions to hold national banks accountable, and to get these problems fixed." *Id.* at 1. The OCC's examination of foreclosure documentation processes is another reason it is not necessary for the Court to appoint a special master to do the same.

proceedings should be suspended. This permits proper foreclosures to proceed. A complete suspension of foreclosures, by contrast, would suspend many foreclosures which rightfully should proceed, potentially resulting in protracted uncertainty and costs for both borrowers and lenders. Moreover, a potentially lengthy suspension of a large number of proper foreclosures could be harmful to New Jersey's communities as a whole. As many commentators have noted, the imposition of a foreclosure moratorium can have significant collateral consequences, including causing declining home prices and shaking investor confidence, thereby making credit less available to consumers. *See, e.g.*, Shaun Donovan, *How We Can Really Help Families*, THE HUFFINGTON POST, Oct. 17, 2010, available at http://www.huffingtonpost.com/shaun-donovan/how-we-can-really-help-fa_b_765528.html (Secretary for Housing and Urban Development Shaun Donovan: “[F]amilies who have watched their home values decline over the last few years want nothing more than homebuyers . . . to buy the vacant homes in their neighborhoods. These homeowners are at risk, too - and the best hope they have is for the “Foreclosed” signs in front of the vacant, abandoned properties on their block to come down, so that the value of their homes can start rising again.”).

Moreover, an open-ended, blanket suspension of foreclosures pending an open-ended, broad investigation of mortgage servicers' general foreclosure processes presents constitutional concerns. Questions of due process arise when courts attempt to impose broad remedies for conduct outside the context of a specific claim in a particular case. *See, e.g., Serra Chevrolet, Inc. v. General Motors Corp.*, 446 F.3d 1137, 1151 (11th Cir. 2006) (“To comply with the Due Process Clause, [sanctions must be] specifically related to the particular claim which was at issue.”) (quotation omitted).

Similarly, an open-ended, indiscriminate suspension of foreclosure proceedings may potentially effect a “taking” under the 5th Amendment of the U.S. Constitution and Article I, Paragraph 20 of the New Jersey Constitution. *See, e.g., Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 535 U.S. 302, 335-36 (2002). Furthermore, the appointment of a special master to review Citi’s processes and potentially impose sanctions based on conduct not at issue before the court could also implicate separation of powers issues. *See, e.g., Crescent Park Tenants Ass’n v Realty Equities Corp. of New York*, 275 A.2d 433, 437-38 (N.J. 1971); *Indep. Realty Co. v. Twp. of N. Bergen*, 870 A.2d 637, 641 (N.J. Super. Ct. App. Div. 2005); *see also Morgan v. Union County Bd. of Chosen Freeholders*, 633 A.2d 985, 994 (N.J. Super. Ct. App. Div. 1993) (“Assuming there were violations of the statutory scheme, we have no roving commission to correct these mistakes in this case where plaintiff has not sought [relief] and no future harm is imminent or threatened.”).

The complex constitutional issues presented by a blanket suspension of foreclosures and appointment of special master should be avoided in favor of the more precise, fair and effective processes already available in existing judicial processes.

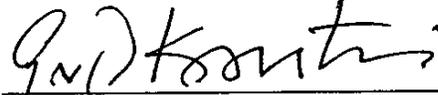
Conclusion

For the reasons set forth in this memorandum of law and the accompanying affidavit, the Court should not suspend the ministerial duties of the Office of Foreclosure and the Superior Court Clerk's Office regarding the processing of Citi's uncontested residential mortgage foreclosure actions, stay sheriffs' sales in those foreclosure actions, or appoint a special master pursuant to Rule 4:41 to investigate Citi's foreclosure practices.

Dated: January 5, 2011

Respectfully submitted,

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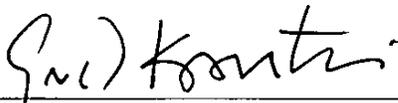
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**CERTIFICATION AS TO
FACSIMILE SIGNATURE (R.1:4-4(c))**

Gerald Krovatin hereby certifies as follows:

1. I am an attorney at law in the State of New Jersey and counsel for Citibank, N.A. and Citi Residential Lending, Inc.
2. I hereby certify that Steven M. Smith acknowledged the genuineness of his signature on the within Affidavit and that the original of the Affidavit or a copy with the original signature affixed will be filed if requested by the Court or a party



Gerald Krovatin

Dated: January 5, 2011

SUPERIOR COURT N.J.
REG'D

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IN THE MATTER OF RESIDENTIAL :
MORTGAGE FORECLOSURE :
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DOCKET NO. F-059553-10

Civil Action

**AFFIDAVIT OF STEVEN M. SMITH
IN SUPPORT OF RESPONSE OF
CITIBANK, N.A. AND CITI
RESIDENTIAL LENDING, INC. TO
ORDER TO SHOW CAUSE**

STATE OF TEXAS)

) ss.:

COUNTY OF DALLAS)

STEVEN M. SMITH, being of full age, and duly sworn, according to law upon his oath,
deposes and says:

1. I am Managing Director and Head of Default Servicing of CitiMortgage, Inc. I am fully familiar with the matters set forth herein. I make this Affidavit upon personal knowledge in support of the Response of Citibank, N.A. and Citi Residential Lending, Inc. ("Citi") to the Order to Show Cause filed December 20, 2010. The information in this affidavit pertains to all foreclosures in New Jersey in which a Citi entity, including Citibank, N.A., Citi

Residential Lending, Inc., CitiFinancial, Inc. or CitiMortgage, Inc., is the primary servicer, and thus is responsible for submission of foreclosure documents to the court.

2. Citi has several safeguards in place to enable as many homeowners as possible to keep their homes and to ensure that no loan is referred for foreclosure until Citi has confirmed that the borrower is in default and given the borrower ample notice and opportunity to engage in discussions with Citi.

3. Through its participation in the federal Home Affordable Modification Program and its creation of additional, proprietary Citi loan modification programs, Citi actively identifies eligible borrowers and conducts extensive outreach to contact and guide them through the process of applying for trial and obtaining permanent loan modifications.

4. Specifically, in the 90 days before any foreclosure referral, Citi will have made a number of efforts to contact the borrower in order to notify the borrower of loss mitigation opportunities and give the borrower ample prior notice of any foreclosure.

5. By the time any borrower is referred for foreclosure, Citi will have sent the borrower at least two solicitation letters for loan modification programs and will have made at least four (and generally significantly more than four) additional attempts to contact the borrower by methods which may include phone calls, e-mails, text messages and/or in-home visitation regarding the possibility of loan modification.

6. After these efforts have been exhausted, and prior to referring any loan to foreclosure, Citi subjects all loans to a review in order to determine whether the loan is eligible for foreclosure, which includes a check to confirm that the borrower is in default and determine if any loss mitigation efforts are under way.

7. In addition, Citi subjects a targeted set of loans to a separate foreclosure audit review, to determine whether any other issues exist.

8. Thus, Citi ensures that only those loans for which there is no other reasonable option ever enter the foreclosure process.

9. More than a year ago, in the fall of 2009, Citi internally undertook a voluntary review of its existing foreclosure practices and promptly initiated a series of steps to strengthen its practices and add additional resources to ensure foreclosures were being processed correctly.

10. Under Citi's longstanding procedures, where Citi is the servicer of a mortgage loan, foreclosure documentation is prepared in the first instance by foreclosure counsel to ensure compliance with federal and state foreclosure laws.

11. Citi foreclosure counsel review the records and documents relevant to the mortgage loan, so that correct information will be included in the documents prepared.

12. Where documents, such as affidavits, are to be executed by Citi personnel, foreclosure counsel provide the documents to the servicing unit at Citi tasked with executing such documents.

13. Under Citi's current, enhanced foreclosure documentation processes, each such foreclosure affidavit is reviewed by a Citi employee who verifies the facts in the affidavit and then signs the affidavit in front of a notary.

14. Citi developed and implemented enhanced training programs with respect to proper execution and notarization of foreclosure affidavits. These training programs emphasize, among other things, that the signor must have personal knowledge of the facts and must sign in the presence of a notary. All Citi employees who sign foreclosure affidavits must

annually certify that they have completed the training and attest to their understanding and compliance with the processes described.

15. Citi centralized its foreclosure operations into one unit, and added resources and staff to its foreclosure operations. These changes help ensure that all of Citi's staff members have sufficient resources and time to personally verify and properly execute all supporting documents in foreclosure actions.

16. Citi enhanced its ongoing monitoring of its foreclosure practices. Managers are required to regularly review foreclosure files to check compliance with the proper procedures. In addition, Citi increased its quality control checks to include a weekly review of a sample of affidavits, performed by trained employees who are dedicated to quality control and reporting.

17. Citi implemented policies for enhanced oversight of the law firms that handle Citi foreclosures. Before permitting any law firm to perform foreclosure work for Citi, Citi conducts extensive due diligence on the firm, which includes completion of a detailed questionnaire and searches for any complaints or lawsuits with the state bar, regulatory agencies and state and federal courts. Law firms are informed of Citi's standards and expectations with respect to affidavits and other filings submitted on Citi's behalf in foreclosure proceedings, the control processes such firms must have in place concerning foreclosure-related documentation, and the escalation of any issues to Citi. Among other things, each law firm is required, as a condition of its representation of Citi, to follow all local, state and federal laws regarding their legal work on Citi's behalf, and to be familiar with and comply with each specific state's laws and processes regarding foreclosure. Citi also does periodic on-site legal audits to review selected files, observes default-related processes at the law firm, and reviews new legal

requirements and challenges in the relevant state. In addition, if a foreclosure is contested or encounters unexpected issues, the law firm escalates the matter to Citi, and Citi may elect to direct the law firm to cease or take certain actions.

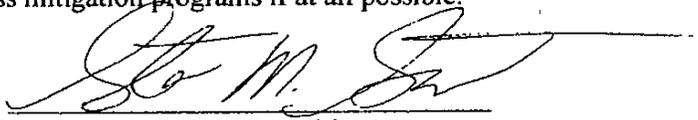
18. In New Jersey, as of January 3, 2011, there were 4,023 active foreclosures serviced by Citi. In addition, there are 747 foreclosures in New Jersey serviced by Citi that are on hold, for reasons that include potential loan modifications for the borrower. Many of these foreclosures may never restart—for example, if a loan modification occurs, the foreclosure will be dismissed—or if they do restart, they will likely require new affidavits because changes in circumstances or the passage of time has changed the relevant financial information. Citi will review the affidavits in all of these cases for accuracy in the event that, and before, any of these foreclosures do restart.

19. Of the 4,023 active foreclosure in New Jersey serviced by Citi, 613 involve affidavits that were prepared under our pre-strengthened processes. Based on our ongoing review of those 613 active foreclosures, Citi has determined thus far that foreclosure affidavits need to be corrected in 210 foreclosures.

20. Of the 210 cases, a significant percentage contained errors that were actually in the borrowers favor.

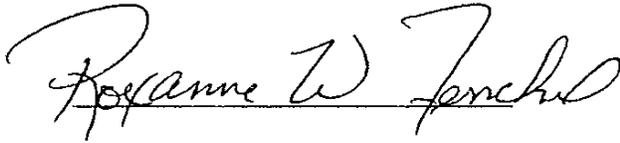
21. Nevertheless, Citi intends to dismiss all 210 of those foreclosure actions, and any other foreclosure actions in New Jersey we find, based on our completion of this review, to require corrections, as soon as possible.

22. After dismissal, Citi will re-file these foreclosures pursuant to our current, enhanced foreclosure documentation procedures, while also re-initiating attempts to resolve those matters with the borrowers through loss mitigation programs if at all possible.



Steven M. Smith

Sworn to and Subscribed
before me this 5 day of
January 2011

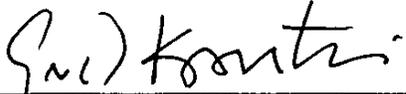


**CERTIFICATION AS TO
FACSIMILE SIGNATURE (R.1:4-4(c))**

Gerald Krovatin hereby certifies as follows:

1. I am an attorney at law in the State of New Jersey and counsel for Citibank, N.A. and Citi Residential Lending, Inc.

2. I hereby certify that Steven M. Smith acknowledged the genuineness of his signature on the within Affidavit and that the original of the Affidavit or a copy with the original signature affixed will be filed if requested by the Court or a party



Gerald Krovatin

Dated: January 5, 2011

KROVATIN KLINGEMAN LLC

744 Broad Street, Suite 1903
Newark, New Jersey 07102
(973) 424-9777

PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP

1285 Avenue of the Americas
New York, New York 10019-6064
(212) 373-3000

Attorneys for Citibank, N.A and Citi Residential Lending, Inc.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PARTY
MERCER COUNTY

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

DOCKET NO. F-059553-10

Civil Action

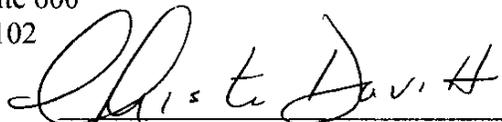
PROOF OF SERVICE

I hereby certify that I caused the original and two copies of the within Response of Citibank, N.A. and Citi Residential Lending, Inc. and supporting papers to be hand-delivered to the Acting Clerk, Superior Court of New Jersey, 25 W. Market Street, Trenton, New Jersey 08625.

I further certify that I caused a copy of the within documents to be hand-delivered to the following:

Hon. Mary C. Jacobson, P.J. Ch.
Superior Court of New Jersey
210 S. Broad Street, 5th Floor
Trenton, New Jersey 08625

Edward J. Dauber, Esq.
Greenbaum, Dauber, Epstein & Tucker, PC
One Gateway Center, Suite 600
Newark, New Jersey 07102


Christina Davitt

Dated: January 5, 2011

KROVATIN KLINGEMAN LLC

ATTORNEYS AT LAW

GERALD KROVATIN

HENRY E KLINGEMAN*

HELEN A NAU**

ANNA G COMINSKY**

*ALSO ADMITTED IN HI AND PA

**ALSO ADMITTED IN NY

SUPERIOR COURT OF N.J.
REC'D

JAN 05 2011

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NEWARK, NEW JERSEY
07102

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FAX 973-424-9779
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January 5, 2011

HAND-DELIVERED

Acting Clerk
Superior Court of New Jersey
25 W. Market Street
P.O. Box 971
Trenton, New Jersey 08625

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

Dear Sir/Madam:

Enclosed for filing please find an original and two copies of the following documents:

- 1) Notice of Appearance by Krovatin Klingeman LLC (Gerald Krovatin, Esq.) as counsel for Citibank, N.A. and Citi Residential Lending, Inc.;
- 2) Notice of Appearance by Paul, Weiss, Rifkind, Wharton & Garrison LLP (Theodore V. Wells, Jr., Esq.), as counsel for Citibank, N.A. and Citi Residential Lending, Inc.;
- 3) Response of Citibank, N.A. and Citi Residential Lending, Inc. to Order to Show Cause;
- 4) Affidavit of Steven M. Smith; and
- 5) Proof of Service.

KROVATIN KLINGEMAN LLC
ATTORNEYS AT LAW

Acting Clerk
Superior Court of New Jersey
January 5, 2011
Page 2

Please file the original and return a stamped "filed" copy to me in the enclosed self-addressed stamped envelope. Kindly charge any applicable fees to our firm account number 140788. By copy of this letter we are forwarding a copy of the enclosed to the Honorable Mary C. Jacobson, P.J. Ch and to Edward J. Dauber, Esq.

Thank you for your attention to this matter.

Very truly yours,


Gerald Krovatin

GK:Cmd
Enclosure

Cc. Hon. Mary C. Jacobson, P.J. Ch.
Edward J. Dauber, Esq.