

FILED Jan 05, 2011

B-190  
CLC# 809637  
CLC# 135  
1-5-11

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

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

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SUPERIOR COURT  
CLERK'S OFFICE

DOCKET NO : F-059553-10

Civil Action

**MEMORANDUM OF RESPONDENTS JPMORGAN CHASE BANK, N.A.  
AND CHASE HOME FINANCE LLC IN RESPONSE TO ORDER TO SHOW CAUSE**

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JPMorgan Chase Bank, N.A. (“JPMC”) and Chase Home Finance LLC (“CHF,” and together with JPMC, “Chase”) respectfully submit this memorandum in response to the Court’s Order to Show Cause dated December 20, 2010 (the “Order to Show Cause”).<sup>1</sup>

### **PRELIMINARY STATEMENT**

Chase takes seriously the foreclosure requirements imposed by New Jersey and other states, and is committed to working with the Court and the Office of Foreclosure to assure the public that the foreclosure process going forward fully conforms with applicable requirements.

To that end, during the past three months, Chase voluntarily has undertaken a comprehensive review and overhaul of its document execution processes, addressing many of the issues that may be assigned to the proposed Special Master. This review and overhaul – which is far along but still ongoing – has involved:

- Suspending foreclosure actions and sales in 43 states and territories (including New Jersey);
- Retaining outside counsel and independent consultants to assist Chase in reviewing its practices and procedures for preparing foreclosure affidavits;
- Assessing the extent and nature of deficiencies in previously-filed affidavits and related court filings in pending foreclosure actions;
- Developing model affidavits for each state (including a model Certification of Proof of Amount Due in New Jersey) that fully conform with applicable local requirements;
- Designing and testing new procedures for Chase employees to complete affidavits;
- Designing and implementing quality control and quality assurance procedures;

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<sup>1</sup> The facts set forth in this memorandum are supported by the Affidavit of Michael Zarro, Senior Vice President in charge of Default Specialty Operations of JPMorgan Chase Bank, N.A., submitted herewith

- Preparing and implementing an intensive training program for Chase employees who complete affidavits;
- Revising and enhancing Chase’s audit plan for reviewing the practices of local foreclosure counsel; and
- Developing a plan and process for the remediation of previously-filed affidavits.

Chase’s review identified instances when a Certification of Proof of Amount Due (“Certification”) to be submitted in support of an application for final judgment were prepared, the calculation of the amount due and the review of the supporting financial information was often conducted by a Chase employee other than the person who signed the Certification. In addition, some Certifications included legal conclusions or other information that Chase personnel did not – and, as non-lawyers, often could not – verify.

Chase believes that the amounts due and the supporting financial information contained in the Certifications were materially accurate, and that no borrower was improperly foreclosed upon. Chase recognizes, however, that its prior practices were inadequate and that Certifications were often submitted without the signer having the appropriate level of personal knowledge. As a result, Chase temporarily and voluntarily suspended foreclosures and other related actions to allow it to correct and remediate those document execution issues.

In light of the significant reforms undertaken by Chase and the newly-enacted procedural safeguards in the amendments to Rules 1:5-6, 4:64-1 and 4:64-2, Chase respectfully asks the Court to permit Chase to commence new foreclosure actions and file new documents in pending actions. The Order to Show Cause and Administrative Order 01-2010 (“Administrative Order”) cite defects in *prior* practices. Any concerns the Court may have about *new* filings should be allayed by both the newly-required attorney

certifications addressing the accuracy of court submissions, and Chase's new processes and procedures for executing documents – including Certifications of Proof of Amount Due – which are described in detail below.<sup>2</sup> That is particularly the case for entirely new foreclosure proceedings

To the extent that the Court deems it appropriate to appoint a Special Master, Chase believes it would be beneficial to both litigants and the Courts if the Special Master was appointed to: (a) oversee the process by which new documents are filed and previously filed-documents are verified; (b) help interpret and give effect to the procedures described in the Administrative Order; and (c) otherwise work with plaintiffs and/or loan servicers to help facilitate the orderly and accurate processing of foreclosure actions.

With such oversight in place, Chase submits that there is no need to impose a stay of proceedings pending a review of past practices. While the Order to Show Cause identifies, and Chase acknowledges, procedural deficiencies in past document execution practices, there is no suggestion that Chase foreclosed on any property where the borrower was not in default. Notwithstanding, whatever problems may have existed, Chase confirmed the default at various points in the process and made numerous attempts to communicate with the borrower prior to foreclosure, and provide the borrower with the chance to resolve the default without foreclosure. To date, Chase has not identified or become aware of any systemic deficiencies in its processes that caused it to pursue foreclosure actions without merit.

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<sup>2</sup> Chase is committed to remedying any issues with Chase-signed foreclosure documents, and as noted above, has already undertaken significant remedial measures designed to address these issues. Chase also is committed to cooperating with the Administrative Office of the Court to provide comfort regarding Chase's procedures going forward in connection with residential mortgage foreclosure actions to the fullest extent permitted by the applicable federal law

Timely foreclosures are, unfortunately, a necessary part of a well-functioning real estate market, and an indefinite stay of all foreclosures by Chase and the other Respondents could have a severely adverse effect on homeowners and neighborhoods in New Jersey, and further stall the state's economic recovery. To the extent that any concerns are identified with respect to the accuracy of a particular Chase filing, such concerns can be addressed by the Court or, if appointed, the Special Master, as they arise

Finally, the sanctions and costs proposed in the Order to Show Cause are not justified in light of the fact that there is no suggestion that foreclosure actions were commenced or judgments were entered in any cases where the borrowers were not actually in default. Furthermore, Chase is fully prepared to remediate the document execution issues in pending cases and use the new processes going forward.

**I. THE RESPONDENTS AND THEIR LENDING AND SERVICING BUSINESSES**

JPMorgan Chase & Co. (“JPM,” NYSE: JPM) is a financial services holding company, and is a leader in investment banking, financial services for consumers, small business and commercial banking, financial transaction processing, asset management and private equity.

Respondent JPMC, a subsidiary of JPM, is a national banking association with branches in 23 states. Respondent CHF, a subsidiary of JPMC, is the third largest mortgage servicer in the country, servicing over 9 million loans throughout the country. As a mortgage servicer, CHF is responsible for the day-to-day management of loan accounts, including handling customer inquiries, collecting and crediting loan payments, reporting and remitting to investors, payment of taxes and insurance, engaging in loss mitigation efforts to keep borrowers in their homes and, as a last resort, pursuing foreclosure proceedings.<sup>3</sup>

Chase is proud of its strong ties to New Jersey. JPMC has 225 branches in the state. CHF is headquartered in Iselin, New Jersey, and collectively, Chase employs more than 6,000 people in the state. Chase is a lender on more than 80,000 loans in New Jersey, and currently services more than 270,000 loans in the state. In 2010, Chase lent

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<sup>3</sup> A borrower’s relationship is typically with the mortgage servicer, rather than the lender. The servicer often differs from the entity that originated the mortgage loan at the time of closing. Sometimes a serviced loan is owned and held by the servicer or a related entity, with the servicer acting on its own behalf. Other times, the servicer has a contractual relationship with the owner/holder of the loan and acts in an agency capacity on that entity’s behalf. Other servicing functions include sending default notices to delinquent borrowers, negotiating loss mitigation workout deals such as loan modifications and repayment plans, engaging local foreclosure counsel if necessary, and directing the foreclosure action as the client of the foreclosure firm (regardless of whether the foreclosure is brought in the name of the servicer or in the name of the holder or owner of the loan – a decision generally guided by the servicer’s agreement with the owner/holder.)

approximately \$106 billion in home loans nationwide, including \$4.7 billion in New Jersey.

CHF services loans originated by Chase as well as loans originated and/or owned by other lenders including Government Sponsored Enterprises (“GSEs”) (e.g., Freddie Mac and Fannie Mae) and private investors who hold pools of loans in securitized trusts.<sup>4</sup>

**A. Chase Is Committed To Keeping People In Their Homes**

Chase works hard, with respect to every customer, to avoid foreclosure because Chase knows how important it is to treat homeowners fairly and also because it’s good business. Foreclosure causes more loss to lenders and servicing companies than working with customers to modify loans under one of the federal, state, and private programs available to assist struggling homeowners.

Before commencing a foreclosure lawsuit, Chase engages in significant efforts to avoid foreclosure even after a loan is in default. Indeed, based upon 2010 foreclosure referrals, the average time between the contractual due date and the commencement of a foreclosure proceeding is 220 and 240 days in New Jersey. In *each* case, Chase’s policy is to undertake a careful, multi-step review of the loan and Chase makes substantial attempts to provide the borrower with alternatives prior to initiating a foreclosure proceeding. In many cases, these loss mitigation efforts continue during the foreclosure proceeding. On average, Chase will have attempted to contact a borrower more than 100 times between the time the loan becomes delinquent and the foreclosure sale.

Specifically, when a loan is identified as delinquent, Chase makes repeated efforts to contact the borrower by telephone and by letter to invite a discussion of alternatives to

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<sup>4</sup> By contract, JPMC has appointed CHF as sub-servicer for loans serviced by JPMC.

foreclosure. If the account remains delinquent, Chase issues a “Notice of Intention to Foreclose” letter consistent with New Jersey’s Fair Foreclosure Act. *See* N.J.S.A. 2A:50-56 When collection efforts are exhausted, Chase again attempts to bring the account current, utilizing a variety of options that would permit the borrower to retain his or her home, including, as appropriate, modification, reinstatement, deferment, borrower stipulations, temporary forbearance, repayment plans or one-time payments from FHA insurance. Eligible borrowers are offered modifications under: (a) the federal Home Affordable Modification Program (“HAMP”); (b) Chase’s Home Affordable Modification Program (“CHAMP”) if they do not qualify for HAMP; or (c) a program specifically prescribed by the GSEs. If none of these home-retention options can be used in a borrower’s particular circumstances, Chase then offers other programs which provide an orderly mechanism for the homeowner to relinquish title and avoid foreclosure. One example is a “short sale” when the borrower owes more than what the home is worth. Short sales allow struggling homeowners to sell the property and satisfy their obligations to Chase, which generally will waive its right to seek a deficiency judgment on the note. Another example is a “deed-in-lieu of foreclosure” which permits a borrower to transfer ownership of the property to Chase (if it is free of other liens) in satisfaction of the mortgage. These options may be significantly more favorable to the borrower than a foreclosure, as they provide some borrower control over the sale timing and over the date when s/he is required to vacate the property.<sup>5</sup>

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<sup>5</sup> Fannie Mae recently announced policy changes designed to encourage borrowers to work with their mortgage servicers to pursue alternatives to foreclosure. *See* Fannie Mae June 23, 2010 News Release, available at [www.fanniemae.com/newsreleases/2010/5071.jhtml](http://www.fanniemae.com/newsreleases/2010/5071.jhtml), April 14, 2010 Announcement SEL-2010-05, available at [www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1005.pdf](http://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/sel1005.pdf). Pursuant to Fannie Mae policy, a borrower who walks away from a mortgage and had the capacity to pay, or who does not complete a workout alternative in good faith, is ineligible for a Fannie Mae-backed loan for seven years. In

Chase has a dedicated team of approximately 2,000 mortgage relationship managers available to meet with customers in person or by telephone to discuss alternatives to foreclosure. Chase also has established: (a) 51 Chase Home Ownership Centers, including two in New Jersey, where borrowers can meet face-to-face with a specially trained loan advisor who is focused exclusively on helping Chase customers keep their homes; (b) a toll-free number for borrowers to call; and (c) web based resources providing information on loan modifications and other options. **Since early 2009, Chase has offered to modify approximately 1,020,000 home loans, including approximately 30,000 in New Jersey, of which approximately 7,500 were completed.**

Only after all other options are exhausted and prove unavailing, and provided there are no other reasons why foreclosure is premature, will Chase refer the loan to foreclosure.<sup>6</sup> This typically occurs when the loan has been delinquent for between 220 and 240 days, based upon 2010 New Jersey foreclosure referrals. Before referral, and twice again before a foreclosure sale is completed, Chase procedures require *every* loan to be subjected to foreclosure review.<sup>7</sup> The first review is conducted prior to the referral to foreclosure. Two additional reviews are performed prior to a foreclosure sale – one at approximately two to three weeks before the scheduled sale date, and another approximately 96 hours prior to the sale. Each is designed to confirm that the foreclosure and sale are proper and that Chase has complied with all applicable processes and

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contrast, borrowers who work with servicers on foreclosure alternatives such as a loan modification, a short sale or deed-in-lieu of foreclosure could be eligible for a new Fannie Mae-backed mortgage in three years (or even as little as two years depending on the circumstances). *Id.*

<sup>6</sup> Loss mitigation efforts do not cease once the loan is referred to foreclosure. Rather, during the foreclosure process, workout efforts occur on a parallel track with homeowners consistently being provided opportunities to resolve the default prior to sheriff's sale.

<sup>7</sup> The foreclosure procedures and safeguards discussed in this paragraph predate the investigation and remediation process discussed herein

guidelines. The foreclosure teams confirm, among other items, that the loan is past due, and that Chase has complied with all of its pre-referral procedures, including efforts to contact the borrower to discuss alternatives. **Since the start of 2010, Chase's policy has been to subject 100% of its service loan portfolio to a foreclosure review process.**

**B. Certifications Of Proof Of Amount Due Submitted In New Jersey Foreclosure Proceedings Are Created Using Records Which Are Accurate And Subject To Intensive Internal And External Controls**

When foreclosure cannot be avoided, and the loan review team confirms that all criteria for foreclosure are met, Chase refers the loan to outside local counsel to commence foreclosure proceedings. At that time, Chase provides its counsel with information about the loan and default, and with the key documents necessary to pursue foreclosure.

In states where foreclosures are accomplished through judicial proceedings, Chase typically submits a verification of indebtedness setting forth the amount due by the borrower. For uncontested matters in New Jersey, Chase submits a Certification of Proof of Amount Due in accordance with Rules 4:64-2 and 1:4-4(b). The Certifications are not notarized. In other states which do not allow for the use of a certification in lieu of affidavit, Chase often submits a notarized affidavit of indebtedness ("AOI").

Certifications are typically submitted in New Jersey along with the application for judgment.<sup>8</sup> Other documents submitted with the judgment package are generally already in the possession of foreclosure counsel (i.e., the note, mortgage, and assignments, if applicable), although there may be instances where Chase provides additional information or documents at counsel's request.

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<sup>8</sup> Depending on the status of the loan, the jurisdiction, and whether or not the foreclosure action is contested, other documents may be submitted as well

While the process Chase historically used to complete Certifications was deficient, Chase believes that its business records concerning the loan, *i.e.*, the data used to complete the Certifications, were and are materially accurate. To manage the loan accounts, Chase uses an electronic record-keeping system known as Mortgage Servicing Package (“MSP”) to maintain up-to-date information concerning, among other things, the status of the loan and payment history.<sup>9</sup> Monetary transactions are posted on MSP in real-time (transactions are batched and updated nightly) Thus, when a borrower makes a loan payment to Chase, the payment is promptly recorded and the loan record is updated MSP also stores data about payments Chase makes on behalf of the borrower, including tax payments and hazard insurance, as well as records of communications with borrowers.

Chase employs a number of internal and external controls to ensure that the information in MSP is accurate and reliable, including real-time posting of transactions, daily reconciliations, control self-assessment processes, internal audit review, and testing by Chase’s external auditor, PricewaterhouseCoopers. Chase also relies on the integrity of its hard copy loan files, most of which are maintained in a secure facility of JPMorgan Chase Custody Services in Monroe, Louisiana<sup>10</sup> These files typically contain original notes. Images of those hard copy files are maintained on an imaging system.

Additional confidence in the accuracy of the information on account balances in Chase’s servicing system comes from borrower access to and review of this information. Most borrowers receive monthly loan statements reflecting, among other items, the

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<sup>9</sup> MSP is a commercially available system which, according to some estimates, is used by approximately 75% of the mortgage servicing industry

<sup>10</sup> Files pertaining to a small percentage of loans serviced by CHF are stored with third-party custodians.

unpaid principal balance, interest rate, and the amount of the outstanding indebtedness. Borrowers also receive annual Form 1098 and 1099 tax statements as appropriate. Escrow accounts for taxes and/or insurance are reconciled at least once per year as required by federal law, and borrowers are provided with annual escrow disclosure statements. Similarly, most borrowers also have access to key information about their loans through Chase.com. When a loan is in default, breach and default letters are sent notifying the borrower that Chase intends to commence a foreclosure on the property. These letters comply with state law and typically identify the amount of indebtedness

C. **Chase's Decision To Temporarily Halt Mortgage Foreclosure Proceedings, Sales, And Evictions In New Jersey**

Beginning on September 28, 2010, Chase implemented a temporary halt to obtaining foreclosure judgments in numerous states, including New Jersey. Subsequently, Chase announced that it would halt foreclosure sales of properties in which foreclosure judgments had been obtained. Chase also halted evictions in New Jersey and most other states.

Chase took these steps when concerns arose about potential problems with the execution of certain documents – principally AOIs (or in New Jersey, Certifications) – by Chase employees. Although Chase had no basis to believe that foreclosure proceedings were pursued with respect to non-delinquent borrowers, Chase determined that a full investigation and remediation of its internal document execution procedures were necessary to ensure that all documents were properly executed and to confirm that the problems it had discovered did not affect the merits of the foreclosure proceedings.

Chase's investigation disclosed that its employees signed Certifications for New Jersey files which set forth the outstanding indebtedness amounts on the basis of file

reviews and verifications that were in fact often performed by other Chase personnel.

Chase also determined that, in some instances, local foreclosure counsel had inserted into the Certifications certain legal conclusions and representations unrelated to the mortgagor's indebtedness and default that were not, and in some cases could not have been, verified by the non-lawyer signer. Nevertheless, whatever issues may have existed in the process by which Certifications were executed, Chase is not aware of any instance where a foreclosure was improperly instituted or pursued as a result of document execution issues.

It is worth noting that in neither the exhaustive discussion in the Order to Show Cause nor the Legal Services of New Jersey Report upon which the Court heavily relied in issuing the various orders of December 20, 2010 is there any suggestion that Chase's records are inaccurate or that any borrower has been foreclosed upon when s/he was not in default

**D. Foreclosures Are A Necessary Part Of The Lending Process And Are Critical To A Healthy Housing Market**

Foreclosures are an unfortunate but necessary part of a healthy, functioning housing market, and delays in foreclosure can impede economic recovery and harm neighborhoods. Properties subject to defaulted loans are often in disrepair or even abandoned, blighting communities and driving down surrounding property values. This was recognized by New Jersey's Legislature in the Save New Jersey Homes Act of 2008, N.J.S.A. 46:10B-36, *et seq.*, which imposes an obligation on foreclosing lenders to repair, remedy, and otherwise be liable for municipal code violations during the foreclosure of a vacant or abandoned home. *See* N.J.S.A. 46:10B-51(b). While every effort is made to keep New Jersey homeowners in their homes, economic realities sometimes make that

impossible. In those instances, the community as a whole benefits from the prompt liquidation of the property and sale to a paying homeowner.

Further, the market depends on the willingness of investors to lend money to home buyers and home owners, both through direct lending and through investments in securities tied to mortgages. If lenders are unable to recover by foreclosing on property in a reasonably expeditious manner when the borrower is in default, the lender may be deterred from further investment in the market. That result makes it harder for people to buy homes and increases the cost of obtaining credit for *all* consumers, including the vast majority of New Jerseyans who are not in default on their present obligations. In addition, other borrowers who are making their required contractual payments are disadvantaged unfairly when contractual commitments are enforced inconsistently.

Chase suspended foreclosures more than three months ago, and is now undertaking a comprehensive review of the files in all pending actions in New Jersey in accordance with the amendments to the Rules of Court and instructions of the Supreme Court of New Jersey. Chase submits that an additional court-imposed stay pending a Special Master review is unnecessary and, as noted above, could have significant adverse consequences for New Jersey's homeowners, neighborhoods and economy.

**E. Foreclosure Proceedings Were Only Commenced After Uncured Defaults**

As described above, prior to the recent freeze in foreclosures, Chase had numerous safeguards in place to ensure that borrowers being foreclosed upon were in fact severely delinquent and had multiple opportunities to cure their defaults and/or agree to an appropriate loan modification or another procedure to avoid foreclosure. Moreover, given the abundance of information provided to borrowers about their accounts, the Court

can also have confidence that any significant inaccuracy in this information could and would have been raised by borrowers.

The Certification is filed along with plaintiff's final judgment application – at the end of the lengthy foreclosure and after the borrower has already been served with process and afforded an opportunity to challenge the assertions that the loan is in default and that foreclosure is proper. Moreover, the borrower is served with the application for final judgment, including the Certification, and has the opportunity to object if he believes that the figures contained therein are inaccurate. *See* Rules 4:64-1(d)(2) and 4:64-9<sup>11</sup> While the Certifications were, of course, subject to human error, the lack of any meaningful volume of objections to those Certifications speaks to the material accuracy of the information contained in the documents.

As of November 30, 2010, CHF is the servicer on approximately 14,000 loans that are the subject of pending foreclosure cases in New Jersey. Certifications were submitted in a portion of these cases and as the Court has directed, Chase is reviewing the Certifications filed in each of these actions<sup>12</sup>

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<sup>11</sup> The New Jersey mediation program, which applies to all mortgage foreclosure actions commenced on or after January 5, 2009, also would have afforded the borrower an opportunity to participate in a mediation in which the borrower could raise any objections to the foreclosure in advance of any final judgment

<sup>12</sup> Chase's systems require significant manual intervention in order to recreate account balance data at any specific point in time. Because account activity – such as payment of property taxes or hazard insurance – may have occurred since the Certification was completed, there is no practical way for Chase to compare each Certification on file in New Jersey in an automated fashion to confirm the accuracy of each line item in the Certification at the time it was executed. Chase is able, however, to confirm that the borrower remains in default today and that the current indebtedness is greater than it was at the time the Certification was submitted. Thus, although Chase cannot systematically verify that the amount of outstanding indebtedness listed in the Certification was accurate to the penny when executed, Chase believes that the current higher balance due is sufficient to assure that the information in the Certification was not inaccurate in any material respect at the time it was executed

II. **CHASE HAS TAKEN, AND CONTINUES TO TAKE, SIGNIFICANT STEPS TO REMEDIATE DOCUMENT EXECUTION ISSUES**

As a result of the issues identified in Chase's document execution procedures, Chase has been intently engaged in formulating and implementing a comprehensive remediation strategy. For purposes of this submission, we focus on several key components

A. **Chase Has Developed Standardized Model Affidavits Of Indebtedness And Certifications Of Proof Of Amount Due**

Historically, Chase relied on local foreclosure counsel to develop the form of affidavit and/or certification appropriate within their respective jurisdictions. Many local foreclosure counsel had their own template forms and, as a result, Chase employees had to familiarize themselves with hundreds of affidavit and certification forms. As noted above, this problem was exacerbated by the fact that some local foreclosure counsel included legal conclusions and other statements in the affidavits or certifications that the signers need not, and should not, have been asked to affirm.

To address this concern, Chase developed standard models in each state that uses such a document. In New Jersey, Chase developed a model Certification of Proof of Amount Due to be used by all Chase foreclosure counsel in New Jersey cases, which includes the Amount Due Schedule set forth in Appendix XII-J of the Court Rules. Chase communicated with each foreclosure counsel it uses in New Jersey, as well as with a separate law firm engaged to serve as an independent advisor, to arrive at this standard Certification *and Chase's policy is that it will be used in every existing case where a substituted Certification is appropriate, and in every new case going forward when a Certification is required.* A copy of the model Certification is attached to the Affidavit of Michael Zarro as Exhibit 1. By standardizing its forms, Chase is able to develop

uniform procedures, training, and quality control mechanisms, which are discussed in more detail below. In addition, the model Certification will ensure that future Certifications (and affidavits in other states) contain *only* that information that Chase employees are able to affirm.

**B. Chase Has Developed New Procedures And Quality Control Mechanisms**

Over the past 90 days, Chase has developed, tested and revised new procedures for executing sworn documents, including verifications of indebtedness. Where necessary, these processes are being tailored to state-specific requirements, including any special requirements of New Jersey. The procedures provide for multi-layer quality control and quality assurance testing followed by audit review, and Chase has engaged Deloitte & Touche LLP to independently review the procedures.

The new procedures generally provide for Chase to receive a form verification (in New Jersey, a Certification) from foreclosure counsel. A trained Chase foreclosure analyst will then confirm information about the loan and the default, and access Chase's MSP system to determine, and record by hand on the Certification, the amounts due and owing. Chase's procedures provide for the signer to reject a document that contains errors, and Chase employees have been specifically trained *not* to complete any affidavit or certification if they have any questions about the content or do not understand any portion of the document.<sup>13</sup>

At present, *every* affidavit or certification signed by a Chase foreclosure employee is reviewed a second time by a quality-check analyst. The quality-check analyst performs

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<sup>13</sup> Similar procedures have been and continue to be developed for other sworn documents, such as lost assignment affidavits, and notarized unsworn documents such as assignments of mortgage.

each of the same steps as did the signer to confirm that the factual information in the affidavit or certification matches the information contained in Chase's electronic business record systems. If a document fails the quality check, the quality-check analyst and the foreclosure analyst will work together to reconcile the two results so that an accurate document will be filed. The review of 100% of affidavits and certifications will continue until Chase management determines that quality levels are consistently high and support a more streamlined review going forward. At that point, the quality-check analysis will continue with random samplings of affidavits and certifications.

The aforementioned quality control process is being tested and independently validated through a Control Self Assessment and Quality Assurance process conducted by an independent operational risk and control team. Chase's independent Internal Audit team will provide, on a sampling basis, a third layer of review and validation. Finally, Chase has engaged Deloitte & Touche LLP to independently review Chase's procedures to ensure that they are sound and contain no observable gaps.

Chase has nearly completed refining its process for execution of these documents, and none will be submitted to the courts in New Jersey until the process is finalized and has been subjected to Deloitte & Touche LLP's review

To provide further assurance that no borrower improperly loses a home to foreclosure, Chase has revised its policies to require a "last clear check" in its ongoing foreclosure sale process, which will also be implemented in New Jersey once the foreclosure halt is lifted. Prior to foreclosure sale (and eviction, if applicable), Chase will review the MSP system to ensure that the loan is 151 or more days past due, that appropriate outreach to the borrower was attempted by Chase, and that a search of the

Department of Defense database confirmed that the borrower's military status did not provide an exemption from foreclosure.<sup>14</sup>

To confirm that these steps are followed meticulously and that documents are prepared and executed properly, Chase will track each document, including the name of the responsible foreclosure analyst. Chase will also monitor and track the results from the quality-check process.

**C. Chase Has Developed And Implemented An Exhaustive New Training And Certification Program**

Chase is committed to ensuring that the preparation and execution of documents satisfy all evidentiary standards and that any document signed by Chase and filed in court is accurate and complies with all legal requirements.

To that end, Chase has, in conjunction with its outside counsel and advisors, developed a rigorous training program designed to ensure that Chase employees understand the proper way to complete an affidavit or certification. The program includes instruction on the review of substantive information from Chase's systems and on the proper procedures for document execution. Importantly, trainees are encouraged to seek help from supervisors and they are specifically instructed not to sign any affidavit or certification where they are unable to confirm the contents.

There are approximately 400 employees that are part of the foreclosure document execution process. Each one, including signers and quality control personnel, must pass the new training program, which consists of classroom training (2.5 days for current employees and 10 days for new employees) and lab work on how to execute the

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<sup>14</sup> This is at least the second check of United States military records, as local foreclosure counsel performs its own search of the Department of Defense database in connection with its application for default. See Rule 1 5-7. Foreclosure counsel may also perform searches at other points in the foreclosure process.

applicable documents. After training, Chase requires *each* employee who may be asked to sign such a document or to review it for quality control purposes to meet individually with an outside attorney to confirm that the employee understood the document execution process and is prepared to proceed under the prescribed procedures. Employees who do not pass this screening certification are provided additional coaching and/or training, and then are re-screened.

Going forward, Chase will implement a periodic certification process, pursuant to which the foreclosure analysts will confirm their compliance with, and understanding of, Chase's prescribed procedures. Chase's independent audit group will also perform an audit of the reformed document execution procedures to ensure that the revised controls are functioning effectively and are sustainable.

**D. Review Of New Jersey Court Files**

As discussed above, Chase has developed a comprehensive plan to address the issues raised by the Court's Order to Show Cause. As part of this plan and before the Order to Show Cause was issued, Chase voluntarily began a thorough review of every open file in New Jersey to determine whether the file contained documents that may have been improperly executed. In accordance with the Administrative Order and the new amendments to Rules 1:5-6, 4:64-1 and 4:64-2, Chase is now reviewing these files to confirm that the facts provided to foreclosure counsel and now contained in court documents are accurate in all material respects. To the extent facts cannot be verified or errors are identified, Chase will submit a new Certification. Chase submits that this review, combined with the intense remediation steps discussed above, sufficiently address the concerns raised in the Order to Show Cause and obviate any need for the

Special Master to conduct the inquiry and reporting set forth in Paragraphs 1(D)(i) through (vi) therein.

**III. THE COURT SHOULD NOT IMPOSE AN INDEFINITE STAY PENDING A SPECIAL MASTER REVIEW**

As set forth above, Chase has implemented numerous new procedures and safeguards to assure that documents submitted in support of foreclosure are accurate and properly executed. In addition, the Court has imposed new Rules that require Chase's local foreclosure counsel to submit certifications concerning the accuracy of new complaints and pending filings. Thus, the Court can be assured that the document execution issues that gave rise to the Order to Show Cause will not affect documents submitted in the future.

Chase believes that, in light of these new safeguards, an indefinite freeze of new filings is unnecessary and new foreclosure filings should resume promptly. As set forth above, the significant delay in the foreclosure process that would result from a stay of new filings presents a real and significant danger to New Jersey's neighborhoods, homeowners, and economy. Accordingly, Chase respectfully submits that it should be permitted to file new foreclosure complaints as well as new documents in pending foreclosure actions using its new procedures and in accordance with the new Court Rules.

To the extent that the Court deems it appropriate to appoint a Special Master, Chase submits that the focus of the Special Master should be on assisting servicers and the Court in moving forward. Litigants and the Court would benefit if the Special Master was appointed to: (a) oversee the process by which new documents are filed and previously filed-documents are verified (*see, e g* , note 14, *supra*); (b) help interpret and give effect to the procedures described in the Administrative Order; and (c) otherwise

work with loan servicers to help facilitate the orderly and accurate processing of foreclosure actions.

Further, Chase believes that the new Rules, in combination with Chase's new procedures and the oversight of the Special Master, obviate the need for a stay of foreclosure proceedings – certainly with respect to entirely new proceedings, but also with respect to ongoing proceedings. For ongoing proceedings, under the new Rules, Chase will be reviewing each pending foreclosure action, and no new judgments or sales will go forward until a file is reviewed. To the extent that any concerns are identified with respect to the accuracy of a particular filing, the Court or Special Master can work with Chase to address any necessary remediation before judgment and/or sale, thereby ensuring that a sound process is followed and the borrower is protected. An indefinite, blanket stay is unnecessary to accomplish those goals and, as set forth above, could have a dramatic unintended effect on New Jersey's housing market.

**IV. THE FACTS AND CIRCUMSTANCES DO NOT SUPPORT THE IMPOSITION OF SANCTIONS**

Chase respectfully submits that the Court should not impose sanctions<sup>15</sup> New Jersey courts have historically treated the signing of certifications without personal knowledge as an evidentiary issue that affects the admissibility of evidence. For example, in *Cho Hung Bank v Kim*, 361 N.J. Super 331, 341-42 (App.Div.2003), the court held that the certification of amount due should set forth facts admissible in evidence and to which the deponent is competent to testify. When the certification was

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<sup>15</sup> The Order to Show Cause also proposes that the Special Master report on whether the Office of Foreclosure and Foreclosure Processing Unit should be reimbursed for "re-handling and re-processing" foreclosure files. The Order to Show Cause does not describe the "re-handling and re-processing" or the proposed assessment of fees and therefore Chase is unable to respond, other than to state that, to the extent this is intended as a sanction, it is unwarranted for the reasons set forth in this section.

completed by a plaintiff's attorney without personal knowledge of the lender's finances, the Appellate Division remanded to the trial court to resolve the discrepancy between the amounts stated in the attorney-signed certification and the plaintiff-signed certification. *Id* See also *Higgins v Thurber*, 413 N.J.Super. 1, 21, n.19 (App.Div.2010) (affidavits by a party's attorneys not based on personal knowledge are objectionable hearsay) (citing *Gonzalez v. Ideal Tile Importing Co.*, *Gonzalez v Ideal Tile Importing Co.*, 371 N.J.Super. 349, 358 (App.Div.2004), *aff'd* 184 N.J. 415 (2005), *cert. denied*, 546 U.S. 1092, 126 S.Ct 1042, 163 L.Ed.2d 857 (2006). Indeed, in certain instances, certifications not based on personal knowledge have been accepted when the underlying information was not subject to challenge and the witness would have known the company's historic practices. *Bd. of Educ of City of Clifton v W R Grace Corp* , 258 N.J.Super. 94, 125-27 (Law Div. 1992) (accepting affidavit not based on personal knowledge where the affiant, as Secretary of the company, would have had access to the company's books and records at the time and nothing contradicted the statements in the affidavit). This is the case here, where a Chase employee conducted a review of that information, and where the signer was aware that such a review had occurred and typically was familiar with the review procedures and the individuals who conducted that review.

Moreover, even in cases where inaccurate information is contained in a certification, the New Jersey Supreme Court has recognized that may be cured through the submission of a corrected certification. See *First Union Nat Bank v Penn Salem Marina, Inc* , 190 N.J. 342, 356 (2007) ("As noted above there were several internal discrepancies in Jackson's certification and schedule concerning the amounts due in the separate categories of damages The Office of Foreclosure should have either notified

plaintiff to submit a corrected certification or returned the matter to the Chancery Division.”). The recognized ability to cure an inaccurate certification strongly underscores that the submission of a certification without personal knowledge is not sanctionable.

Sanctions have traditionally been reserved for the most egregious conduct, such as where a litigant intentionally presents false information to the Court. *Compare Triffin v Automatic Data Processing, Inc*, 411 N.J.Super. 292 (App Div.2010) (sanctions imposed where litigant fabricated evidenced by affixing faxed signatures without consent as copies of genuine original documents) *with, CCTS, LLC v Daugherty*, 2008 WL 5245272 at \* 2 (N.J. Super. Ct. App. Div. Dec 18, 2008) (no sanctions imposed where facts were unintentionally misrepresented).

As detailed herein, Chase has acknowledged the issues with its Certifications and, starting well before the Order to Show Cause was issued, Chase has taken – and continues to take – significant and meaningful measures to remediate. There is no indication that the deficiencies led to unwarranted judgments, much less any intent to mislead the Court. In such circumstances, Chase respectfully submits that sanctions should not be imposed.

## V. CONCLUSION

Chase appreciates the concerns of the Court and shares the commitment to restoring confidence in the integrity of the foreclosure process. Chase believes that its comprehensive review and reform of its foreclosure process, combined with the Court’s new requirements designed to ensure that local counsel be satisfied of the factual basis for any action begun or certification filed, provide a firm basis for this confidence. For these reasons Chase believes the issues in its processes (a) did not affect the outcome of

foreclosure proceedings, and (b) have been fully addressed and will be remediated, and that neither a blanket stay of foreclosure proceedings nor sanctions are appropriate or necessary. Chase respectfully submits that the relief sought in the Order to Show Cause, and in particular, the proposed stay, should not be granted.

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Attorneys for Respondents  
JPMorgan Chase Bank, N.A. and  
Chase Home Finance LLC

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

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

DOCKET NO.: F-059553-10

Civil Action

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**AFFIDAVIT OF MICHAEL ZARRO IN SUPPORT OF THE RESPONSE OF  
JPMORGAN CHASE BANK, N.A. AND CHASE HOME FINANCE LLC  
TO ORDER TO SHOW CAUSE**

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STATE OF OHIO )  
COUNTY OF FRANKLIN ) SS:

**AFFIDAVIT OF MICHAEL ZARRO**

I, Michael Zarro, being duly sworn, depose and state the following:

1. I am the Senior Vice President in charge of Default Specialty Operations at JPMorgan Chase Bank, N.A. ("JPMC").

2. I have been employed by JPMC and its predecessors since 1994 and am responsible for the support and management of the disposition of assets secured by real estate, including the foreclosure process.

3. In that capacity, I am a senior member of Chase's team working to analyze and remediate issues with respect to the execution by Chase employees of documents used in foreclosure proceedings and other related issues.

4. I am submitting this Affidavit in support of the Response to the December 20, 2010 Order to Show Cause ("Order"). This Affidavit is based on information, belief and personal knowledge.

**I. THE RESPONDENTS AND THEIR LENDING AND SERVICING BUSINESSES**

5. JPMorgan Chase & Co ("JPM," NYSE: JPM) is a financial services holding company, and is a leader in investment banking, financial services for consumers, small business and commercial banking, financial transaction processing, asset management and private equity.

6. Respondent JPMC, a subsidiary of JPM, is a national banking association with branches in 23 states.

7. Respondent Chase Home Finance LLC (“CHF,” and with JPMC, “Chase”), a subsidiary of JPMC, is the third largest mortgage servicers in the country, servicing over 9 million loans throughout the country. As a mortgage servicer, CHF is responsible for the day-to-day management of loan accounts, including handling customer inquires, collecting and crediting loan payments, reporting and remitting to investors, payment of taxes and insurance, engaging in loss mitigation efforts to keep borrowers in their homes and, as a last resort, pursuing foreclosure proceedings.

8. A borrower’s relationship is typically with the mortgage servicer, rather than the lender. The servicer often differs from the entity that originated the mortgage loan at the time of closing. Sometimes a serviced loan is owned and held by the servicer or a related entity, with the servicer acting on its own behalf. Other times, the servicer has a contractual relationship with the owner/holder of the loan and acts in an agency capacity on that entity’s behalf. Other servicing functions include: sending default notices to delinquent borrowers; negotiating loss mitigation workout deals such as loan modifications and repayment plans; engaging local foreclosure counsel if necessary; and directing the foreclosure action as the client of the foreclosure firm (regardless of whether the foreclosure is brought in the name of the servicer or in the name of the holder or owner of the loan – a decision generally guided by the servicer’s agreement with the owner/holder).

9. JPMC has 225 branches in the state of New Jersey. CHF is headquartered in Iselin, New Jersey, and collectively, Chase employs more than 6,000 people in the state.

Chase is a lender on more than 80,000 loans in New Jersey, and currently services more than 270,000 loans in the state.

10. In 2010, Chase lent approximately \$106 billion in home loans nationwide, including \$4.7 billion in New Jersey.

11. CHF services loans originated by Chase as well as loans originated and/or owned by other lenders including Government Sponsored Enterprises (“GSEs”) (e.g., Freddie Mac and Fannie Mae) and private investors who hold pools of loans in securitized trusts. By contract, JPMC has appointed CHF as sub-servicer for loans serviced by JPMC.

A. **Chase’s Procedure to Avoid Foreclosure Actions**

12. Chase works hard, with respect to every customer, to avoid foreclosure because Chase knows how important it is to treat homeowners fairly, and also because it's good business. Foreclosure causes more loss to lenders and servicing companies than working with customers to modify loans under one of the federal, state, and private programs available to assist struggling homeowners.

13. Before commencing a foreclosure lawsuit, Chase engages in significant efforts to avoid foreclosure even after a loan is in default. Based upon 2010 foreclosure referrals in New Jersey, the average time between the contractual due date and the commencement of a foreclosure proceeding is 220 to 240 days.

14. In *each* case, Chase’s policy is to undertake a careful, multi-step review of the loan and Chase makes substantial attempts to provide the borrower with alternatives prior to initiating a foreclosure proceeding. In many cases, these loss mitigation efforts continue during

the foreclosure proceeding. On average, Chase will have attempted to contact a borrower more than 100 times between the time the loan becomes delinquent and the foreclosure sale.

15. Specifically, when a loan is identified as delinquent, Chase makes repeated efforts to contact the borrower by telephone and by letter to invite a discussion of alternatives to foreclosure

16. If the account remains delinquent, Chase issues a Notice of Intent to Foreclose letter consistent with New Jersey's Fair Foreclosure Act.

17. When collection efforts are exhausted, Chase again attempts to bring the account current, utilizing a variety of options that would permit the borrower to retain his or her home, including, as appropriate, modification, reinstatement, deferment, borrower stipulations, temporary forbearance, repayment plans or one-time payments from FHA insurance. Eligible borrowers are offered modifications under: (a) the federal Home Affordable Modification Program ("HAMP"); (b) Chase's Home Affordable Modification Program ("CHAMP") if they do not qualify for HAMP; or (c) a program specifically prescribed by the GSEs.

18. If none of these home-retention options can be used in a borrower's particular circumstances, Chase then offers other programs which provide an orderly mechanism for the homeowner to relinquish title and avoid foreclosure. One example is a "short sale" when the borrower owes more than what the home is worth. Short sales allow struggling homeowners to sell the property and satisfy their obligations to Chase, which generally will waive the right to seek a deficiency judgment on the note. Another example is a "deed-in-lieu of foreclosure" which permits a borrower to transfer ownership of the property to Chase (if it is free of other

liens) in satisfaction of the mortgage. These options may be significantly more favorable to the borrower than a foreclosure, as they provide some borrowers control over the sale timing and over the date when the borrower is required to vacate the property.

19. Chase has a dedicated team of approximately 2,000 mortgage relationship managers available to meet with customers in person or by telephone to discuss alternatives to foreclosure. Chase also has established: (a) 51 Chase Home Ownership Centers, including two in New Jersey, where borrowers can meet face-to-face with a specially trained loan advisor who is focused exclusively on helping Chase customers keep their homes; (b) a toll-free number for borrowers to call; and (c) web-based resources providing information on loan modifications and other options.

20. Since early 2009, Chase has offered to modify approximately 1,020,000 home loans since early 2009, including 30,000 in New Jersey, of which approximately 7,500 were completed.

21. Only after all other options are exhausted and prove unavailing, and provided there are no other reasons why foreclosure is premature, will Chase refer the loan to foreclosure. This typically occurs when the loan has been delinquent for between 220 and 240 days, based upon 2010 New Jersey foreclosure referrals. Loss mitigation efforts do not cease once the loan is referred to foreclosure. Rather, during the foreclosure process, workout efforts occur on a parallel track with homeowners consistently being provided opportunities to resolve the default prior to sheriff's sale.

22. Before referral, and twice again before a foreclosure sale is completed, Chase procedures require *every* loan to be subjected to foreclosure review. The first review is conducted prior to the referral to foreclosure. Two additional reviews are performed prior to a foreclosure sale – one at approximately two to three weeks before the scheduled sale date, and another approximately 72 hours prior to the sale. Each is designed to confirm that the foreclosure and sale are proper and that Chase has complied with all applicable processes and guidelines. The teams confirm, among other items, that the loan is past due, and that Chase has complied with all of its pre-referral procedures, including efforts to contact the borrower to discuss alternatives.

23. Since the start of 2010, Chase’s policy has been to subject 100% of its serviced loan portfolio to a foreclosure review process.

**B. Submission of Affidavits In Foreclosure Proceedings**

24. When foreclosure cannot be avoided, and the loan review team confirms that all criteria for foreclosure are met, Chase refers the loan to outside local counsel to commence foreclosure proceedings. At that time, Chase provides its counsel with information about the loan and default, and with the key documents necessary to pursue foreclosure.

25. In states where foreclosures are accomplished through judicial proceedings, Chase typically submits a verification of indebtedness setting forth the amount due by the borrower. For uncontested matters in New Jersey, Chase submits a Certification of Proof of Amounts Due in accordance with Rules 4.64-2 and 1:4-4(b) (“Certification”). The Certifications are not notarized. In other states which do not allow for the use of a certification in lieu of affidavit, Chase often submits a notarized affidavit of indebtedness (“AOI”).

Certifications are typically submitted in New Jersey along with the application for judgment. Other documents submitted with the judgment package are generally already in the possession of foreclosure counsel (*i.e.*, the note, mortgage, and assignments, if applicable), although there may be instances where Chase provides additional information of documents at counsel's request. Depending upon the status of the loan, the jurisdiction, and whether or not the foreclosure action is contested, other documents may be submitted as well.

**C. Chase's Books and Records**

26. To manage the loan accounts, Chase uses its system of record, Mortgage Servicing Package ("MSP"), to maintain up-to-date information concerning, among other things, the status of the loan and payment history. MSP is a commercially available system which, according to some estimates, is used by approximately 75% of the mortgage servicing industry.

27. Monetary transactions are posted on MSP in real-time (transactions are batched and updated nightly). Thus, when a borrower makes a loan payment to Chase, the payment is promptly recorded and the loan record is updated. MSP also stores data about payments Chase makes on behalf of the borrower, including tax payments and hazard insurance, as well as records of communications with borrowers.

28. Chase employs a number of internal and external controls to ensure that the information in MSP is accurate and reliable, including real-time posting of transactions, daily reconciliations, control self-assessment processes, internal audit review, and testing by Chase's external auditor, PricewaterhouseCoopers. Chase also relies on the integrity of its hard copy loan files, most of which are maintained in a secure facility of JPMorgan Chase Custody Services in Monroe, Louisiana. These files typically contain original notes. Images of those

hard copy files are maintained on an imaging system. Files pertaining to a small percentage of loans serviced by CHF are stored with third-party custodians.

29. Most borrowers receive monthly loan statements reflecting, among other items, the unpaid principal balance, interest rate, and the amount of the outstanding indebtedness. Borrowers also receive annual Form 1098 and 1099 tax statements, as appropriate. Escrow accounts for taxes and/or insurance are reconciled at least once per year as required by federal law, and borrowers are provided with annual escrow disclosure statements. Similarly, most borrowers also have access to key information about their loan through Chase.com.

30. When a loan is in default, breach and default letters are sent notifying the borrower that Chase intends to commence a foreclosure on the property. These letters comply with state law and typically identify the amount of indebtedness.

**D. Chase's Decision To Temporarily Halt Mortgage Foreclosure Proceedings, Sales, And Evictions In New Jersey**

31. Chase has identified certain deficiencies in its historical practices for document execution. Specifically, Chase's review identified instances when a Certification to be submitted in support of an application for final judgment was prepared, and the calculation of the amount due and the review of the supporting financial information was often conducted by a Chase employee other than the person who signed the Certification.<sup>1</sup> In addition, some Certifications included legal conclusions or other information that Chase personnel did not – and, as non-lawyers, often could not – verify.

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<sup>1</sup> In certain circumstances, foreclosure counsel would perform the calculation of the amount due, which was reviewed by a Chase employee other than the person who signed the Certification

32. The facts set forth in the Certifications with respect to the borrowers' indebtedness, the uncured default, and the amount of the debt were verified by Chase employees prior to the execution of those Certifications by consulting the company's books and records, which are subject to extensive internal and external controls.

33. Beginning on September 28, 2010, Chase implemented a temporary halt to obtaining foreclosure judgments in 43 states, including New Jersey. Subsequently, Chase announced that it would halt foreclosure sales of properties in which foreclosure judgments had been obtained. Chase also halted evictions in New Jersey and most other states.

34. Chase has no basis to believe that any foreclosure proceedings were pursued with respect to non-delinquent borrowers.

35. Whatever issues may have existed in the process by which Certifications were executed, Chase is not aware of any instance where a foreclosure was improperly instituted or pursued as a result of document execution issues.

**E. Foreclosure Proceedings Were Only Commenced After Uncured Defaults**

36. Chase's systems require significant manual intervention in order to recreate account balance data at any specific point in time. Because account activity – such as payment of property taxes or hazard insurance – may have occurred since the Certification was completed, there is no practical way for Chase to compare each Certification on file in New Jersey in an automated fashion to confirm the accuracy of each line item in the Certification at the time it was executed.

37. Chase is able, however, to confirm that the borrower remains in default today and that the current indebtedness is greater than it was at the time the Certification was submitted. Thus, although Chase systematically cannot verify that the amount of outstanding indebtedness listed in the Certification was accurate to the penny when executed, Chase believes that the current higher balance due is sufficient to assure that the information in the Certification was not inaccurate in any material respect at the time it was executed.

38. While the Certifications were, of course, subject to human error, the lack of any meaningful volume of objections to those Certifications speaks to the material accuracy of the information contained in the documents.

39. As of November 30, 2010, CHF is the servicer on approximately 14,000 loans that are the subject of pending foreclosure cases in New Jersey. Certifications were submitted in a portion of these cases, and as the Court has directed, Chase is reviewing the Certifications filed in each of these actions.

40. To date, Chase has not identified or become aware of any systematic deficiencies in its processes that caused it to pursue foreclosure actions without merit.

**II. CHASE HAS TAKEN, AND CONTINUES TO TAKE, SIGNIFICANT STEPS TO REMEDIATE DOCUMENT EXECUTION ISSUES**

41. During the past three months, Chase voluntarily has undertaken a comprehensive review and overhaul of its document execution processes, addressing many of the issues that may be assigned to the proposed Special Master. This review and overhaul – which is far along but still ongoing – has involved:

- Suspending foreclosure actions and sales in 43 states and territories (including New Jersey);
- Retaining outside counsel and independent consultants to assist Chase in reviewing its practices and procedures for preparing foreclosure affidavits;
- Assessing the extent and nature of deficiencies in previously-filed affidavits and related court filings in pending foreclosure actions;
- Developing model affidavits for each state (including a model Certification of Proof of Amount Due in New Jersey) that fully conform with applicable local requirements;
- Designing and testing new procedures for Chase employees to complete affidavits;
- Designing and implementing quality control and quality assurance procedures;
- Preparing and implementing an intensive training program for Chase employees who complete affidavits;
- Revising and enhancing Chase's audit plan for reviewing the practices of local foreclosure counsel; and
- Developing a plan and process for the remediation of previously-filed affidavits.

**A. Chase Has Developed Standardized Model Affidavits of Indebtedness and Certifications of Proof of Amount Due**

42. Historically, Chase relied on local foreclosure counsel to develop the form of affidavit and/or certification appropriate within their respective jurisdictions. Many local foreclosure counsel had their own template forms and, as a result, Chase employees had to familiarize themselves with hundreds of affidavit and Certification forms. As noted above, this problem was exacerbated by the fact that some local foreclosure counsel included legal conclusions and other statements in the Certifications that the signers need not, and should not, have been asked to affirm.

43. To address this concern, Chase developed standard models in each state that uses such a document. In New Jersey, Chase developed a model Certification of Proof of Amount Due to be used by all Chase foreclosure counsel in New Jersey cases, which includes the Amount Due Schedule set forth in Appendix XII-J of the Court Rules. Chase communicated with each foreclosure counsel it uses in New Jersey, as well as with a separate law firm engaged to serve as an independent advisor, to arrive at this standard Certification *and Chase's policy is that it will be used in every existing case where a substituted Certification is appropriate, and in every new case going forward when a Certification is required.* A copy of the model Certification is annexed hereto and incorporated herein as Exhibit 1.

44. By standardizing its forms, Chase is able to develop uniform procedures, training, and quality control mechanisms. In addition, the model Certification will ensure that future Certifications (and affidavits in other states) contain *only* the information that Chase employees are able to affirm.

**B. Chase Has Developed New Procedures and Quality Control Mechanisms**

45. Over the past 90 days, Chase has developed, tested and revised new procedures for executing sworn documents, including verifications of indebtedness. Where necessary, these processes are being tailored to state-specific requirements, including any special requirements of New Jersey. The procedures provide for multi-layer quality control and quality assurance testing followed by audit review, and Chase has engaged Deloitte & Touche LLP to independently review the procedures.

46. The new procedures generally provide for Chase to receive a form verification (in New Jersey, a Certification) from foreclosure counsel. A trained Chase

foreclosure analyst will then confirm the information about the loan and the default, and access Chase's MSP system to determine, and record by hand on the Certification, the amounts due and owing.

47. Chase's procedures provide for the signer to reject a document that contains errors, and Chase employees have been specifically trained *not* to complete any affidavit or certification if they have any questions about the content or do not understand any portion of the document. Similar procedures have been and continue to be developed for other sworn documents, such as lost assignment affidavits, and notarized unsworn documents such as assignments of mortgage.

48. At present, *every* affidavit or certification signed by a Chase foreclosure employee will be reviewed a second time by a quality-check analyst. The quality-check analyst performs each of the same steps as did the signer to confirm that the factual information in the affidavit or certification matches the information on Chase's electronic business record systems. If a document fails the quality check, the quality-check analyst and the foreclosure analyst will work together to reconcile the two results so that an accurate document will be filed.

49. The review of 100% of affidavits and certifications will continue until Chase management determines that quality levels are consistently high and support a more streamlined review going forward. At that point, the quality-check analysis will continue with random samplings of affidavits and certifications.

50. The aforementioned quality control process is being tested and independently validated through a Control Self Assessment and Quality Assurance process

conducted by an independent operational risk and control team. Chase's independent Internal Audit team will provide, on a sampling basis, a third layer of review and validation. Finally, Chase has engaged Deloitte & Touche LLP to independently review Chase's procedures to ensure they are sound and contain no observable gaps.

51. Chase has nearly completed refining its process for execution of these documents, and none will be submitted to the courts in New Jersey until the process is finalized and has been subjected to Deloitte & Touche LLP's review.

52. To provide further assurance that no borrower improperly loses a home to foreclosure, Chase has revised its policies to require a "last clear check" in its ongoing foreclosure sale process, which will also be implemented in New Jersey once the foreclosure halt is lifted. Prior to foreclosure sale (and eviction, if applicable), Chase will review the MSP system to ensure that the loan is 151 or more days past due, that appropriate outreach to the borrower was attempted by Chase, and that a search of the Department of Defense database confirmed that the borrower's military status did not provide an exemption from foreclosure. This is at least the second check of United States military records, as local foreclosure counsel performs its own search of the Department of Defense database in connection with its application for default. *See Rule 1:5-7.* Foreclosure counsel may also perform searches at other points in the foreclosure process.

53. To confirm that these steps are followed meticulously and that documents are prepared and executed properly, Chase will track each document, including the name of the responsible foreclosure analyst. Chase will also monitor and track the results from the quality check process.

C. **Chase Has Developed and Implemented A New Training and Certification Program**

54. Chase is committed to ensuring that the preparation and execution of documents satisfy all evidentiary standards, and that any document signed by Chase and filed in court is accurate and complies with all legal requirements.

55. To that end, Chase has, in conjunction with its outside counsel and advisors, developed a rigorous training program designed to ensure that Chase employees understand the proper way to complete an affidavit. The program includes instruction on the review of substantive information from Chase's systems and on the proper procedures for document execution. Importantly, trainees are encouraged to seek help from supervisors and are specifically instructed not to sign any affidavit or certification where they are unable to confirm the contents.

56. There are approximately 400 employees that are part of the foreclosure document execution process. Each one, including signers and quality control personnel, must pass the new training program, which consists of classroom training (2.5 days for current employees and 10 days for new employees) and lab work on how to execute the applicable documents. After training, Chase requires *each* employee who may be asked to sign such a document or to review it for quality control purposes to meet individually with an outside attorney to confirm that the employee understood the document execution process and is prepared to proceed under the prescribed procedures. Employees who do not pass this screening certification are provided additional coaching and/or training, and then are re-screened.

57. Going forward, Chase will implement a periodic certification process, pursuant to which the foreclosure analysts will confirm their compliance with, and understanding of, Chase's prescribed procedures. Chase's independent audit group will also perform an audit of the reformed document execution procedures to ensure that the revised controls are functioning effectively and are sustainable.

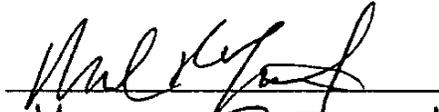
**D. Review of New Jersey Court Files**

58. As discussed above, Chase has developed a comprehensive plan to address the issues raised by the Court's Order to Show Cause. As part of this plan and before the Order to Show Cause was issued, Chase voluntarily began a thorough review of every open file in New Jersey to determine whether the file contained documents that may have been improperly executed. In accordance with the Administrative Order and the new amendments to Rules 1:5-6, 4:64-1 and 4:64-2, Chase is reviewing these files to confirm that the facts provided to foreclosure counsel and now contained in court documents are accurate in all material respects. To the extent facts cannot be verified or errors are identified, Chase will submit a new Certification.

FURTHER AFFIANT SAYETH NAUGHT.

I declare under penalty of perjury under the laws of the United States of America that the foregoing *Affidavit* is true and correct. Executed on the 5<sup>th</sup> day of January, 2011, in

Franklin County, OHIO

  
\_\_\_\_\_  
Michael B. Jones Sr.  
SR Vice President

STATE OF Ohio )  
 ) SS:  
COUNTY OF Franklin )

I HEREBY CERTIFY that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments in the County aforesaid, Michael Zarro, who is personally known to me or produced TX DL as identification, and who executed the foregoing Affidavit, and acknowledged before me that he had the authority to do so on behalf of JPMorgan Chase Bank, N.A. and Chase Home Finance LLC.

I have hereunto set my hand and affixed my official seal this 5<sup>th</sup> day of January, 2011.

Katherine M Seeds

Notary Public

My commission expires: 2/6/11



KATHERINE M. SEEDS  
Notary Public, State of Ohio  
My Commission Expires 02-06-11

**CERTIFICATION PURSUANT TO R. 1:4-4**

I hereby certify that the within is a facsimile signature of the original signature I further acknowledge the genuineness of said signature and that the original signature will be filed if requested by the Court.

**McELROY, DEUTSCH, MULVANEY &  
CARPENTER, LLP**

Attorneys for Respondents,  
JPMorgan Chase Bank, N.A. and  
Chase Home Finance LLC

By:  \_\_\_\_\_  
Richard P. Haber

Dated: January 5, 2011

EXHIBIT A

**CHASE HOME FINANCE LLC**

Plaintiff,

vs.

\_\_\_\_\_, *et al*

Defendant(s).

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
COUNTY

DOCKET NO F-

CIVIL ACTION

**CERTIFICATION OF  
PROOF OF AMOUNT DUE**

I, \_\_\_\_\_, hereby certify as follows:

1 I am authorized to execute this Certification of Proof of Amount Due on behalf of Chase Home Finance LLC ("Chase"). The statements made in this Certification of Proof of Amount Due are based on my personal knowledge.

2 I am over the age of 18 and competent to testify as to the matters contained herein.

3 For convenience, the following party or parties listed on the Note, are referred herein as "Borrower": \_\_\_\_\_.

4 In my capacity as \_\_\_\_\_, I have access to Chase's business records, including the business records for and relating to the Borrower's loan. I make this Certification of Proof of Amount Due based upon my review of those records relating to the Borrower's loan and from my own personal knowledge of how they are kept and maintained. The loan records for the Borrower are maintained by Chase in the course of its regularly conducted business activities and are made at or near the time of the event, by or from information transmitted by a person with knowledge. It is the

regular practice to keep such records in the ordinary course of a regularly conducted business activity.

5. Borrower executed a Note secured by a Mortgage as described in the attached Schedule, and:

\_\_\_\_\_ (a) Chase is the servicer of the loan and holds the Note; or

\_\_\_\_\_ (b) Chase is the servicer of the loan and is authorized to act on behalf of the holder of the Note.

6. The Borrower has defaulted on his/her payment under the terms of the Note. The Borrower's default on the Note has not been cured, and the loan has been accelerated making the entire balance of the loan due and owing pursuant to the terms of the Borrower's loan records. The total amount due and owing is \_\_\_\_\_, as more specifically set forth in the Schedule annexed hereto, together with interest accruing as of \_\_\_\_\_.

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 willfully false, I am subject to punishment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Name:  
Title:

**Appendix XII-J  
AMOUNT DUE SCHEDULE**

NOTE AND MORTGAGE DATED \_\_\_\_\_

Recorded on \_\_\_\_\_, in \_\_\_\_\_ County, in Book \_\_\_\_\_ at Page \_\_\_\_\_

Property Address \_\_\_\_\_

Mortgage Holder \_\_\_\_\_

**STATEMENT OF AMOUNT DUE**

Unpaid Principal Balance as of date of default \_\_\_\_\_ \$ \_\_\_\_\_

Interest from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

(Interest rate = \_\_\_\_\_% per year, \$ \_\_\_\_\_ per day X \_\_\_\_\_ days)

Late Charges from \_\_\_\_\_ through filing of the complaint on \_\_\_\_\_  
(\$ \_\_\_\_\_/mo X \_\_\_\_\_ mos) \$ \_\_\_\_\_

Advances through \_\_\_\_\_ for

Real Estate Taxes \$ \_\_\_\_\_

Home Owners Insurance Premiums \$ \_\_\_\_\_

Mortgage Insurance Premiums \$ \_\_\_\_\_

Inspections \$ \_\_\_\_\_

Winterizing/Securing \$ \_\_\_\_\_

**Sub-total of Advances** \$ \_\_\_\_\_

**Less Escrow Advances** \$ \_\_\_\_\_

**Net Advances** \$ \_\_\_\_\_ \$ \_\_\_\_\_

Interest on Advances from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Other Charges (specify) \$ \_\_\_\_\_

**Total Due as of** \_\_\_\_\_ \$ \_\_\_\_\_

Surplus money If after the sale and satisfaction of the mortgage debt including costs and expenses, there remains any surplus money, the money will be deposited into the Superior Court Trust Fund and any person claiming the surplus or any part thereof, may file a motion pursuant to Court Rules 4 64-3 and 4 57-2 stating the nature and extent of that person's claim and asking for an order directing payment of the surplus money The Sheriff or other person conducting the sale will have information regarding the surplus, if any

Dated \_\_\_\_\_

\_\_\_\_\_  
Name  
Title

**McELROY, DEUTSCH, MULVANEY  
& CARPENTER, LLP**  
1300 Mount Kemble Avenue  
P.O. Box 2075  
Morristown, New Jersey 07962  
(973) 993-8100  
Attorneys for Respondents,  
JPMorgan Chase Bank, N.A. and  
Chase Home Finance, LLC

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

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

DOCKET NO.: F-059553-10

Civil Action

**CERTIFICATION OF SERVICE**

Richard P. Haber, Esq. hereby certifies as follows

1. I am an attorney at law of New Jersey employed by McElroy, Deutsch, Mulvaney & Carpenter, LLP, counsel for Respondents, JPMorgan Chase Bank, N.A. and Chase Home Finance, LLC (collectively, "Chase") in the above matter
2. On January 5, 2011, I caused an original and one copy of Chase's Memorandum in Response to Order to Show Cause, Affidavit of Michael Zarro, and this Certification of Service to be hand-delivered as follows:

Jennifer M. Perez, Esq.  
Acting Clerk of the Superior Court  
Hughes Justice Complex  
25 West Market Street  
6<sup>th</sup> Floor, North Wing  
Trenton, New Jersey 08625

3. On January 5, 2011, I caused a courtesy copy of all of the aforesaid papers to be hand-delivered to:

Honorable Mary C. Jacobson, P.J.Ch.  
Superior Court of New Jersey  
210 South Broad Street  
Trenton, New Jersey 08625

4. On January 5, 2011, I caused a copy of all of the aforesaid papers to be served via hand-delivery as follows:

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

I hereby certify that the foregoing statements made by me are true to the best of my knowledge. I understand that if anything stated herein is willfully false I may be punished.

  
\_\_\_\_\_  
Richard P. Haber, Esq.

Dated: January 5, 2011

**MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP**  
ATTORNEYS AT LAW

1300 MOUNT KEMBLE AVENUE  
P O BOX 2075  
MORRISTOWN, NEW JERSEY 07962-2075  
(973) 993-8100  
FACSIMILE (973) 425-0161

RICHARD P HABER  
Direct dial (973) 425-8846  
rhaber@mdmc-law.com

**RECEIVED**  
JAN 05 2011  
SUPERIOR COURT  
CLERK'S OFFICE

January 5, 2011

**Via Hand Delivery**

Jennifer M Perez, Esq  
Acting Clerk of the Superior Court  
Hughes Justice Complex  
25 West Market Street  
6<sup>th</sup> Floor, North Wing  
Trenton, New Jersey 08625

**RE: *IN THE MATTER OF RESIDENTIAL MORTGAGE FORECLOSURE  
PLEADING AND DOCUMENT IRREGULARITIES***  
**Docket No. F-059553-10**  
**Order to Show Cause returnable January 19, 2011**  
**MDMC File No. C0681-1031**

Dear Ms. Perez:

This firm is counsel to Respondents, JPMorgan Chase Bank, N A. and Chase Home Finance, LLC (collectively, "Chase"). Enclosed for filing on behalf of Chase is an original and one copy of its Memorandum in Response to Order to Show Cause, Affidavit of Michael Zarro, and our Certification of Service. Also enclosed is this firm's check for \$135 to cover the fee for Chase's first filing in this matter.

Kindly file these papers and return one copy to me in the envelope provided for your convenience. Thank you in advance for your courtesies in this matter.

Very truly yours,

MC ELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

  
Richard P. Haber

RPH/

Enclosures

cc: Hon. Mary C. Jacobson, P.J.Ch. (via hand delivery)  
Edward J Dauber, Esq. (via hand delivery)