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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

ONEWEST BANK, FSB'S RESPONSE
TO ORDER TO SHOW CAUSE

OneWest Bank, FSB ("OneWest") respectfully submits this response to the Court's December 20, 2010 Order Directing The Named Foreclosure Plaintiffs To Show Cause Why The Court Should Not Suspend The Ministerial Duties Of The Office Of Foreclosures 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 ("Order To Show Cause" or "OSC")

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INTRODUCTION

This Court's Order to Show Cause appears to be motivated by a concern that foreclosures in New Jersey should not go forward absent a high degree of confidence about the underlying default evidenced by affidavits or certifications supporting the foreclosure. OneWest could not agree more. As explained below, OneWest has completed a rigorous review and re-verification of its New Jersey foreclosure certifications (a process begun months before this Court issued its OSC) and has been able to establish that there are no cases in New Jersey in which the underlying foreclosure was improper. OneWest has also already implemented (and nearly completed) a process for re-documenting its foreclosure certifications to ensure the courts' ability to reach the same conclusion. That process can and will be implemented consistent with the new rules amendments recently adopted in New Jersey. The bottom line is straightforward: there is no reason to believe that any OneWest foreclosure in New Jersey was inappropriate, and OneWest is able to submit additional documentation immediately making that fact unmistakably clear without any need for additional supervision or judicial compulsion.

The history of OneWest's work to address the current foreclosure controversy began in late September 2010, when media reports began raising concerns regarding the process by which mortgage servicers had submitted sworn affidavits in support of pending judicial foreclosure proceedings. In response to these concerns, OneWest immediately undertook an elaborate, labor-intensive project to ensure that (1) the affidavits of indebtedness it had submitted in pending foreclosure actions did not overstate amounts due from borrowers; (2) these previously filed affidavits could be re-documented pursuant to a process that would provide absolute confidence about both the manner in which affiants obtained personal knowledge of the relevant facts and the process by which affidavits were executed (and, where appropriate under local law, notarized); and (3) its affidavits submitted in connection with new foreclosures are executed in

accordance with rigorous, testable and audited best practices on a going-forward basis. This process is now nearing completion. Across all judicial foreclosure states, OneWest has completed its review of almost 93 percent of its affidavits of indebtedness (or local equivalents) in foreclosure cases that have not proceeded to sale, and, based upon its statistical tracking of thousands of post-judgment cases, has been able to re-verify the financial accuracy of **98 percent** of such affidavits. As a result, OneWest has prepared re-verified affidavits documenting that fact pursuant to rigorous procedures described below. With respect to the remaining approximately two percent of affidavits that could not be re-verified, the average financial discrepancy of approximately one percent of total indebtedness is not sufficient, under controlling New Jersey Supreme Court precedent, to call into question the validity of the underlying foreclosure.

These facts, in short, do not justify a sanction or any other retrospective remedy envisioned by this Court's Order to Show Cause, particularly in light of the recently adopted amendments to the New Jersey Rules of Court that provide express procedures for addressing questions about foreclosure affidavits and certifications in pending New Jersey foreclosure actions. It is particularly unnecessary (and harmful to the New Jersey public) to suspend the issuance of orders, judgments, or writs of execution, or to halt sheriff's sales, with respect to foreclosure proceedings initiated by OneWest. OneWest has already completed its review of pending New Jersey foreclosure certifications and is prepared to submit re-verified affidavits consistent with the new rules amendments that will address any concerns about the integrity of its foreclosure documentation process — as it has done successfully in every other judicial foreclosure state in the country. To adopt the relief contemplated in the Order to Show Cause would only further delay a return to normalcy in the New Jersey real estate markets, at a time

when other states are not imposing such delay and uncertainty and in circumstances when there is no genuine question about the borrower defaults underlying the foreclosures at issue.

Nor is court-ordered oversight required for prospective future foreclosures justified, as envisioned by the Order to Show Cause. As noted above, on December 20, 2010, the Supreme Court of New Jersey adopted emergency amendments to Rules 1:5-6, 4:64-1, and 4:64-2. These amendments provide, among other things, that foreclosure counsel must submit certifications confirming the reliability and accuracy of the information presented in support of foreclosure, based on counsel's personal communication with the relevant servicers. OneWest is fully prepared and able to comply with these new rules, which are quite similar to rules recently adopted in New York (and with which OneWest is already in compliance). The Supreme Court's adoption of a specific set of procedural rules to further ensure the integrity of the foreclosure process negates any need for the additional overlay of a court-appointed monitor, particularly as such a monitor might be applied to a federally chartered financial institution like OneWest that is subject to extensive supervision by its federal banking regulator.

BACKGROUND

In response to widespread media reports of foreclosure affidavit irregularities in the mortgage industry in late September 2010, OneWest assembled a team consisting of more than 120 professionals, working with OneWest Legal, Enterprise Risk Management, and outside counsel, to assess the issue as it applied to OneWest and to develop a response. (Certification of Anthony Ebers ("Ebers Cert.") ¶ 5) Based on these media reports, OneWest focused on three key issues: whether any OneWest judicial foreclosure affidavits or certifications (commonly referred to in many states as "affidavits of indebtedness" or similar names) overstated the amount due from the borrowers; whether such affidavits contained inaccurate statements of the affiants' personal knowledge concerning loan-related facts set forth in such affidavits; and whether such

affidavits complied with applicable laws governing notarization. (*Id.*) Commencing on October 1, 2010, OneWest implemented enhanced procedures for reviewing and executing foreclosure affidavits. (*Id.* at ¶ 6.) These procedures were designed to address both (a) the review and execution of foreclosure affidavits in cases where no foreclosure affidavit had previously been submitted in the relevant foreclosure actions (sometimes referred to as “new referrals”), and (b) the re-verification of foreclosure affidavits that had previously been submitted in the relevant foreclosure actions. (*Id.* at ¶ 6.)

OneWest’s Process To Ensure Accuracy Of Affidavits In “New Referrals”

For new referrals, all foreclosure affidavits executed by OneWest dated on or after October 2, 2010 are the product of the following process, which takes place at OneWest’s facility in Austin, Texas. (*Id.* at ¶ 7.) The foreclosure affidavit is prepared by OneWest’s local foreclosure counsel in the relevant jurisdiction and electronically uploaded, along with any business records (such as the note, mortgage, assignment, or other documents as deemed appropriate by counsel) to LPS’s mortgage processing system¹ licensed by OneWest to support the default and foreclosure process and OneWest’s computer-based mortgage servicing platform. (*Id.*) The text of the foreclosure affidavit is drafted by local foreclosure counsel to comply with local legal requirements. (*Id.*) Each affidavit must affirmatively state that the basis of the affiant’s personal knowledge of the facts set forth in the affidavit consists of the affiant’s knowledge of OneWest’s mortgage servicing systems and recordkeeping procedures and his or her personal review of the documents referenced in the affidavit. (*Id.*) The affiant is required to personally review each document referenced in the affidavit. (*Id.*) The affiant is further required to personally verify that the financial information set forth in the affidavit (for example, the

¹ LPS, short for “Lender Processing Services, Inc.,” is a third-party technology vendor whose products are commonly used throughout the mortgage servicing industry. See <http://www.lpsvcs.com/Pages/default.aspx>

borrower's total indebtedness, unpaid principal balance, interest arrearage, and accrued fees, as appropriate in a given jurisdiction with respect to a given loan) matches the corresponding information stored on OneWest's mortgage servicing platform. (*Id.*) This information is generally available to the affiant through the "PAY4 screen," an interface provided on LPS's Process Management System that accesses electronically stored financial information that reflects real-time transactions and accounting information regarding mortgage loans and is maintained in the regular course of business by OneWest. (*Id.* & Exh. 1 thereto.)

Once the affiant has personally reviewed the documents referenced in the affidavit and has personally verified the financial information set forth therein, the affiant is required to appear personally before a notary public to sign the affidavit and take the required oath. (*Id.*) The executed affidavit is then returned to local foreclosure counsel for filing according to locally applicable court procedures. (*Id.*) This process applies specifically with respect to New Jersey loans. (*Id.* at ¶ 8)

OneWest's Process For Re-verifying The Accuracy Of Previously Filed Affidavits Of Indebtedness

For foreclosure actions in judicial foreclosure states in which an affidavit of indebtedness (or local equivalent, such as a New Jersey certification of amounts due) had been filed prior to October 1, 2010, and in which either (a) no judgment has been entered, or (b) if a judgment has been entered, the property has not been sold, OneWest implemented the following process commencing on October 2, 2010. (*Id.* at ¶ 9.) The foreclosure affidavit that was previously prepared and filed by OneWest's local foreclosure counsel in the relevant jurisdiction is electronically uploaded to LPS's mortgage servicing system, along with any business records referenced in the previously filed affidavit (such as the note, mortgage, assignment, or other documents as deemed appropriate by counsel). (*Id.* at ¶ 9) That affidavit is then reviewed to

ensure the inclusion of language affirmatively stating that the basis of the affiant's personal knowledge of the facts set forth in the affidavit consists of the affiant's knowledge of OneWest's mortgage servicing systems and recordkeeping procedures and his or her personal review of the documents referenced in the affidavit. (*Id.*) The affidavit is then placed into what OneWest refers to as the "re-verification process." (*Id.*)

In the re-verification process, a OneWest mortgage specialist personally reviews each document that was referenced in the previously filed affidavit to confirm the accuracy of statements made about such documents in the previously filed affidavit. (*Id.* at ¶ 10.) The same individual then personally reviews the key financial information set forth in the previously filed affidavit to confirm, based on financial information as of the effective date of the previously filed affidavit accessed on OneWest's mortgage servicing platform, that the previously filed affidavit did not overstate the amounts due from borrowers. (*Id.*) As part of this process, the mortgage specialist is required to complete a "control sheet" that documents his or her completion of each element of the review process. (*Id.* & Exh. 2) If the mortgage specialist confirms based on this personal review both (a) that the representations concerning the documents referenced in the previously filed affidavit were correct, and (b) that the key financial information set forth in the previously filed affidavit did not overstate the amounts due from the borrower, then the affidavit is deemed "re-verified." (*Id.* at ¶ 10.) Once the affiant has personally reviewed the documents referenced in the affidavit and has personally re-verified the financial information set forth therein, the foreclosure specialist is required to appear personally before a notary public to sign the re-verified affidavit and take the required oath. (*Id.*)

In foreclosure actions in most judicial foreclosure states (including both actions that have not yet gone to judgment, and actions in which a judgment has been entered but the property has

not yet been sold), OneWest's foreclosure counsel have filed re-verified affidavits in court by notice, with service on the other parties to the action (*Id.* at ¶ 11.) In addition to the new rule amendments just adopted in New Jersey, several other jurisdictions (including, for example, the State of New York, the State of Maryland, Miami-Dade County, Florida, and Cuyahoga County, Ohio) have implemented specific procedures for filing confirming affidavits like the re-verified affidavits OneWest has prepared, in such jurisdictions, our local counsel are filing re-verified affidavits according to the appropriate jurisdiction-specific procedure. (*Id.*)

As of today's date, OneWest has completed the re-verification review process for more than 8,200 previously filed foreclosure affidavits nationwide. (*Id.* at ¶ 12.) Based upon its statistical tracking of thousands of post-judgment cases, OneWest has determined that only approximately two percent of affidavits overstated amounts due from borrowers. (*Id.* at ¶ 12.) Among the small percentage of affidavits that could not be re-verified, the amount by which the correct amount due was overstated was extremely small, averaging only approximately 1 percent of the correct total amount of indebtedness. Based upon One West's statistical analysis, approximately 98 percent of the affidavits nationwide were successfully re-verified. (*Id.* at ¶ 13) With respect to the affidavits that were successfully re-verified, OneWest has executed new affidavits pursuant to the process above and has provided (or is currently in the process of providing) such affidavits to local foreclosure counsel for filing in all judicial foreclosure states except New Jersey. (*Id.* at ¶ 13.) In fact, OneWest's foreclosure affidavit re-verification process is largely complete in all states other than New Jersey.

OneWest has executed new certifications for all New Jersey certifications that have been successfully re-verified, and is prepared to submit those to local foreclosure counsel for filing immediately pursuant to the "Emergent Amendments to Rules 1:5-6, 4:64-1 and 4:64-2" that

were recently adopted in New Jersey. (*Id.* at ¶ 14) OneWest has withheld instructions to New Jersey counsel to file such documents because of the Court’s Order entered December 20, 2010. (*Id.* at ¶ 14.)

OneWest’s Efforts To Avoid Foreclosure When Possible

Any review of foreclosure procedures would be remiss in failing to take account of the servicer’s efforts to avoid foreclosures where reasonably possible. OneWest participates in a number of loan modification programs as part of its aggressive effort to provide distressed borrowers with foreclosure-avoidance alternatives. Among other programs, OneWest participates in the Home Affordable Modification Program (“HAMP”) and the Home Affordable Foreclosure Alternatives program (“HAFA”), both of which are sponsored by the U.S. Department of the Treasury. (*Id.* at ¶ 15.) Based on Treasury Department data as of November 2010,² OneWest compares favorably to other major national mortgage servicers on a number of key measures. These data reflect that OneWest has started 47,710 HAMP trial modifications for borrowers around the United States, and has a conversion rate to permanent loan modifications that exceeds that of most other large servicers. OneWest was also one of the first mortgage servicers in the United States to agree to participate in the HAMP Principal Reduction Alternative program, pursuant to which OneWest actively reviews distressed borrowers for reductions in loan principal. (Ebers Cert. at ¶ 16.)

Reflecting OneWest’s active efforts to avoid foreclosure wherever reasonably possible, OneWest loans in foreclosure are typically not only in contractual default, but severely delinquent, at the time foreclosure is commenced. (*Id.* at ¶ 17) Almost 40 percent of OneWest’s loans in active judicial foreclosures were more than six months delinquent at the time

² Data available at <http://www.financialstability.gov/docs/Nov%202010%20MHA%20Report.pdf>

the foreclosure action was commenced. (*Id.* at ¶ 17) Approximately 10 percent of OneWest’s loans in active judicial foreclosures were more than one year delinquent at the time of commencement. (*Id.*) In New Jersey, OneWest’s loans in active judicial foreclosure are an average of 671 days delinquent, as measured from the last paid installment. (*Id.*) No loan is referred to foreclosure before OneWest confirms that numerous efforts (both telephonically and by written communications) have been made to contact the borrower to see if he qualifies for a loan modification. From the inception of HAMP, OneWest has processed 5,625 applications for loan modifications in New Jersey. (*Id.*)

ARGUMENT

I. THE RELIEF CONTEMPLATED BY THE OSC SHOULD NOT BE GRANTED BECAUSE NEW JERSEY LAW PERMITS THE SUBMISSION OF RE-VERIFIED CERTIFICATIONS IN PENDING FORECLOSURE PROCEEDINGS TO CORRECT DISCREPANCIES (IF ANY) IN THE FORM OF PRIOR CERTIFICATIONS.

A. NEW JERSEY LAW DOES NOT SUPPORT ANY OF THE REMEDIES CONTEMPLATED IN THE ORDER TO SHOW CAUSE GIVEN ONEWEST’S PROMPT AND PROACTIVE RE-VERIFICATION OF ITS FORECLOSURE CERTIFICATIONS.

The Order to Show Cause contemplates, *inter alia*, the suspension of the entry of orders, judgments, and writs of execution, a hold on sheriff’s sales in pending foreclosure actions, the appointment of a special master, and the issuance of various sanctions in light of general industry-wide concerns regarding previously submitted affidavits. This extreme relief should not be entered against OneWest because it has reverified that, in nearly all pending cases, the affidavits submitted were factually accurate. In a tiny minority of cases – approximately two percent – financial discrepancies averaging one percent of total indebtedness do not call into question the validity of the foreclosure and are curable under directly applicable New Jersey Supreme Court precedent.

New Jersey case law recognizes that supplemental affidavits may be submitted to trial courts to add or correct information previously submitted to the court. *See Sholtis v Am. Cyanamid Co*, 238 N.J. Super. 8, 18, 568 A.2d 1196, 1201 (App. Div.1989) (holding trial court committed reversible error by failing to consider additional evidence contained in several supplemental affidavits, particularly in the absence of any “design to mislead” or “surprise or prejudice to the opposing party”). “[A]s a trial is a search for the truth and courts should dispose of cases on their merits, a judge should approach summary judgment motions with a predisposition to acting only with all reasonably determinable information in hand.” *Id* at 17, 568 A 2d at 1201; *see also Cornblatt v. Barow*, 153 N.J. 218, 240, 708 A 2d 401, 411-412 (1998) (holding doctrine of “substantial compliance,” invoked to avoid “technical defeat of valid claims,” could be applied to determine whether and in what circumstances a certification, rather than an affidavit, would fulfill the statutory requirement for an “affidavit of merit” in support of a professional malpractice action); *Ferreira v Rancocas Orthopedic Assoc.*, 178 N. J. 144, 145, 836 A.2d 779, 784-785 (2003) (dismissal not warranted where affidavit was untimely served but opposing party did not suffer any prejudice, disapproving of “slavish adherence to form over substance”); *Elizabeth Bd. of Educ. v New Jersey Transit Corp*, 342 N.J. Super. 262, 272, 776 A 2d 821, 827 (App. Div. 2001) (affirming award of attorneys’ fees despite defects in affidavit of service where the opposing party did not challenge the actual amount of the fees, but rather the “sufficiency of the submissions”).

The rule that affidavits (or certifications) may be supplemented, amended or corrected applies in the foreclosure context. In *First Union Nat’l Bank v. Penn Salem Marina, Inc*, 426 190 N.J. 342, 356-357, 921 A 2d 417, 426 (2007), the Supreme Court of New Jersey noted that a certification submitted in support of a foreclosure action in the Chancery Division contained

“several internal discrepancies.” Rather than invalidating the foreclosure, the Supreme Court stated that, had such discrepancies been discovered by the Office of Foreclosure, it “should have either notified plaintiff to submit a corrected certification or returned the matter to the Chancery Division. In either event, plaintiff should have been required to submit a corrected certification.” *Id.* at 356-357, 921 A.2d 417 at 426. On remand to the Chancery Division to determine the correct amount of the foreclosure judgment, the servicer “filed a certification setting forth a detailed, corrected proof of the amount due as of the January 13, 2005 foreclosure judgment,” which was approximately \$2,000 less than the original judgment – meaning that the original certification had overstated the true amount due. *See First Union Nat’l Bank v Penn Salem Marina, Inc*, 2009 WL 614522 (N.J. Super. Ct. App. Div. Mar. 12, 2009) (unpublished). Notwithstanding the discrepancy in amount due set forth in the original certification, the appellate division found “no abuse of discretion or other error in the trial court’s refusal to set aside the foreclosure judgment and void the sheriff’s sale.” *Id.* at *4. The appellate court focused on the practical effect of the minor error in the certification in discussing the appropriate resolution:

There is no evidence in this case that the \$2000 difference between the original and re-calculated judgments had any effect on the defendants’ ability to redeem the property. . . . Given these facts, setting aside the foreclosure judgment and voiding the sheriff’s sale would only delay the foreclosure process, interfere with the rights of the third-party to which the bank sold the property, and otherwise serve no legitimate purpose. . . . [T]here is no basis to do anything more than modify the original judgment by approximately \$2000, a technicality made moot by plaintiff’s waiver of its right to any further collection of the judgment.

Id. at *4-5.

Similarly, in *Township of Lakewood v Block 251, Parcel 34*, 48 N.J. Super. 581, 587, 138 A 2d 768, 771-772 (App. Div 1958), the court held that a tax foreclosure judgment was not

impaired by a deficiency in an original affidavit because the problem had been as subsequently corrected by the filing of a supplemental affidavit. The relevant statute mandated an affidavit of posting of notice of foreclosure, which was required to recite that the “notices were posted in three conspicuous places.” *See id.* at 587, 138 A.2d 768 at 771-772. While the plaintiff’s original affidavit of posting did not include this required information, “the plaintiff filed a supplemental affidavit of posting indicating that the notice of the tax foreclosure was in fact posted in three conspicuous places in accordance with the rules of the court.” *Id.* Accordingly, the court held that “there had been compliance with the requirement for posting of notice” and observed that “[i]n the absence of any harm or prejudice by the omission of this fact from the original affidavit, it is clear that the omission was rectified by the supplemental affidavit.” *Id.*; *see also PNC Bank, N.A. Pittsburgh v. Charles*, 2005 WL 2483443, *2-*3 (N.J. Super. Ct. Ch. Div. Oct. 7, 2005) (unpublished) (permitting foreclosure plaintiff to submit supplemental certification to correct amount of late charge from 4 percent, as stated in original certification, to 5 percent and deeming evidence regarding late fee sufficient to support foreclosure proceeding); *Kessler v. Tarrats*, 191 N.J. Super. 273, 281-282, 466 A.2d 581, 585 (Ch. Div. 1983) (accepting supplemental affidavit in support of plaintiff’s action to foreclose mortgage after briefs were filed).

These authorities demonstrate that there is no need for the relief requested in the Order to Show Cause. First, nothing about OneWest’s certifications of amounts due calls into question the validity of any pending foreclosure case. The relevant financial information in approximately 98 percent of previously submitted affidavits was correct, and to the extent that either (a) the financial information in the remaining two percent of cases requires correction due to minor discrepancies, or (b) the statements regarding personal knowledge of the affiant in any

cases justify re-review and re-documentation, both issues are curable and can be addressed as dictated by the Supreme Court in *First Union*. There, the original judgment entered was \$2,000 higher than the Court concluded was proper based on the submission of a corrected certification. Yet far from sanctioning the party that submitted the certification which contained “internal discrepancies,” the Court concluded that the *de minimis* nature of the error, coupled with the lack of prejudice to the defendants, did not warrant vacating the judgment or setting aside the subsequent sale of the property. The same result should follow here.

Second, the New Jersey Supreme Court has adopted new rule amendments which specifically contemplate the filing of attorney affirmations in pending cases, providing another measure of certainty as to the information being relied upon by the courts in entering judgments and authorizing sales and eliminating any justification for special master review, sanctions, or other steps envisioned in the Order to Show Cause.

Third, the blanket remedies outlined in the Order to Show Cause – general holds on writs of execution, blanket suspensions of foreclosures, across-the-board monetary sanctions, and the like – are inconsistent with the underlying purpose of a judicial foreclosure process in the first place, namely, case-specific determinations based on individual facts and circumstances. The proper resolution of a discrepancy involving a truly *de minimis* amount obviously would be different from the proper resolution of a large discrepancy. As between two cases involving large discrepancies, the proper resolution of a discrepancy caused by an innocent data-entry error that was later corrected by filing a supplemental affidavit would obviously be different from the proper resolution of an unexplained discrepancy that was not later corrected. Other individualized factors similarly would require separate fact-finding and legal and equitable determinations. If there were a factual basis for believing that a substantial proportion of

OneWest foreclosures involved common factual statements, perhaps one could argue *ex hypothesis* that all such foreclosures should be taken out of the normal judicial fact-finding process and referred to a master for special treatment, but no such factual basis exists where OneWest's accuracy rate is in the range of 98 percent, and the average level of discrepancy with respect to the tiny minority of other cases is *de minimis*. That is why the most appropriate way to address pending foreclosures is through the process set forth in the new rule amendments, rather than through either a special extrajudicial fact-finding process or a blanket sanction or foreclosure moratorium not based on case-specific facts.

Permitting pending foreclosures to proceed, with re-verified or corrected affidavits filed consistent with the new rule amendments as necessary, will enable the courts to continue processing foreclosure judgments with added confidence in the integrity of the evidentiary submissions presented to them. In pending foreclosure proceedings, the relevant facts are those concerning the borrower's default entitling OneWest to foreclose, and the amounts owing as a result of that default. To the extent there may have been questions regarding the personal knowledge of individuals who executed previously submitted certifications of amounts due, those issues can be put to rest by the submission of a re-verified certification so that any such defects do not unnecessarily delay a foreclosure proceeding where the underlying facts of the borrower's default are undisputed.

B. THE OSC'S PROPOSAL TO SUSPEND ENFORCEMENT OF FORECLOSURE JUDGMENTS CONTRAVENES RULE 4:50.

Several of the remedies outlined in the Order to Show Cause would nullify final judgments of foreclosure entered prior to the date of the OSC. (*See, e.g.*, OSC at 4-5 (contemplating directive that would, *inter alia*, require court clerk not to issue writs of execution following entry of final judgment of foreclosure and stay all sheriff's sales based on previously

entered foreclosure judgments)). Yet New Jersey court rules do not allow final judgments to be disregarded or cast aside in this manner. Relief from a final judgment may be ordered only in the limited circumstances outlined in R. 4:50-1. “R. 4:50-1 relief from judgment is not to be granted lightly,” and “denial of such relief will be left undisturbed absent a clear abuse of discretion.” *Cho Hung Bank v. Kim*, 361 N.J. Super. 331, 336, 825 A.2d 566, 569 (App. Div. 2003). Circumstances warranting relief from a previously entered final judgment typically are limited to those that involve the post-judgment discovery of evidence that was “material to the issue tried” and “controlled the result” at trial.” *Gilgallon v. Bond*, 279 N.J. Super. 265, 275, 652 A.2d 753, 758 (App. Div. 1995). For example, in the foreclosure context, a material discrepancy concerning the total amount due under a secured note could suffice to modify or reopen a judgment. *Cf. Kim*, 361 N.J. Super. at 341, 825 A.2d at 572.

As explained above, there is no basis for believing that any OneWest foreclosure judgment was procured by means of a certification that contained any material misstatement that was outcome-determinative. For the overwhelming majority of cases in which OneWest has re-verified that the amount due from borrowers was not overstated at all, thus resulting in no prejudice to any borrower, that should be the end of the matter. But even for the remaining cases involving very small average discrepancies, the Appellate Division’s *First Union* decision makes clear that the appropriate remedy is the submission of a corrected certification – not a nullification of the judgment as contemplated in the Order to Show Cause. Indeed, in *First Union*, the Appellate Division expressly considered and rejected the idea of vacating the foreclosure judgment and setting aside the sheriff’s sale. *See First Union*, 2009 WL 614522, *4-5 (holding that “setting aside the foreclosure judgment and voiding the sheriff’s sale” based on a \$2,000 discrepancy in amount due would “serve no legitimate purpose”). For these reasons, any

remedy that would interfere with the operation of a final judgment of foreclosure is unjustified and should not be adopted.

C. SANCTIONS ARE A PARTICULARLY INAPPROPRIATE REMEDY HERE.

While the Court's Order to Show Cause does not specify on what legal basis sanctions might be considered here, the OSC's inclusion of "attorneys or law firms acting on [servicers'] behalf" within the ambit of potential sanctions targets (OSC at 6) suggests the Court means to apply the standard applicable to sanctions for attorney misconduct. Nothing about OneWest's conduct could justify sanctions under that standard. For one thing, New Jersey case law generally requires (a) a misrepresentation of fact, (b) that is material, to justify imposition of sanctions. *See, e.g., In re Riva*, 157 N.J. 34, 40, 722 A.2d 933, 936 (1999); *CCTS, L.L.C. v. Daugherty*, 2008 WL 5245272, *2-*3 (N.J. Super. App. Div. Dec. 18, 2008) (affirming trial court's refusal to grant sanctions for fraud on the court where counsel in a tax foreclosure proceeding represented to the court that there was no buyback agreement based on a review of company's electronic database when a buyback agreement had, in fact, been executed but through error was not uploaded into the database).

Here, as noted above, approximately 98 percent of the certifications submitted by OneWest in support of foreclosures contained *no* overstatement of loan-related key financial data, and in the remaining two percent of cases the average discrepancy was not material. To the extent that the Court is considering the possibility of sanctions based on OneWest foreclosure certifications in which all the loan-related facts were correct but in which the Court is nonetheless concerned about the description of the manner in which the affiant ascertained such facts were correct, such concerns are subject to cure through the filing of re-verified certifications as expressly allowed by the New Jersey Supreme Court in *First Union* and as contemplated by the new rules amendments adopted in December. Indeed, OneWest's prompt

and proactive initiative to implement its re-verification process months before this Court issued its Order to Show Cause (and, for that matter, before *any* court or government agency mandated any process changes in any jurisdiction) weighs heavily in favor of not imposing sanctions on OneWest – since imposing sanctions months after OneWest took steps to restore confidence in the integrity of the foreclosure process would create disincentives for industry participants to implement prompt remedial measures in the future.

D. SINGLING OUT A SMALL GROUP OF MORTGAGE SERVICERS FOR SPECIAL RESTRICTIONS OR SANCTIONS PRESENTS SERIOUS DUE PROCESS CONCERNS AND PUTS THEM AT AN UNFAIR COMPETITIVE DISADVANTAGE.

The Court’s Order to Show Cause is directed at six mortgage servicers that are neither the only mortgage servicers in New Jersey, nor even the only large mortgage servicers in New Jersey. The Order to Show Cause itself acknowledges that it is issued “*sua sponte*,” and not based on any findings of fact unique to the six named servicers, based on any motion filed by any party adverse to any of the six named servicers, or otherwise based on anything that would justify singling these six companies out from other participants in the mortgage servicing industry. (OSC at 1.) Yet the most basic notions of due process demand that laws be applied similarly to similarly situated persons. The due process implications of the Order to Show Cause are particularly stark here, because the various remedies contemplated therein would place the six respondent servicers at a distinct competitive disadvantage relative to their competitors who will be not be constrained by those remedies – even if their conduct is no different or better than that of the six OSC respondents. *See, e.g., Robert Wood Johnson Univ. Hosp. v. Thompson*, 2004 U.S. Dist LEXIS 6893, *24-25 (D.N.J. Jan. 14, 2004) (voiding program that would have treated eight hospitals different from all other hospitals with respect to legal compliance obligations, and holding that “the Demonstration Project violates Plaintiffs’ due process and equal protection rights under the Fifth Amendment to the United States Constitution, by setting

them at a distinct competitive disadvantage without reasoned basis.”). For this independent reason, the Order to Show Cause should not be finalized.

II. AS A FEDERAL SAVINGS BANK, ONEWEST’S MORTGAGE SERVICING AND FORECLOSURE OPERATIONS CANNOT BE SUBJECTED TO SUPERVISORY OVERSIGHT BY A STATE COURT-APPOINTED SPECIAL MASTER.

While OneWest does not dispute the Court’s power to engage a special master to assist it in making factual determinations in individual litigated cases, this state Court may not generally condition OneWest’s operations in New Jersey (foreclosure-related or otherwise) on supervision and oversight by a special master. Yet, in two respects, the Order to Show Cause appears to have just that kind of supervision in mind. First, the OSC would appoint a special master to review OneWest’s past business practices to determine, among other things, whether those practices as a whole justify the imposition of sanctions. (*See* OSC at 5-6.) Second, the OSC would empower the special master to examine OneWest’s present business practices for purposes of determining whether those business practices are sufficient to justify allowing OneWest to resume foreclosures on defaulted mortgage loans. (*See id*) Neither of those aspects of the OSC is permissible under established principles of federal banking law.

Because OneWest is a federally chartered savings bank (or “thrift”), its foreclosure processes, like all of its banking operations, are subject to extensive supervision and regulation by its federal banking regulator, the Office of Thrift Supervision (“OTS”). The OTS exercises visitorial powers over OneWest and is actively involved in examining and evaluating the sufficiency of OneWest’s foreclosure and other mortgage servicing processes. *See generally Fid. Federal Savs & Loan Ass’n v. de la Cuesta*, 458 U.S. 141, 161 (1982); 12 C.F.R. §560.2. Indeed, the OTS’s regulatory authority over OneWest is exclusive and does not admit of additional state supervision. *See, e.g., Conf. of Federal Sav & Loan Ass’ns v Stein*, 604 F.2d

1256 (9th Cir 1979), *aff'd*, 445 U.S. 921 (1980) (declaratory judgment that enforcement action by state government agency was preempted by federal thrift law and regulations); *cf. Cuomo v. Clearing House Ass'n L.L.C.*, 129 S. Ct. 2710 (2009) (same holding with respect to national banks). Were the Court to appoint a special master to supervise OneWest's mortgage servicing operations, and were that special master to take steps imposing impediments to or conditions on such operations or otherwise take actions not allowed as a matter of federal banking law, OneWest would be obligated to confer with its federal regulator and possibly seek relief under federal law from such impermissible state supervision of its federally regulated activities – particularly inasmuch as the OTS has occupied the entire field of lending regulation for federal thrifts, *see* 12 C.F.R. § 560.2(a), including mortgage servicing, *see id.* § 560.2(b)(10), and specifically including various aspects of New Jersey foreclosure law. *See OTS Chief Counsel Letter P-2003-5*, 2003 OTS LEXIS 6, *12 (July 22, 2003). It would be eminently desirable to avoid such a clash of federal and state stakeholders by simply allowing OneWest to implement the procedures set forth in the new rule amendments, particularly given that there is no reason for any general suspicion about the accuracy of OneWest's foreclosure certifications or the integrity of its re-verification process.

III. FOR INDEPENDENT REASONS, CERTIFICATIONS EXECUTED BY ONEWEST ON OR AFTER OCTOBER 2, 2010 CANNOT FORM THE BASIS FOR ANY OF THE RELIEF REFERENCED IN THE ORDER TO SHOW CAUSE.

As explained above, all foreclosure affidavits and certifications executed by OneWest on or after October 2, 2010 are the product of an enhanced process that ensures not only the factual accuracy of the information set forth therein, but also the full personal review by the affiant of all referenced business records and an enhanced notary process designed to meet or exceed applicable state law requirements. These enhancements eliminate any need for the OSC's

proposed forward-looking remedies, which appear directed at conditioning future foreclosures on compliance with a court-appointed monitor's assessment and supervision of servicer foreclosure processes. Such a forward-looking order would be inappropriate here for at least three reasons.

First, nothing about OneWest's conduct in the past justifies such onerous limitations on its ability to operate in the future. As noted above, OneWest has been able to confirm the factual accuracy of 98 percent of its foreclosure affidavits; has been able to confirm that the financial discrepancies on the remaining two percent of affidavits is so small on average as to be *de minimis* under governing New Jersey case law; and has affirmatively and voluntarily taken steps to re-document its foreclosure affidavits in New Jersey and elsewhere long before any court suggested it should do so. This is not the kind of corporate behavior that normally justifies draconian limitations on otherwise lawful business processes or extraordinary government intervention in day-to-day corporate functions.

Second, because the New Jersey Supreme Court has adopted new statewide procedural rules effective December 20, 2010, those rules will provide additional comfort in the validity and accuracy of new certifications. This new rule recognizes that lawyers, as officers of the court, are well positioned to filter out frivolous or baseless filings. Since courts in New Jersey will no longer accept certifications in support of foreclosure proceedings without the additional affirmation by counsel required by the rules, there will be an important additional layer of protection mooting the need for the relief contemplated by the Order to Show Cause going forward. These prospective rules also provide uniformity and consistency because they will apply to all mortgage servicers, rather than only those six servicers identified in the Court's Order to Show Cause. Indeed, subjecting OneWest and the five other servicers listed in the OSC to differing requirements than the other servicers initiating foreclosure proceedings in New

Jersey would implicate serious fairness concerns, particularly in the absence of information as to why these servicers were identified in the OSC and the differences between their practices and those of other servicers operating in New Jersey.

Third, public policy concerns militate against the adoption of the processes outlined in the Order to Show Cause, including the appointment of a special master, because the additional delays necessarily associated with such a process will keep those homes destined for foreclosure off the market and with higher vacancy rates for longer periods of time. It is in the best interests of the New Jersey economy (and therefore the public of New Jersey) to have a smoothly functioning real estate market. Such a market necessarily includes a process whereby foreclosures are conducted fairly and efficiently in those instances in which a borrower can no longer afford his home and cannot qualify for a loan modification or other loss-mitigation solution. While the individual circumstances giving rise to such a situation are frequently unfortunate, the alternative is a world in which residential real estate values remain depressed because of uncertainty about foreclosures and buyers who are willing to purchase and occupy foreclosed properties are unable to complete the necessary transactions, often leaving properties abandoned and neighborhoods blighted.³ The delay associated with appointing a special master would be particularly disruptive to the New Jersey real estate market given that foreclosure proceedings have already been on hold for three months, while foreclosures in every other state have been moving forward, in some instances with revised requirements.

³ See, e.g., *Foreclosure Freeze Has Potentially Grim Future*, N.J. STAR-LEDGER, Oct. 12, 2010 (foreclosure moratorium would harm the real estate market, as nearly one quarter of all home sales are foreclosure sales); Martin Crutsinger, *Housing Market Sees Setback as Contracts Slip*, N.J. STAR-LEDGER, Nov. 6, 2010, at 8 (noting number of home sales fell because of foreclosure moratorium); Antoinette Martin, *A 'Shadow Inventory' Dampens Winter Market*, N.Y. TIMES, Dec. 10, 2010 (noting that foreclosure moratorium would increase "shadow inventory" and prolong completion of foreclosure sales; further observing that New Jersey has the largest "shadow inventory" in the country).

The new rules adopted in New Jersey, which include a deadline requiring certain filings within 30 days, further suggest that the intention of the Supreme Court is to encourage that legitimate foreclosure proceedings be advanced through the system, rather than held back by additional delays. These new rules, coupled with OneWest's detailed, audited procedures for submitting evidence in support of pending foreclosure proceedings, should provide confidence that the best approach for this Court to adopt is one that will efficiently clear the backlog of foreclosure cases that have accumulated over the recent months, not one that will cause unnecessary delay.

CONCLUSION

For the foregoing reasons, OneWest respectfully submits that the Court should decline to order the relief proposed in its December 20, 2010 Order To Show Cause.

Respectfully submitted,


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ORIGINAL

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 ANTHONY L.
EBERS IN SUPPORT OF ONEWEST
BANK, FSB'S RESPONSE TO ORDER
TO SHOW CAUSE**

I, Anthony L Ebers, hereby certify that the following is true and correct:

1. I am employed by OneWest Bank, FSB, as Executive Vice President, Chief Operating Officer. My business address is 888 East Walnut, Pasadena, CA 91101.
2. I received a Bachelor of Science, Business Administration in Finance and Banking from the University of Missouri, Columbia in 1988
3. I have more than two decades of executive-level experience in the mortgage industry at major financial institutions. Since the early 1990s, I have held management positions at, among others, Citicorp Mortgage, Banc Boston Mortgage Corporation, HomeSide Lending, IndyMac Bank and OneWest Bank. I have held my present position since March of 2009 when OneWest Bank was founded.
4. In my present position, I manage the direct mortgage lending and home loan servicing divisions at OneWest Bank. I have been directly involved with OneWest's response to

industry-wide concerns surrounding the integrity and accuracy of foreclosure affidavits, as described more fully below.

5. In response to widespread media reports of foreclosure affidavit irregularities in the mortgage industry in late September 2010, OneWest assembled a team consisting of more than 120 professionals, working with OneWest Legal, Enterprise Risk Management and outside counsel, to assess the issue as it applied to OneWest and to develop a response. Based on these media reports, our team focused on three key issues: whether any OneWest judicial foreclosure affidavits or certifications (commonly referred to in many states as “affidavits of indebtedness” or similar names) overstated the amount due from the borrowers; whether such affidavits contained inaccurate statements of the affiants’ personal knowledge concerning loan-related facts set forth in such affidavits; and whether such affidavits complied with applicable laws governing notarization.

6. Commencing on October 1, 2010, OneWest implemented enhanced procedures for reviewing and executing foreclosure affidavits. These procedures were designed to address both (a) the review and execution of foreclosure affidavits in cases where no foreclosure affidavit had previously been submitted in the relevant foreclosure actions (sometimes referred to as “new referrals”), and (b) the re-verification of foreclosure affidavits that had previously been submitted in the relevant foreclosure actions.

7. For new referrals, all foreclosure affidavits executed by OneWest dated on or after October 2, 2010 are the product of the following process, which takes place at OneWest’s facility in Austin, Texas and which I have personally observed. The foreclosure affidavit is prepared by OneWest’s local foreclosure counsel in the relevant jurisdiction and electronically uploaded, along with any business records (such as the note, mortgage, assignment, or other

documents as deemed appropriate by counsel) to LPS's mortgage processing system licensed by OneWest to support the default and foreclosure process and OneWest's computer-based mortgage servicing platform. The text of the foreclosure affidavit is drafted by local foreclosure counsel to comply with local legal requirements. Each affidavit must affirmatively state that the basis of the affiant's personal knowledge of the facts set forth in the affidavit consists of the affiant's knowledge of OneWest's mortgage servicing systems and recordkeeping procedures and his or her personal review of the documents referenced in the affidavit. The affiant is required to personally review each document referenced in the affidavit. The affiant is further required to personally verify that the financial information set forth in the affidavit (for example, the borrower's total indebtedness, unpaid principal balance, interest arrearage, and accrued fees, as appropriate in a given jurisdiction with respect to a given loan) matches the corresponding information stored on OneWest's mortgage servicing platform. This information is generally available to the affiant through the "PAY4 screen," an interface provided on LPS's mortgage processing system that accesses electronically stored financial information that reflects real-time transactions and accounting information regarding mortgage loans and is maintained in the regular course of business by OneWest. A true and correct example of a PAY4 screen, with personally identifiable financial information redacted, is attached hereto at Exhibit 1. Once the affiant has personally reviewed the documents referenced in the affidavit and has personally verified the financial information set forth therein, the affiant is required to appear personally before a notary public to sign the affidavit and take the required oath. The executed affidavit is then returned to local foreclosure counsel for filing according to locally applicable court procedures.

8. The process set forth in paragraph 7 above applies specifically with respect to New Jersey loans.

9. For foreclosure actions in judicial foreclosure states in which an affidavit of indebtedness (or local equivalent, such as a New Jersey certification of amounts due) had been filed prior to October 1, 2010, and in which either (a) no judgment has been entered, or (b) if a judgment has been entered, the property has not been sold, OneWest implemented the following process commencing on October 2, 2010. This process, which I have personally assisted in developing and observed, takes place at OneWest's facility in Austin, Texas. The foreclosure affidavit that was previously prepared and filed by OneWest's local foreclosure counsel in the relevant jurisdiction is electronically uploaded to LPS's mortgage processing system, along with any business records referenced in the previously filed affidavit (such as the note, mortgage, assignment, or other documents as deemed appropriate by counsel). That affidavit is then reviewed to ensure the inclusion of language affirmatively stating that the basis of the affiant's personal knowledge of the facts set forth in the affidavit consists of the affiant's knowledge of OneWest's mortgage servicing systems and recordkeeping procedures and his or her personal review of the documents referenced in the affidavit. The affidavit is then placed into what OneWest refers to as the "re-verification process."

10. In the re-verification process, a OneWest mortgage specialist personally reviews each document that was referenced in the previously filed affidavit to confirm the accuracy of statements made about such documents in the previously filed affidavit. The same individual then personally reviews the key financial information set forth in the previously filed affidavit to confirm, based on financial information as of the effective date of the previously filed affidavit accessed on OneWest's mortgage servicing platform, that the previously filed affidavit did not

overstate the amounts due from borrowers. As part of this process, the mortgage specialist is required to complete a “control sheet” that documents his or her completion of each element of the review process. A true and correct copy of the control sheet used for this process is attached as Exhibit 2. If the mortgage specialist confirms based on this personal review both (a) that the representations concerning the documents referenced in the previously filed affidavit were correct, and (b) that the key financial information set forth in the previously filed affidavit did not overstate the amounts due from the borrower, then the affidavit is deemed “re-verified.” Once the affiant has personally reviewed the documents referenced in the affidavit and has personally re-verified the financial information set forth therein, the mortgage specialist is required to appear personally before a notary public to sign the re-verified affidavit and take the required oath.

11. In foreclosure actions in most judicial foreclosure states (including both actions that have not yet gone to judgment, and actions in which a judgment has been entered but the property has not yet been sold), our local foreclosure counsel have filed re-verified affidavits in court by notice, with service on the other parties to the action. Several jurisdictions (including, for example, the State of New York, the State of Maryland, Miami-Dade County, Florida, and Cuyahoga County, Ohio) have implemented specific procedures for filing confirming affidavits like the re-verified affidavits OneWest has prepared; in such jurisdictions, our local counsel are filing re-verified affidavits according to the appropriate jurisdiction-specific procedure.

12. As of today’s date, OneWest has completed the re-verification review process for more than 8,200 previously filed foreclosure affidavits (or local equivalents) nationwide — almost 93 percent. Of those affidavits reviewed for re-verification purposes in post-judgment cases nationwide, only approximately 2 percent were found to have overstated amounts due from

borrowers. Among the small percentage of affidavits that could not be re-verified, the amount by which the correct amount due was overstated was extremely small, averaging only approximately 1 percent of the correct total amount of indebtedness.

13. Approximately 98 percent of the affidavits that have been reviewed in post-judgment cases on a nationwide basis have been successfully re-verified. With respect to the affidavits that were successfully re-verified, OneWest has executed new affidavits pursuant to the process outlined in paragraphs 9 and 10 above, and has provided (or is currently in the process of providing) such affidavits to local foreclosure counsel for filing pursuant to the process outlined in paragraph 11 above in all judicial foreclosure states except New Jersey. In fact, OneWest's foreclosure affidavit re-verification process is largely complete in all states other than New Jersey.

14 OneWest has executed new certifications for all New Jersey certifications that have been successfully re-verified, and is prepared to submit those to local foreclosure counsel for filing immediately pursuant to the "Emergent Amendments to Rules 1:5-6, 4:64-1 and 4:64-2" that were recently adopted in New Jersey. OneWest has withheld instructions to New Jersey counsel to file such documents because of the Court's Order entered December 20, 2010.

15 OneWest participates in a number of loan modification programs as part of its aggressive effort to provide distressed borrowers with foreclosure-avoidance alternatives. Among other programs, OneWest participates in the Home Affordable Modification Program ("HAMP") and the Home Affordable Foreclosure Alternatives program ("HAFA"), both of which are sponsored by the U.S. Department of the Treasury. Based on Treasury Department data as of November 2010,¹ OneWest compares favorably to other major national mortgage servicers on a number of key measures. These data reflect that OneWest has started 47,710

¹ Data available at <http://www.financialstability.gov/docs/Nov%202010%20MHA%20Report.pdf>

HAMP trial modifications for borrowers around the United States, and has a conversion rate to permanent loan modifications that exceeds that of most other large servicers.

16 OneWest was also one of the first mortgage servicers in the United States to agree to participate in the HAMP Principal Reduction Alternative program, pursuant to which OneWest actively reviews distressed borrowers for reductions in loan principal.

17. Reflecting OneWest's active efforts to avoid foreclosure wherever reasonably possible, OneWest loans in foreclosure are typically not only in contractual default, but severely delinquent, at the time foreclosure is commenced. Almost 40 percent of OneWest's loans in active judicial foreclosures were more than six months delinquent at the time the foreclosure action was commenced. Approximately 10 percent of OneWest's loans in active judicial foreclosures were more than one year delinquent at the time of commencement. In New Jersey, OneWest's loans in active judicial foreclosure are an average of 671 days delinquent, as measured from the last paid installment. No loan is referred to foreclosure before OneWest confirms that numerous efforts (both telephonically and by written communications) have been made to contact the borrower to see if they qualify for a loan modification. From the inception of HAMP, OneWest has processed 5,625 applications for loan modifications in New Jersey

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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.



ANTHONY EBERS

Dated: January 5, 2011

EXHIBIT 1

PAY4 AS-OF 09/30/09 PAYOFF CALCULATION TOTALS 09/11/09 09:25:54

NAME CONTACT NAME

PRINCIPAL BALANCE	139,814.02	-----	RATE CHANGES	-----
INTEREST 09/30/09	10,973.68	INT FROM	RATE	AMOUNT
PRORATA MIP/PMI	.00	08/01/08	6.75000	10,973.68
ESCROW ADVANCE	8,709.78	09/30/09		
ESCROW BALANCE	.00			
SUSPENSE BALANCE	.00			
HUD BALANCE	.00			
REPLACEMENT RESERVE	.00			
RESTRICTED ESCROW	.00			
TOTAL-FEES	30.00			
ACCUM LATE CHARGES	560.40			
ACCUM NSF CHARGES	.00			
OTHER FEES DUE	.00			
PENALTY INTEREST	.00			
FLAT/OTHER PENALTY FEE	.00	TOTAL INTEREST		10,973.68
CR LIFE/ORIG FEE RBATE	.00	TOTAL TO PAYOFF		162,543.88
RECOVERABLE BALANCE	2,456.00	NUMBER OF COPIES: 1	PRESS PF1 TO PRINT	

EXHIBIT 2

CONTROL SHEET (Revised 10.22.10 @ 8:30 AM)

Date _____

Due Date _____

Attorney _____

Borrowers Name _____

Property State _____

Sale Date _____

Loan Number _____

Judgment Date _____

Affidavit Good Through Date _____

JFig Screen Good Through Date _____

DOC PREP

Pass Soft Fail

Documents	Required	Document Found		Comments	Final QC
Affidavit Printed		<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/>
Affidavit Uploaded		<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/>
JFig/screenprints		<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/>
Complaint	N/A	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/>
Note	N/A	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/>
Mortgage	N/A	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/>
Assignment	N/A	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/>
Other (if applicable)	N/A	<input type="checkbox"/> Yes	<input type="checkbox"/> No	See Matrix	<input type="checkbox"/>

Reviewer Name _____ Date _____ Time _____

AOI REVIEW

Pass Soft Fail

AOI/Judgment Doc	MSP Data		MSP/PM Data Source	Comments	Final QC
	Less Than or Equal To	Greater Than			
UPB			PAY 4		<input type="checkbox"/>
Interest			PAY 4		<input type="checkbox"/>
Total Debt			PAY 4		<input type="checkbox"/>
	Pass	No Pass			<input type="checkbox"/>
Escrow Advance			PAY 4, HAZ1, TAX1		<input type="checkbox"/>
Late Charges			PAY 4		<input type="checkbox"/>
Inspection			PAY 4, PIR1, PMTA		<input type="checkbox"/>
BPO			PAY 4, DDCH		<input type="checkbox"/>
Corp Advances			PAY 4, DDCH		<input type="checkbox"/>
Attorney Fees/Cost			PAY 4, DDCH		<input type="checkbox"/>
Suspense Amount			PAY 4		<input type="checkbox"/>
MI Insurance			PAY 4		<input type="checkbox"/>
Other Amounts.					<input type="checkbox"/>
	Confirmed	N/A			<input type="checkbox"/>
Confirm AITNO /Vesting	<input type="checkbox"/>	<input type="checkbox"/>	Desktop		<input type="checkbox"/>
Reviewed Copy of Mortgage	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
Reviewed Copy of Note	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
Included JFig#s	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
Reviewed Complaint	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>
Confirmed Assignment	<input type="checkbox"/>	<input type="checkbox"/>	Desktop		<input type="checkbox"/>

Not all charges and attorneys fee/cost are permissible in the final judgment amounts. Values are expected to be equal to or less than the PAY 4 amount. Any amount that is more than \$500.00 less than that of the PAY4 requires a Team Lead co-sign.

Reviewer Name _____ Date _____ Time _____

Team Lead Review _____ Date _____ Time _____ (as applicable)

REJECTED (To which department and reason): _____

DOCUMENT CONVERSION

Pass Soft Fail

AOI/Judgment Doc	Document Changes		Comments	Final QC
	Completed	N/A		
Business Records Language Inserted – Refer to Matrix				<input type="checkbox"/>
Current Affidavit Date is consistent throughout document. See Original Affidavit, if no date use PAY4 as of date				<input type="checkbox"/>
Caption Review Process complete Refer to Presentation Slide 2 Step IV				<input type="checkbox"/>
Jurat/Notarial Language Included. Refer to Legal Refer to Presentation Slide 2 Step VI				<input type="checkbox"/>
QC Verification Checklist Signer verbiage for authorized signer (For ex , Officer of the Bank or Attorney In Fact, replace with authorized signer)				<input type="checkbox"/>
Business Address of Signer is correct				<input type="checkbox"/>
Owner/holder language correct				<input type="checkbox"/>
Review Margins and Formatting of Document				<input type="checkbox"/>

Reviewer Name _____ Date _____ Time _____

QC Reviewer Verification _____ Date _____ Time _____

REJECTED (To which department and reason): _____

FINAL QC

PASS FAIL

Final QC Review Completed	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Sign	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Notarized	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Final QC Reviewer Name _____ Date _____ Time _____

REJECTED (To which department and reason) _____

SIGNER

AOI/Judgment Doc				Comments	Final QC
	Yes	No	N/A		
Signer's Name is printed consistently throughout the document (must match the DAP)					<input type="checkbox"/>
Signer's Title is correct consistently throughout the document (must match the DAP)					<input type="checkbox"/>
Signer must ensure that all					<input type="checkbox"/>

QCs have passed for all figures before signing					
Notary must ensure that affidavit sign date matches the notary date					<input type="checkbox"/>

Signer Name _____ Date _____ Time _____

REJECTED (To which department and reason) _____

NOTARY

AOI/Judgment Doc				Comments	Final QC
	Yes	No	N/A		
State = Texas					<input type="checkbox"/>
County = Travis					<input type="checkbox"/>
Notary must ensure that affidavit sign date matches the notary date					<input type="checkbox"/>
Notary block is completed correctly with state, county, signer's name where applicable, date, notary signature, and stamp seal) Stamp seal must include commission expire date, or it must be written in					<input type="checkbox"/>

Notary Name _____ Date _____ Time _____

AOI Co-Sign _____ Date _____ Time _____

REJECTED (To which department and reason): _____

COPY/IMAGING/SHIPPING

Shipping Date _____

Tracking Number _____

Date sent to copying/imaging _____

Shipper _____

REJECTED (To which department and reason) _____

Data uploaded into Data Base YES NO Name _____

A soft fail by definition can be rectified prior to review and signing of the affidavit. Examples of soft fails include, but not limited to: missing documents, judgment figure screen prints do not match the 'good through' date of the affidavit, inability by the conversion team to format the firm's document, reviewer did not sign checklist, notary seal missing.

A hard fail or final fail refers to an error which results in the affidavit having to be amended by the firm prior to execution. Examples of hard fails include, but not limited to: financial errors, reviewer not on the DAP.

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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

**CERTIFICATION PURSUANT
TO R. 1:4-4(c)**

I, Anthony DiLello, hereby certify that:

1. I am an attorney-at-law admitted to practice in the State of New Jersey.
2. I hereby certify pursuant to *R. 1:4-4(c)* that the facsimile signature of Anthony L.

Ebers affixed to the annexed Certification of Anthony L. Ebers in Support of OneWest Bank, FSB's Response to Order to Show Cause is genuine and true and that the annexed Certification of Anthony L. Ebers in Support of OneWest Bank, FSB's Response to Order to Show Cause or a copy thereof with an original signature affixed will be filed if requested by the court or a party.

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

DATED: January 5, 2011
New York, New York



Anthony DiLello

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Civil Action

CERTIFICATION OF SERVICE

I, Anthony DiLello, of full age, hereby states and certifies as follows:

1. I am an attorney employed by the law firm of O'Melveny & Myers LLP, attorneys for respondent OneWest Bank, FSB ("OneWest") in this action.
2. On this date, an original and two (2) copies of the annexed: (i) OneWest Bank, FSB's Response to Order To Show Cause; (ii) Certification of Anthony L. Ebers; (iii) Certification Pursuant to R. 1:4-4(c) were filed with the Clerk of the Superior Court, Mercer County, Chancery Division, located at 210 South Broad Street, Trenton, New Jersey 08625 via messenger.
3. I further certify that on this date, true and correct copies of the aforementioned documents were served via FedEx upon:

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

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. January 5, 2011
New York, New York



Anthony DiLello