EXHIBIT 20

Attorney Name	Plaintiff Name	Docket #	Defendant	Contested Matter
ZUCKER GOLDBERG & ACKERMAN	Hudson City Savings Bank	F-3378-10	KERRY WOMBOUGH	No

Attorney Name	Plaintiff	Docket	Defendant	Vicinage
PHELAN HALLINAN	HUDSON CITY SAVINGS BANK	F-41102-09	ANNAN, VIDAL	ESSEX
PHELAN HALLINAN	HUDSON CITY SAVINGS BANK	F-50336-09	MISEVIC'US, MILDA	BERGEN
PHELAN HALLINAN	HUDSON CITY SAVINGS BANK	F-32940-09	SENSALE, MARGARET	PASSAIC
PHELAN HALLINAN	HUDSON CITY SAVINGS BANK	F-19716-09		ESSEX

EXHIBIT 21

Attorney Name	Plaintiff	Docket	Defendant	Vicinage
PHELAN HALLINAN	INVESTORS SAVINGS BANK	F-27065-10	CLAPPER, JOANNE	HUDSON

EXHIBIT 22

Attorney Name	Plaintiff Name	Docket #	Defendant	County	Contested Matter
ZUCKER GOLDBERG & ACKERMAN	JP Morgan Chase Bank, NA as successor Trustee by merger to The First National Bank of Chicago, as Trustee for Home Equity Loan Pass Through Certificates, Series 1998-HE1	F-23962-08	Judith K. Marchesani a/k/a Judith K. Bell	CUMBERLAND	No
ZUCKER GOLDBERG & ACKERMAN	JPMorgan Chase Bank, NA	F-13473-05	DESIREE HILL	GLOUCESTER	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank f/k/a Washington Mutual Bank, FA	F-11859-06	JOSEPH A TAURIELLO	OCEAN	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank f/k/a Washington Mutual Bank, FA	F-10023-06	Brian T Myers	SUSSEX	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank, FA	F-12930-04	THOMAS T. BEALS	ESSEX	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank, FA	F-11593-05	DAVID L BOSTON	GLOUCESTER	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank, FA	F 7006-06	LOURDES KEARNEY	CAMDEN	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank	F-29906-09	NICOLE FOCA-RODI	HUDSON	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank	F 23069-06	MONICA MATHIS	UNION	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank	F-20894-06	GREGORY WILLIAMS	CAMDEN	No
ZUCKER GOLDBERG & ACKERMAN	Washington Mutual Bank	F-13523-06	Darren Dohanish	SOMERSET	No

Attorney Name	Plaintiff	Docket	Defendant	Vicinage
PHELAN HALLINAN	CHASE MANHATTAN MORTGAGE CORPORATION	F-10842-02	CALDWELL, JOANNE	ESSEX
PHELAN HALLINAN	CHASE MANHATTAN MORTGAGE CORPORATION	F-3041-01	MARTIN, JOHN A	CAMDEN
PHELAN HALLINAN	JPMORGAN CHASE BANK, NA AS TRUSTEE FOR NOMURA ASSET ACCEPTANCE COPPORATION MORTGAGE PASS THROUGH CERTIFICATES SERIES 2004-AR3	F 14749-07		PASSAIC

EXHIBIT 23

Attorney Name	Plaintiff Name	Docket #	Defendant	County	Contested Matter
ZUCKER GOLDBERG & ACKERMAN	LaSalle Bank National Association, as Trustee for Lehman XS Trust Series 2007-9	F-27506-07	Vincent V. Rullo, Jr	OCEAN	No
ZUCKER GOLDBERG & ACKERMAN	LaSalle Bank National Association, as Trustee for Lehman XS Trust Series 2007-9	F-32019-08	MARLENE GRIECO	BERGEN	No
ZUCKER GOLDBERG & ACKERMAN	LaSalle Bank National Association, as Trustee for LXS 2007-1	F-40978-08	SANDRA BARBOSA	SUSSEX	No
ZUCKER GOLDBERG & ACKERMAN	LaSalle Bank National Association, as Trustee for LXS 2007-1	F-40978-08	Sandra Barbosa	SUSSEX	No
ZUCKER GOLDBERG & ACKERMAN	LaSalle Bank National Association, as Trustee for Structured Asset Investment Loan Trust 2004-10	F-38703-08	D Michael Keck	CAMDEN	Yes
ZUCKER GOLDBERG & ACKERMAN	LaSalle Bank National Association, as Trustee for Structured Asset Securities Corporation Trust 2005-WF1	F-40704-08	JANET MACK	MIDDLESEX	No
ZUCKER GOLDBERG & ACKERMAN	LaSalle Bank, National Association, as Trustee for LXS 2007-1	F-49148-08	BHARAT B CHAHWALA	ATLANTIC	No

Attorney Name	Plaintiff	Docket	Defendant	Vicinage
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION AS TRUSTEE FOR MSM 2006-15XS	F-39705-08	FSSES, LENA	MONMOUTH
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION , AS TRUSTEE FOR MSM 2006-15XS	F-9358-08		UNION
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY LOAN TRUST 2007-8XS	F-36073-08	CHIEDU, CHUKWUEMEKA	ESSEX
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2006-11	F 1098-08	NUSSBAUM, NOSSON	OCEAN
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2006-11	F-10012-08	SIMONE, DEBORAH L	CAMDEN
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2006-13ARX	F-50436-08	DEOCA, EDELYS MONTES	BERGEN
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2006-13ARX	F-28293-08	GALLARDO, DANNY	PASSAIC
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2006-13ARX	F-25652-08	MARTINEZ, JOSE	ESSEX
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUST 2006-13ARX	F-44836-08	SWARUP, RUPENDRA	BERGEN
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MORGAN STANLEY MORTGAGE LOAN TRUSTS 2006 6AR	F-50822-08	FERONE, ROBERT	OCEAN
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MSM 2007-7AX	F-49208-08	DUNN, DARRELL	ESSEX
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MSM 2007-7AX	F-2831-09	MCGRIFF, TINA J	CAMDEN
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MSM 2007-7AX	F-22060-08	SHAIWANY, GULAM	BERGEN
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MSM 2007-7AX	F-39593-08	VANDEVENDER GEORGE	ATLANTIC
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE HOLDERS OF PRIME MORTGAGE TRUST, MORTGAGE PASS -THROUGH CERTIFICATES, SERIES 2004-CL1	F-00831-10	COLLIER, JAMES F	MORRIS
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION AS TRUSTEE FOR MORGAN STANLEY LOAN TRUST 2007-1XS	F-46670-08	SANTOS, JENNY L	
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MSM 2007-10XS	F-44001-08	PROTOVIN, LINDA	
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR MSM 2007-7AX	F-44905-08	ROCHE, ROBERT & ROCHE, CHRISTINA	
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE STRUCTURED ASSET INVESTMENT LOAN TRUST 2005-2	F-26839-07	MAXWELL ANSON	
PHELAN HALLINAN	LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE UNDER THE TRUST AGREEMENT FOR THE STRUCTURED ASSET INVESTMENT LOAN TRUST SERIES 2004-8	F-18075-08	RONDON, APOLINAR	

PHELAN HALLINAN	LASALLE NATIONAL ASSOCIATION AS TRUSTEE UNDER THE TRUST AGREEMENT FOR THE STRUCTURED ASSET INVESTMENT LOAN TRUST SERIES 2004-1	F-668-07	HERNANDEZ, ORLANDO	

EXHIBIT 7

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July 17, 2012

Via Hand Delivery

The Honorable Margaret Mary McVeigh, P.J Ch.
Superior Court of New Jersey
Passaic County Courthouse, Chambers 100
71 Hamilton Street
Paterson, New Jersey 07505

Re: In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases Docket Number F- 009564-12

Dear Judge McVeigh:

This firm represents Wells Fargo Bank, N.A ("Wells Fargo"). In accordance with the direction provided by the Court at the hearing held on June 7, 2012, Wells Fargo is providing these amended papers in support of its application to proceed in a Summary Action. As is set forth in the Amended Verified Complaint, Wells Fargo makes this application on behalf of Foreclosure Plaintiffs pursuant to the authority granted to Wells Fargo by those Foreclosure Plaintiffs. Wells Fargo seeks an Order from this Court permitting Wells Fargo to issue corrected Notices of Intent to Foreclose ("NOI") as set forth in the New Jersey Supreme Court Order dated April 4, 2012, that was entered following the Court's decision in U.S Bank, N A v Guillaume, 209 N.J. 449 (2012), ("Guillaume").

Wells Fargo services mortgage loans for residential properties in New Jersey *Am. Ver. Comp*, ¶ *2.* [1] As the servicer of mortgage loans, Wells Fargo undertakes payment collection, loss mitigation and collection efforts, including foreclosure. *Id*, ¶ *3.* Wells Fargo undertakes those tasks in accordance with the contracts that govern its relationship with the owners of the loans as well as the loan documents, Rules of Court and any applicable laws. *Id* As the entity collecting and processing payments, Wells Fargo possesses the information relevant to the payments made, escrows, payments that are due and whether a loan is in default and by how much. *Id* This information is maintained on

[1] Wells Fargo also appears as a Foreclosure Plaintiff in foreclosure cases in its capacity as a trustee for the owners of securitized loans. Where Wells Fargo is acting as the trustee and not the servicer, Wells Fargo plays no role in the servicing of the loans This current application to the Court does not include those foreclosure cases in which Wells Fargo is the trustee *Id*, *fn 1*

Wells Fargo's systems of record. *Id.* The Foreclosure Plaintiff is not likely to have possession of the relevant servicing information in cases in which the servicing of the loan is being handled by Wells Fargo *Id.*

One of Wells Fargo's duties as a servicer on a defaulted mortgage is to issue the NOI, in accordance with the Fair Foreclosure Act ("FFA") at N J.S.A. 2A:50-56. The NOI is prepared based upon current loan information held by Wells Fargo *Id.*, ¶ 4

On February 27, 2012, the New Jersey Supreme Court decided Guillaume and held that the FFA requires strict adherence to the notice requirements set forth at N J.S.A. 2A:50-56(c) for all NOIs. The Court also held that a court adjudicating a foreclosure action in which the strict requirements of N.J.S.A. 2A:50-56(c) were not met has the discretion to choose the appropriate remedy, including allowing a corrected NOI to be served.

Following its decision in Guillaume, the Supreme Court issued an Order on April 4, 2012 which authorizes this Court to entertain summary actions by Order to Show Cause as to why Plaintiffs who caused deficient NOIs to be served should not be allowed to issue corrected NOIs to defendant/mortgagors and/or parties obligated on the debt ("Foreclosure Defendants") in pending, pre-judgment uncontested foreclosures filed prior to February 27, 2012 in which final judgment has not yet been entered. The April 4th Order also instructed that any corrected NOI must be accompanied by a letter to each Foreclosure Defendant setting forth:

- the reasons why the corrected NOI is being served;
- the procedure to follow in the event a Foreclosure Defendant wishes to object to the corrected NOI;
- the name of a person to contact with any questions; and
- that the receipt of the corrected NOI allows the Foreclosure Defendant 30 days in which to object to or cure the default.

In accordance with the decision in Guillaume, Wells Fargo has identified a population of foreclosure cases in which the previously served NOIs failed to include the name and address of the lender, as required by N.J.S.A. 2A:50-56(c)(11).[2] Wells Fargo seeks an Order from this Court allowing

[2] Other servicers seeking to proceed by summary action to issue corrected NOIs may have additional deficiencies in the NOIs previously issued in their pending, pre-judgment foreclosure actions The Supreme Court's April 4, 2012 Order contemplates that other NOI deficiencies could be raised in the summary actions because the Order indicates that the explanatory letter to the Foreclosure Defendants should identify the "reasons" that the corrected NOI is being issued. However, for Wells Fargo, the only deficiency in the NOIs is the failure to include the name and address of the lender, which is the very issue that Wells Fargo took to the Supreme Court in Guillaume

Wells Fargo to serve corrected NOIs that will include the name and address of the current lender so that Certifications of Due Diligence can be signed and the uncontested foreclosures can proceed to final judgment.

Wells Fargo has worked with its New Jersey foreclosure attorneys to compile a list of all pending, uncontested foreclosures in New Jersey in which final judgment has not been entered and in which Wells Fargo served technically deficient NOIs prior to February 12, 2012 that failed to identify the lender and the lender's address ("Corrected NOI List").[3] For each pending case at issue in this application, the Corrected NOI List includes the Named Plaintiff, the Docket Number, the first named Foreclosure Defendant and the County.[4] The Corrected NOI List, attached as Exhibits 1 through 34 to the Amended Verified Complaint, is broken down by each Named Plaintiff. There are a total of 34 Named Plaintiffs for which Wells Fargo seeks to correct previously served NOIs. Those Named Plaintiffs (and their affiliated entities) are the following:

1. Bank of America, N.A.
2. Bank of New York Mellon
3. Bank Atlantic
4. Bayview Financial
5. CitiBank, N.A.
6. Commerce Bank
7. Copperfield Investments
8. Deutsche Bank
9. DLJ Mortgage Capital Inc.
10. E*Trade
11. EMC Mortgage
12 Federal Deposit Insurance Corporation
13. Federal Home Loan Mortgage Corporation
14. Federal National Mortgage Association
15. Federal Home Loan Bank of Chicago
16 FTN Financial
17 GE Capital Mortgage Services, Inc.
18 GMAC Bank
19 HSBC Bank, N.A.
20 Hudson City Savings Bank
21. Investors Savings Bank

[3] The Corrected NOI List also identifies actions in which the bankruptcy stay might apply. Am. Ver. Comp , ¶ *86, Exh 35*

[4] Because considerable time has passed since NOIs were originally served for the foreclosure actions, the lender initially identified in the foreclosure action as the plaintiff may not be the current lender listed in the corrected NOI. For sake of clarity, the corrected NOI will list the current lender and lender's address and Wells Fargo will require that its counsel take the appropriate steps to change the plaintiff in affected foreclosure actions where required

22. JP Morgan Chase Bank
23 LaSalle Bank, N.A.
24. Lehman Brothers
25. Lex Special Assets
26. MidFirst Bank
27. New York Life Insurance and Annuity Corporation
28. PNC Bank
29. Residential Accredit Loans, Inc.
30. Riggs Real Estate Investment Corporation
31. UBS Bank
32. United States Department of Housing and Urban Development
33. US Bank, N A
34. Wilmington Trust Company[5]

For Fannie Mae and Freddie Mac, the Government Sponsored Entities ("GSE") at issue in this application, Wells Fargo seeks to issue corrected NOIs in the cases in which Fannie Mae and Freddie Mac are the Foreclosure Plaintiffs. If the servicer of a Fannie Mae or Freddie Mac loan also holds a secondary lien on the same property, the Fannie Mae and Freddie Mac servicing guidelines allow the servicer to file the foreclosure in the name of the GSE entity. In such cases, such as the cases listed on Exhibits 13 & 14 to the Amended Verified Complaint, Fannie Mae and Freddie Mac should have been identified as the lender in the original NOI, because in such cases, Fannie Mae and Freddie Mac are the holders of the residential mortgages The FFA defines a "lender" as "any person, corporation, or other entity which makes or holds a residential mortgage, and any person corporation or other entity to which such residential mortgage is assigned." N J.S A. 2A:50-55. Therefore, as the "holder" of the mortgages, the GSEs should have been identified in the previously served NOIs.

Not included in this application are the other uncontested foreclosure cases in which Fannie Mae and Freddie Mac are not the Named Plaintiffs and not the holders of the residential mortgages. In such cases, the GSEs retain a beneficial interest in the loan but are not the holders of the mortgage and therefore, not the "lender" under the FFA The previously served NOIs in these cases that identified Wells Fargo as the "lender" were correct because Wells Fargo is the "holder" of the residential mortgages and thus, falls within the definition of a "lender" under the FFA. Further, as the holder of the Mortgage and the Note endorsed in blank, Wells Fargo is the party that is entitled to foreclose. Under the Uniform Commercial Code ("UCC"), the party in possession of the note, endorsed directly to it or in blank, qualifies as the holder or a party with the rights of the holder. N J.S.A. 12A 3-301(1) and (2) Therefore, pursuant to the FFA and the UCC, for the cases in which the GSEs hold a beneficial interest but not the Note and Mortgage, Wells Fargo's prior NOIs were correct and are not at issue in this application.

[5] Count 35 of the Amended Verified Complaint and the corresponding Exhibit 35 reference to the pending foreclosure actions that are currently impacted by the Bankruptcy Stay. Wells Fargo will be seeking to issue corrected NOIs in those cases at the appropriate time and in accordance with the procedures set forth in the Order to Show Cause.

Also included with the Corrected NOI List are foreclosure cases that may have at one point been contested cases that were sent back to the Office of Foreclosure after resolution of the contesting issues, pursuant to N.J. Court Rule 4:64(1)(c)(3). Wells Fargo has included those cases within this application because the current application offers an additional benefit to these Foreclosure Defendants and will allow them to raise whatever objections they have to the process allowing the issuance of the corrected NOI or to the NOI itself, which can be asserted in their individual foreclosure action. Excluding these Foreclosure Defendants from this process will only leave those cases in a limbo state, which is not beneficial for the Parties or the Court.

In accordance with the April 4th Order, in conjunction with this Court's guidance, Wells Fargo will also send a form of letter ("Explanatory Letter") to each Foreclosure Defendant on the Corrected NOI List Attached as Exhibit A to the Verified Complaint is a form of Explanatory Letter that will:

- explain the reason why the corrected NOI is being served;
- the procedure to follow in the event that a Foreclosure Defendant wishes to object to the corrected NOI;
- identifies a contact person for any questions; and
- advises the Foreclosure Defendant of their right to object to the corrected NOI as well as the right to cure the default within 30 days of the date of the corrected NOI.[6]

In further support of this application, Wells Fargo has also supplied the proposed form of corrected NOI as Exhibit B to the Verified Complaint which Wells Fargo will serve on each Foreclosure Defendant identified on the Corrected NOI List. The corrected NOI will include, *inter alia*, information specific to their loan, their default and the lender name and address. In addition, the corrected NOI will also exclude attorneys' fees and costs incurred in the pending foreclosure actions. Permitting Wells Fargo to issue corrected NOIs will provide the Foreclosure Defendants with yet another opportunity to cure their default and reinstate their loans, without the incursion of attorneys' fees and costs that are permitted to be charged after a foreclosure case has been filed. Provision of another opportunity to cure provides a benefit to the Foreclosure Defendants.

[6] The Explanatory Letter will inform the Foreclosure Defendants that if they are unsure of their individual foreclosure docket numbers, they may access that information on the Court's website by using the search function and entering their names In addition, the Explanatory Letter will provide the contact information for a Wells Fargo representative who can assist with providing the docket number for the foreclosure actions Thus, the Explanatory Letter will include all of the elements required by the Supreme Court's April 4, 2012 Order and will be consumer friendly in the ways required by this Court.

Notice will also be provided via publication notice in four newspapers to be chosen by this Court. Wells Fargo will publish the proposed Publication Notice provided with these papers two times in each of the four papers, thereby providing additional notice to Foreclosure Defendants.

Allowing Wells Fargo to cure the deficient NOIs as requested in this application is the correct remedy. In Guillaume, the Supreme Court held that when faced with a deficient NOI, the trial court can determine the appropriate remedy and should consider the express purpose of the NOI provision: "to provide notice that makes 'the debtor aware of the situation' and to enable the homeowner to attempt to cure the default." 209 N.J. at 479. The Court stated that in fashioning a remedy, the trial court should "consider the impact of the defect in the notice of intention upon the homeowner's information about the status of the loan, and on his or her opportunity to cure the default." Id. In determining that a cure was the appropriate remedy, the trial court in Guillaume took such considerations into account when fashioning the remedy, including the nature of the deficiency. Id. at 480.

As in Guillaume, in this application, Wells Fargo seeks an Order allowing it to issue corrected NOIs to include the name and address of the lender in uncontested foreclosure actions. The trial court in Guillaume determined that the nature of that deficiency would allow a cure of the NOI, as opposed to some other remedy, even in the context of a contested foreclosure In the application before this Court, Wells Fargo seeks to correct the same deficiency but in uncontested foreclosures. The Foreclosure Defendants have already received numerous forms of notice concerning their foreclosure case during their cases and, with the issuance of a corrected NOI, will receive yet another opportunity to cure their defaults and reinstate their loans. Further, there is no indication of prejudice nor could there be because Wells Fargo will waive the attorneys' fees and costs that have been incurred in the foreclosures for purposes of the corrected NOI and possible reinstatement pursuant to this application. Furthermore, as the proposed Explanatory Letter makes clear, to the extent that a Foreclosure Defendant wants to object to the information contained in the corrected NOI itself, the Foreclosure Defendant will have the opportunity to raise and voice those objections in their individual foreclosure cases. Moreover, the Order to Show Cause provides a mechanism and process whereby the Foreclosure Defendants can raise directly with this Court any concern, objection or potential prejudice that they believe results from allowing Wells Fargo to correct the deficient NOIs.

For the reasons set forth in Wells Fargo's application, the Supreme Court has issued an Order that is faithful to the decision in Guillaume, and provides a mechanism to cure deficient NOIs so that Foreclosure Defendants will receive the notice that they should have received under the FFA and will also allow for the orderly judicial administration in the pending, uncontested foreclosures. For these reasons, it is respectfully requested that this Court:

(a) Approve the form of Explanatory Letter at Exhibit A to the Verified Complaint;

(b) Approve the form of corrected NOI at Exhibit B to the Verified Complaint, and

(c) Allow Wells Fargo to serve corrected NOIs to the Foreclosure Defendants on the Corrected NOI List.

Undersigned counsel appreciates the Court's attention to this application and will be available to the Court to respond to any questions that may arise after review of the material filed today.

Respectfully submitted,

Mark S. Melodia

cc: Jennifer Perez, Superior Court Clerk (via JEFIS)
Margaret Lambe Jurow, Esquire (via Hand Delivery)

EXHIBIT 8

FILED Dec 20, 2010

PREPARED BY THE COURT

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

DOCKET NO. F -059553-10

CIVIL ACTION

IN THE MATTER OF
RESIDENTIAL MORTGAGE
FORECLOSURE PLEADING AND
DOCUMENT IRREGULARITIES

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

To: Foreclosure Plaintiffs:

ALLY FINANCIAL (F/K/A GMAC)
c/o Zucker, Goldberg & Ackerman; Phelan, Hallinan & Schmeig, PC
BANK OF AMERICA/BAC HOME LOAN SERVICING LP
c/o Stern Lavinthal Frankenberg & Norgaard, LLC; Fein Such Kahn & Shepard, PC
Zucker, Goldberg & Ackerman; Urden Law Offices, PC
JP MORGAN CHASE/ CHASE HOME FINANCE LLC
c/o Phelan, Hallinan & Schmeig, PC
WELLS FARGO/WELLS FARGO BANK NA/ WELLS FARGO FINANCIAL NEW JERSEY, INC.
c/o Phelan, Hallinan & Schmeig, PC; Powers Kirn, LLC
ONEWEST BANK FSB (F/K/A INDYMAC)
c/o McCabe Weisberg & Conway, P.C;. Fein Such Kahn & Shepard, PC
CITIBANK, NA/ CITI RESIDENTIAL LENDING
c/o Zucker, Goldberg & Ackerman; Shapiro & Perez, LLP

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

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

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

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

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

1. The Foreclosure Plaintiffs named in this Order shall appear and show cause on the 19th day of January, 2011, before the Superior Court, Chancery Division, General Equity Part, 210 South Broad Street, Trenton, New Jersey at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, as to whether there are any reasons why the court should not:

   A. Direct the Office of Foreclosure to suspend the processing of orders and judgments in uncontested residential mortgage foreclosure actions where the Foreclosure Plaintiffs named in this Order, or their subsidiaries, servicers, subservicers, specialty servicers, or outsource firms acting on their behalf, are now servicing or have previously serviced the mortgage loan, pending further order of the court.

   B. Direct the Superior Court Clerk not to issue writs of execution or writs of possession where the Foreclosure Plaintiffs named in this Order or their subsidiaries, servicers, subservicers, specialty servicers, or outsource firms acting on their behalf, are now servicing or have previously serviced the mortgage loan, pending further order of the court.

   C. Direct that all pending Sheriffs' sales based on judgments associated with the Foreclosure Plaintiffs named in this Order or their subsidiaries,

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

D. Appoint a Special Master in accordance with R. 4:41-1 to perform the following duties.

i. To inquire into and report to the court on the extent of irregularities concerning affidavits, certifications, assignments and other documents from time to time filed with the court in residential mortgage foreclosure actions by the Foreclosure Plaintiffs.

ii. To inquire into and report to the court on the past business practices of the Foreclosure Plaintiffs and their subsidiaries, servicers, subservicers, specialty servicers, outsource firms, lawyers, or law firms acting on their behalf, for processing foreclosure pleadings and documents needed for court, including the role and responsibility of various persons referred to as robo-signers, who are or were executing affidavits, certifications, assignments or other documents submitted to the court.

iii. To inquire into and report to the court on the present business practices of the Foreclosure Plaintiffs and their subsidiaries, servicers, subservicers, specialty servicers, outsource firms, lawyers, or law firms acting on their behalf, for processing foreclosure pleadings and documents needed for court, including any remediation proposals or corrective actions taken and the

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

iv. To report to the court on the conformance to the court rules of the amended documents submitted by the Foreclosure Plaintiffs and their subsidiaries, servicers, subservicers, specialty servicers, outsource firms, attorneys or law firms acting on their behalf in light of improvements to their business processes, remediation proposals or corrective actions and whether the usual processing of residential mortgage foreclosure actions by the Office of Foreclosure should resume.

v. To report to the court whether sanctions should be imposed on the Foreclosure Plaintiffs and their subsidiaries, servicers, subservicers, specialty servicers, outsource firms, attorneys or law firms acting on their behalf, and, if so, proposing either a recommended amount or a suggested formula to determine an appropriate sanction.

vi. To report to the court whether the Office of Foreclosure and Superior Court Clerk's Foreclosure Processing Unit should be reimbursed and, if so, the recommended amount, for costs incurred for re-handling and re-processing foreclosure files.

E. Apportion the fees and costs of the attorney appointed in paragraph 2 of this Order and the fees and costs of a Special Master and any staff such Special Master might require among the Foreclosure Plaintiffs named in this Order as well as any other foreclosure plaintiffs or servicers who in

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

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

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

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

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

4. The Foreclosure Plaintiffs named in this Order shall file and serve an appearance, an answering affidavit, or a motion returnable on the return date of this order to show cause by January 5, 2011. Such appearance, answering affidavit, or motion must be filed with the Acting Clerk of the Superior Court, PO Box 971, 25 Market Street, Trenton, New Jersey 08625, and a copy of the papers must be sent or delivered directly to the chambers of Judge Mary C. Jacobson, P.J.Ch., at 210 South Broad Street, Trenton, N.J. 08625. A copy of all filings must be sent to the attorney appointed in paragraph 2of this Order and to all attorneys who have entered appearances in this matter

5. The attorney appointed in paragraph 2 of this Order to support the appointment of a Special Master and a suspension of foreclosure processing pending further court order shall file a response to any filings of the Foreclosure Plaintiffs by January 12, 2011 Replies, if any, by the Foreclosure Plaintiffs shall be filed by January 14, 2011.

6. If the Foreclosure Plaintiffs named in this Order do not file and serve opposition to this Order, the application will be decided on the return date and relief may be granted by default, provided that the Acting Clerk of the Superior Court files a proof of service at least three days prior to the return date.

7. The court will entertain argument, but not testimony, on the return date unless the court is requested no later than three (3) days before the return date to allow testimony and agrees to do so.

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

EXHIBIT 9

IN THE MATTER OF RESIDENTIAL MORTGAGE FORECLOSURE PLEADING AND DOCUMENT IRREGULARITIES

Administrative Order 01-2010
Docket # F-238-11

CLOSURE OF DECEMBER 20, 2010 ADMINISTRATIVE ORDER DIRECTING SUBMISSION OF INFORMATION FROM RESIDENTIAL MORTGAGE FORECLOSURE PLAINTIFFS CONCERNING THEIR DOCUMENT EXECUTION PRACTICES TO A SPECIAL MASTER

To. Foreclosure Plaintiffs Filing 200 or more residential mortgage foreclosure actions in 2010:

AURORA LOAN SERVICES
BANK OF NEW YORK MELLON
BAYVIEW LOAN SERVICING, LLC
BENEFICIAL NEW JERSEY
DEUTSCHE BANK, N A
FEDERAL HOME LOAN MORTGAGE
FEDERAL NATIONAL MORTGAGE ASSOCIATION
HOUSEHOLD FINANCE CO
HSBC BANK USA, N A.
HSBC MORTGAGE CORPORATION
HUDSON CITY SAVINGS
METLIFE HOME LOANS
MIDFIRST BANK
MORTGAGE ELECTRONIC REGISTRATION SYSTEM
NATIONSTAR MORTGAGE
NJ HOUSING & MORTGAGE FINANCE AGENCY
PHH MORTGAGE CORP
PNC BANK
SOVEREIGN BANK
SUNTRUST MORTGAGE INC
TD BANK, N A.
THE BANK OF NEW YORK
US BANK, N.A.
WACHOVIA BANK N.A

Administrative Order 01-2010 was issued on December 20, 2010, and modified by Supplemental Administrative Order on January 31, 2011, in response to the request by the Chief Justice for an examination into residential mortgage foreclosure document preparation and filing practices, in order to protect the integrity of the process and ensure the veracity of filings with the court in foreclosure cases.

The operative provisions of Administrative Order 01-2010 provided *inter alia* that the twenty-four foreclosure plaintiffs that each filed 200 or more residential mortgage foreclosure actions in 2010 as identified in the caption were required to provide the

Special Master, Recall Judge Walter R. Barisonek, with certifications detailing their roles and the roles of their subsidiaries, servicers, and outsource firms in the foreclosure process and demonstrating affirmatively the absence of irregularities in their handling of residential mortgage foreclosure proceedings. Having found as to each respondent that the submitted documents are sufficient to establish that the institution has not engaged in irregular practices, the Special Master has entered dismissals in favor of each of the respondents, thereby allowing residential mortgage foreclosure actions involving those institutions to continue to be processed by the Superior Court Clerk's Office and the Office of Foreclosure in the normal course.

In a separate but related proceeding (In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities, Docket No F-59553-10), Judge Mary C Jacobson, Presiding Judge of the General Equity Division, Mercer County, issued a December 20, 2010 order directing six lenders and service providers[1] that had been implicated in irregularities in connection with their handling of residential mortgage foreclosure matters to show cause why the processing of uncontested residential foreclosure matters they had filed should not be suspended By order dated March 29, 2011, Judge Jacobson appointed a Special Master, retired Judge Richard J. Williams, to inquire into the document preparation practices of those entities and to review any remediation plans they may be directed to submit. Pursuant to Reports of Special Master Williams determining that each of the respondents in that order to show cause had made a prima facie showing of the reliability of its processes and upon agreement

[1] The six lenders and service providers named in Judge Jacobson's order to show cause were Bank of America; JPMorgan Chase; Citi Residential; GMAC (now Ally Financial); OneWest Bank; and Wells Fargo

by those respondents to a compliance monitoring program, Judge Jacobson subsequently ordered that each of the six respondents in the order to show cause may resume the filing and prosecution of uncontested residential mortgage foreclosure cases.

In accordance with the Judiciary's continuing obligation to protect the integrity of the residential mortgage foreclosure process and to ensure the veracity of filings with the court in residential mortgage foreclosure cases and pursuant to the authority of the Administrative Director of the Courts as set forth in the December 20, 2010 Administrative Order, it is ORDERED that:

1 The operative provisions of the Administrative Order 01-2010 related to the twenty-four foreclosure plaintiffs identified in the caption are hereby closed. However, pursuant to the findings of Special Master Barisonek, as set forth in his Final Report, I hereby instruct the Office of Foreclosure to periodically review submissions of respondent PHH Mortgage Corporation ("PHH") and servicer EverBank, d/b/a Everhome Mortgage ("EverBank/Everhome"),[2] in order to verify that they remain in full compliance with the provisions of the Rules of Court relating to residential mortgage foreclosures. If in that periodic review the Office of Foreclosure finds documents submitted by PHH and/or EverBank/Everhome to be insufficient or finds that those documents raise concerns that either of the two institutions has engaged in irregular practices, the Office of Foreclosure may refer the matter to the Mercer Vicinage General Equity Presiding Judge for appropriate action, which action might include conducting a

[2] EverBank, d/b/a Everhome Mortgage, serviced mortgages for respondents Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Bank of New York Mellon.

hearing and, depending on her findings, ordering the suspension of the processing of residential mortgage foreclosure actions involving those institutions.

2. The operative provisions of Administrative Order 01-2010 that make reference to Judge Jacobson's separate order to show cause also are hereby closed, subject to Special Master Williams' continued compliance monitoring as agreed to by the six respondents.

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

Date February 2, 2012

EXHIBIT 10

FILED Jan 05, 2011

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SUPERIOR COURT OF N.J.
REC'D
JAN 05 2011

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**

APPEARANCE OF WELLS FARGO BANK, N.A. AND RESPONSE TO THE COURT'S ORDER TO SHOW CAUSE

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Wells Fargo Bank, N.A.("Wells Fargo") shares the Court's goal of moving individual foreclosures forward in a manner that confirms the integrity of those foreclosures for all parties. Wells Fargo fully intends to cooperate with the Court to formulate a process under the Rules of Court to review facts in individual uncontested foreclosures as necessary. It hereby enters its appearance, by and through counsel, and responds to the Court's Order Directing the Named Foreclosure Plaintiffs to Show Cause Why the Court Should not Suspend the Ministerial Duties of the Office of Foreclosure and the Superior Court Clerk's Office Regarding the Processing of Certain Uncontested Residential Mortgage Foreclosure Actions, Stay Sheriff's 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 (the "Order to Show Cause" or "OTSC").

For the reasons set forth below, Wells Fargo respectfully submits that the actions contemplated in the Order to Show Cause are not the correct approach for the Court to achieve its stated goals. Rather, the Court should permit revised or supplemental affidavits to be filed in individual foreclosure cases pending before the Court, allow foreclosures in which a judgment has already been entered to proceed to sale and permit new foreclosure actions to be filed and proceed under the recently Amended Rules of Court.

I. SUMMARY

The Court entered the OTSC *sua sponte* on December 20, 2010 at the direction of the Chief Justice of the New Jersey Supreme Court. The Chief Justice apparently made that directive after reading a position paper submitted *ex parte* on November 4, 2010 (the "Report") by Legal Services of New Jersey ("LSNJ"). A copy of the OTSC was provided to a New Jersey law firm that periodically represents Wells Fargo in connection with foreclosures filed in the state.

The OTSC is directed to six of the many financial institutions that file foreclosure actions

in New Jersey. The OTSC provides that the Court is going to take three primary actions unless given reason not to do so: suspend all foreclosures and foreclosure sales involving Wells Fargo in any respect; appoint a Special Master to inspect the past and present business practices of Wells Fargo and various third parties, and enter sanctions against Wells Fargo.

The Court should not undertake the directives proposed in the OTSC because they are not necessary to ensure the appropriateness of any uncontested foreclosure judgment now of record or to be entered in the future Wells Fargo respectfully states that there is no basis for the Court to presume that the data in any, let alone all, affidavits filed by Wells Fargo are, or were, factually inaccurate. Out of an abundance of caution, Wells Fargo is well-prepared to submit supplemental affidavits in New Jersey foreclosure cases (as it has elsewhere) once the Office of Foreclosure indicates that it will accept such affidavits. Wells Fargo remains committed to following the judicial foreclosure process in New Jersey and to supporting the integrity of its evidentiary foundation and its adherence to the rules of procedure.

Proceeding in the manner contemplated by the OTSC would raise substantial questions as to whether such actions are permitted under the Constitution of the State of New Jersey as well as this State's statutes and Rules of Civil Procedure. Moreover, the directives could have other unintended negative effects on the State's economy. The Court can avoid the difficult legal issues raised by the OTSC and achieve its stated goals by allowing Wells Fargo to continue its process of reviewing and re-submitting affidavits in pending foreclosures, adopting a procedure as necessary for review of affidavits in individual cases and by enforcing recent amendments to the Rules of Court.

II. FACTUAL BACKGROUND

As described below and as supported by the referenced Wells Fargo affidavit of Alan Jones, the following facts are true and make unnecessary the measures proposed in the OTSC:

- Wells Fargo plays varied roles in the residential mortgage market and in New Jersey foreclosures;
- Wells Fargo takes seriously its obligations to attempt to keep New Jersey borrowers in their homes and avoid foreclosure;
- Wells Fargo's historical affidavit process did not result in material factual errors or improper foreclosure filings;
- Wells Fargo is prepared to conduct an extensive review of the affidavits it has used in pending foreclosures in New Jersey and to file supplemental affidavits where appropriate, just as it is already doing in other judicial foreclosure states.

A. Wells Fargo and its Role as Plaintiff and as Servicer in Foreclosures

Wells Fargo Bank, N.A. is a national banking association. It is a wholly owned subsidiary of Wells Fargo & Company, a financial services holding company.[1] Wells Fargo and its affiliates are involved in foreclosure filings in New Jersey in three different capacities: as a servicer for an investor-owned loan, as servicer for a loan owned by Wells Fargo and as a trustee on behalf of the owners of a securitized loan Understanding these different roles is important because of the manner in which an order from the Court would impact Wells Fargo (and the other servicers).

First, Wells Fargo acts as a servicer of mortgage loans. Approximately 80% of the mortgage loans that Wells Fargo services on a nationwide basis are owned by other investors such as Fannie Mae, Freddie Mac, Ginnie Mae, or private securitized trusts *Affidavit of Alan*

[1] There are other subsidiaries that also file foreclosures in the State of New Jersey including, Wells Fargo Financial, Inc through its subsidiaries Wells Fargo Financial New Jersey, Inc and Wells Fargo Financial America, Inc ("WFF") and Wachovia Bank, N A (Wachovia), Wachovia Mortgage FSB and Wachovia Mortgage Corp *Jones Aff*, ¶3. Wells Fargo is the owner and servicer of all loans previously owned and serviced by Wachovia On March 20, 2010, Wachovia was merged into Wells Fargo Bank, N A , and Wachovia ceased to exist As a result, Wachovia may have filed foreclosure actions prior to April, 2010 under its name, but Wells Fargo is now the plaintiff in those cases as the successor in interest. *Id*, ¶4

Jones, ¶4 (hereraſter "Jones Aff") The remaining 20% are loans owned by Wells Fargo or an affiliate *Id.* When Wells Fargo is the servicer of a loan, it undertakes the collection of contractual payments, loss mitigation activities which includes loan modifications, short sales of properties and deeds in lieu, and collection activities which includes foreclosures *Id.* If the loan is owned by another entity, Wells Fargo undertakes its responsibilities as servicer in accordance with the contracts that govern its relationship with the owner of the loan, as well as the loan documents. *Id.*

Second, when Wells Fargo appears as a plaintiff in a foreclosure proceeding, it is often appearing solely in its capacity as a trustee for the holders of privately issued mortgage backed securities *Id*, *¶6.* In those circumstances, the servicer for the securitized loans (not necessarily Wells Fargo) engages in all of the activity undertaken in the foreclosure lawsuit. *Id.* The servicer is authorized to act on behalf of the trust pursuant to contracts that govern the administration of the securitized assets, commonly known as pooling and servicing agreements The selection of the servicer is also governed by those contracts. *Id.* Accordingly, in its trustee capacity, Wells Fargo generally plays no active role in the servicing or foreclosure of mortgage loans. *Id.*

B. Wells Fargo Takes Loss Mitigation Seriously

Wells Fargo makes extensive efforts to work with its borrowers to avoid foreclosure altogether. Wells Fargo's delinquency and foreclosure rates in the second quarter of 2010 were 75% of the industry average. *Jones Aff*, ¶7. Less than 2% of its owner-occupied servicing portfolio went to a foreclosure sale between June, 2009 and June, 2010. I*d.*

Wells Fargo takes numerous steps to work with its borrowers who are in default. Wells Fargo is able to communicate with 80% of its borrowers who are more than 60 days delinquent. Of those borrowers who choose to work with Wells Fargo, approximately 70% are able to avoid

a foreclosure filing. *Id*, ¶9

From January 2009 through September 30, 2010, Wells Fargo provided homeowners across the country with 556,868 active trial or completed mortgage modifications Some of these modifications were made through the well publicized U.S. Treasury's Home Affordable Modification Program ("HAMP") *Id*, ¶8 However, not all loans serviced by Wells Fargo are eligible for modification under HAMP, and approximately 88% of the modifications provided by Wells Fargo were made outside of HAMP *Id.* From January 1, 2009 through June 30, 2010, nationwide Wells Fargo completed approximately 60,000 HAMP and non-HAMP modifications that involved principal forgiveness, with a total reduction of principal of more than $3.2 billion. *Id*, ¶10.

As part of its ongoing efforts to assist borrowers, Wells Fargo has participated in five different home preservation workshops in New Jersey over the past two years. *Id*, ¶11. In addition, a large home preservation workshop is scheduled to take place on January 12 and 13, 2011 at the Meadowlands Exhibition Center. *Id.* These events permit borrowers to speak directly with loss mitigation specialists in order to determine if modification is possible. *Id.*

If a loan is referred to foreclosure, Wells Fargo completes quality assurance reviews to ensure that it has undertaken all of its internally prescribed as well as legally prescribed loss mitigation efforts. *Id*, ¶12. Wells Fargo performs a quality assurance review of loans referred to foreclosure to ensure it has made all required borrower contacts and solicitations, it validates that correct income and expense information has been captured, it validates that there is evidence that retention or liquidation (short sale/deed in lieu of foreclosure), if necessary, have been offered, and that the loan was not actively being reviewed for a workout solution at the time of referral. *Id* Additionally, Wells Fargo hires local New Jersey counsel to handle the foreclosure action, who ensure title is correctly in the name of the plaintiff and all other legal processes are

properly followed. *Id.*

Even after the foreclosure process is initiated, Wells Fargo continues its efforts to work with borrowers Significantly, in addition to loss mitigation efforts, Wells Fargo permits borrowers in New Jersey to reinstate their loans by paying all past due amounts and foreclosure related costs right up until the date of sale. *Id*, ¶*13*

On a nationwide basis as of November, 2010, the average borrower was 16 months delinquent at the time of the foreclosure sale. *Id*, ¶*14*. Delaying foreclosure can be damaging because properties cannot be resold to stabilize communities and home prices. Wells Fargo's records show that on a nationwide basis, in the late stages of foreclosure, approximately 25% of the properties are already vacant. *Id*, ¶*15* Stopping the foreclosure process would allow these properties to further deteriorate, and it would not allow them to repaired or sold to new owners. This action would create additional burdens on the revitalization efforts made by cities and neighborhoods most impacted by foreclosure.

C. Wells Fargo's Historical Affidavit Process

Recent media accounts and the LSNJ Report have focused on the level of personal knowledge of the person signing the affidavit. Wells Fargo respectfully notes that the LSNJ Report appears to presume that the data in affidavits filed by Wells Fargo in New Jersey is not accurate. In fact, there is no basis for this presumption. While Wells Fargo has recognized the need to revise its procedures in this regard as will be discussed below, the loan balance information included in affidavits of indebtedness comes directly from its system of record. *Id.*, ¶*16*. Wells Fargo's processes have always ensured a high level of factual accuracy

D. Affidavit Review and Re-filing

To provide foreclosure courts with additional reassurances as to the appropriateness of foreclosures that have already been filed, in late October, 2010, out of an abundance of caution,

the decision was made to submit supplemental affidavits for approximately 55,000 foreclosures, which were pending in 23 judicial foreclosure states *Id*, ¶17 Because the Office of Foreclosure has indicated to several foreclosure firms that it is not currently accepting supplemental affidavits in the State of New Jersey, the supplemental affidavits for New Jersey have not been submitted. However, Wells Fargo is well-prepared to submit these supplemental affidavits in New Jersey foreclosure cases as well.

III. ARGUMENT

A. THE COURT'S PROPOSALS TO HALT ALL PENDING FORECLOSURES AND APPOINT A SPECIAL MASTER ARE NOT NECESSARY TO REMEDIATE OR RESTORE INTEGRITY TO THE FORECLOSURE PROCESS.

1. The Suspension Of Entry Of Judgments And Of Sales Is Not Necessary To Accomplish The Court's Stated Goals.

a. The data contained in Wells Fargo's foreclosure affidavits is factually accurate and can be further verified or certified by Wells Fargo.

The OTSC states in essence that the Court believes a suspension of foreclosures is necessary to protect the integrity of foreclosure complaint processing in New Jersey and to confirm that foreclosure judgments are being entered based on reliable and accurate information. Respectfully, the Court need not halt all pending foreclosures to accomplish this goal

The OTSC relies on the LSNJ Report as its basis for concluding that many foreclosure affidavits could be inaccurate or even fraudulent. However the Report does not identify a single instance in which *an affidavit executed by Wells Fargo* contained incorrect borrower, mortgage, loan delinquency, or loan balance information. Moreover, none of the exhibits to the report contains any judicial finding of wrongdoing *by Wells Fargo* There certainly is no evidence that anyone forged a signature of a Wells Fargo employee to an affidavit, or that any Wells Fargo affidavit contained inaccurate data, or that any foreclosure filed by Wells Fargo was unjustified.

There is also no evidence that Wells Fargo filed a foreclosure in New Jersey where the borrower was not in payment default, that Wells Fargo did not provide required notice to the borrower, or that Wells Fargo did not bring the action in the name of the correct plaintiff. In light of these circumstances, there is no basis for the Court to conclude that foreclosures filed by Wells Fargo should be suspended on a wholesale basis.

Moreover, Wells Fargo has already begun a process of filing supplemental affidavits of indebtedness in other judicial foreclosure states. This process involves a review of every piece of information contained in each affidavit currently of record in a pending judicial foreclosure. *Jones Aff*, ¶*18-19* Where Wells Fargo finds mistakes, if any, it will fix them. Up until this point, the Office of Foreclosure has indicated to several foreclosure firms that it is not currently accepting supplemental affidavits in the State of New Jersey. *Id.*, ¶*17*. As a result, Wells Fargo has focused its efforts on other states in which affirmative or corrective affidavits are being accepted for filing. Nonetheless, New Jersey is among the states included in the review and re-filing effort Once affidavits are accepted for filing in New Jersey, Wells Fargo estimates that it will take approximately four to six weeks to complete this effort due to the detailed reviewed of statements made in prior affidavits. These supplemental affidavits will affirm the appropriateness of moving forward with each foreclosure.

b. The rights of foreclosure defendants in uncontested foreclosure proceedings were protected by the Rules of Court and Statutes in place prior to December 20, 2010.

LSNJ contends that, absent an extraordinary and emergency intervention by the Judiciary, New Jersey's residential mortgage borrowers will be left without information concerning, or defenses to, foreclosures However, under the Rules in effect prior to December 20, 2010 and currently, New Jersey already provided its residential mortgage borrowers with legally guaranteed opportunities to be made aware of, to respond to, and to correct any positions

being taken by a mortgage servicer in a foreclosure action.

Mortgage debtors are provided with protections at each phase of the case, which correspond to the procedural milestones common to every uncontested foreclosure proceeding: Notice of Intent, Complaint, Notice of Default, Notice of Right to Cure, Motion for Final Judgment, Final Judgment and Notice of the Sheriff Sale The protections at each phase of the case are as follows:

Notice of Intent - *N.J.S.A.* 2A:50-56 (providing the debtor with notice of the amounts necessary to cure and rights under the Fair Foreclosure Act). There is no indication in the Report that Wells Fargo has failed to serve Notices of Intent.

Complaint – *R.* 4:64-1(b); *R.* 4:4-4 (providing the debtor with information about the terms of the debt instruments and opportunity to respond). There is no evidence that Wells Fargo has failed to serve complaints in accordance with the Rules.

Default – *R.* 4:43-1 (debtor served with notice of default and another opportunity to appear and cure). There is no evidence that Wells Fargo has failed to serve default notices.

Notice of Right To Cure – *N.J.S.A.* 2A:50-58(a)(2) (providing debtor with another opportunity to cure before application for final judgment). There is no evidence that Wells Fargo has failed to provide debtors with the Notice and further, Wells Fargo goes beyond this requirement and permits reinstatement until the date of the sheriff sale.

Motion for Final Judgment – *R.* 4:64-1(d)(2); *R.* 4:65-1 (providing debtor with a notice of all amounts due and essential terms of the debt instruments and opportunity to be heard). There is no evidence that Wells Fargo has failed to provide this required notice.

Final Judgment – *R.* 4:64-1(d)(2), *R.* 1:34-6; *R.* 4:43-2 (Office of Foreclosure elects to recommend or withhold recommendation for final judgment and if entered, the debtor is served with the final judgment, providing another opportunity to be heard and/or raise questions about

the adequacy of the proofs). There is no evidence that Wells Fargo fails to serve final judgments upon debtors.

Sheriff Sale – *R.* 4:65-2; *Hardyston Nat'l Bank v. Tartamella*, 56 N.J. 508, 513 (1970) (debtor served with notice of the sheriff sale and entitled to a ten day grace period to redeem the property). There is no evidence that Wells Fargo does not adhere to the requirements for a sheriff sale in New Jersey.

Thus, contrary to the impression created by the Report, the Fair Foreclosure Act and the Court Rules, as they existed prior to December 20, 2010, afforded the debtor with repeated opportunities to challenge the foreclosure and the veracity of the information supporting the foreclosure.

c. **Any concerns regarding foreclosure affidavits should be addressed and remediated, if necessary, in the context of the individual cases in which they were filed.**

Wells Fargo understands that the existence of multiple notices and cure opportunities does not guarantee a perfect process or the absence of all error. Moreover, Wells Fargo shares the Court's goal of ensuring the integrity of the judicial process. However, New Jersey's existing foreclosure process and case law already contemplate such imperfection and consequently allow errors to be corrected in the context of actual, ongoing foreclosure proceedings involving the actual parties-in-interest, and the judge best informed about the individual facts and circumstances of that particular case.

The OTSC and the Report upon which it is premised appear to disregard these existing opportunities for corrective action and assume that the pre-existing system is incapable of responding to its present challenges. Under the existing Rules, debtors as well as foreclosure plaintiffs can seek the intervention of the Court to address problems or errors in a particular case: debtors can move for reconsideration, move to vacate, and can appeal. *R.* 4:49-2, *R.* 4:50-1, *R*

2:2-3, foreclosure plaintiffs can move to correct, amend, supplement or vacate throughout the process as well *See, e g Township of Lakewood v Block 251, Parcel 34, Lots 3359 to 3370*, 48 N.J. Super. 581 (App. Div. 1958); *Montclair Trust Co v Star Co*, 141 N.J Eq 263 (E & A 1948)[2] The existing opportunities for defendants to object to or appear in foreclosure actions together with the absence of any evidence of factually faulty affidavits demonstrate that a wholesale suspension of all foreclosures is not necessary to ensure the integrity of New Jersey foreclosures. Instead, any issues regarding existing affidavits should be raised in the pending foreclosure cases.

2. The Court's Proposal To Suspend The Entry of Judgments and of Sales Could Negatively Impact the Public Interest.

a. The suspension of sales of vacant properties will not serve the public interest.

By the time residential mortgages reach a foreclosure sale, approximately 25 percent of those properties are vacant. *Jones Aff*, ¶15 If the borrower has already left the property and found alternative housing then there is no reason to delay the sale of that property. In fact, there are compelling reasons to move forward with sales of vacant property.

Vacant properties are likely to be in need of repair and renovation. The longer a house remains vacant the more it is likely to depreciate in value Concentrations of vacant properties in a neighborhood will negatively impact values of adjacent homes and are associated with increased criminal activity. *See e g.* W. Scott Frame, *Estimating the Effect of Mortgage Foreclosures on Nearby Property Values A Critical Review of the Literature*, Economic Review Number 3, 2010 Federal Reserve Bank of Atlanta (describing several studies of the impact of foreclosure and vacancy on home values).

[2] It should be further noted that the appointment of the Special Master will essentially constitute a privatization of what has heretofore been a public judicial function and which continues to be required by the Court Rules, statutes and the New Jersey Constitution to be such

Vacant properties that are part of a condominium regime or in a community with common areas or a homeowner's association are a drain on the home owners around them. Condominium or neighborhoods homeowner associations are hurt by long-term vacancy because absent property owners are no longer contributing to the cost of maintaining community common areas or other costs such as insurance Moreover, continuing record ownership of property can lead to additional personal liability for borrowers who have no real interest in remaining in the property. As a result, halting the sale of vacant properties will hurt rather than promote the public interest.

b. A prolonged delay of foreclosure sales will hurt the recovery of the housing market and will hamper availability of home financing in the future.

Economists have noted that a prolonged delay in foreclosures will only delay the recovery of the housing markets. If the Court were to act with a state wide suspension of foreclosures, this would prolong the current downturn in housing prices and further deter interest in property sales. Mark Zandi, chief economist of Moody's, has commented that the housing price recovery in a given state is closely tied to the length of the foreclosure process. Robbie Whelan, *Wall Street Journal,* October 11, 2010. Longer foreclosure processes correlate to slower recovery of the housing market. Zandi has also noted that delays add to the costs of foreclosure, which could lead to an increase in the costs of mortgage financing as lenders pass these costs to future borrowers. Robbie Whelan, *Wall Street Journal,* October 9, 2010. As recently as January 4, 2011, Standard and Poor's issued a statement in which it commented "The growing volume of distressed properties remains one of the primary factors hindering a full recovery in the U.S. housing market," and further noted that New Jersey's foreclosure process is one of the Northeast's lengthiest. Alistair Barr, *MarketWatch,* November 4, 2011.

Obama Administration officials also cautioned against a nationwide moratorium last fall.

As noted by David Stevens, the commissioner of the Federal Housing Administration, "Stopping that process could have significant impacts on prolonging the housing recovery." Shaun Donovan, Secretary of the Department of Housing and Urban Development also noted the negative impact a widespread and lengthy moratorium on foreclosures could have on the housing recovery and the overall economic recovery. The delay and uncertainty created by a suspension of foreclosure sales will hurt the recovery of New Jersey's housing market and increase the cost of obtaining a home loan in the state.

c. The proposed scope of the halt in foreclosures is overly broad.

There is no reason to halt entry of foreclosure judgments provided that foreclosure counsel makes the certification now required by Rules 4.64-1 and 4:64-2. Even if the Court were to conclude that some temporary suspension of foreclosure activity is necessary, there are a number of categories of foreclosures that should not be halted under any circumstances As argued above, there is no reason to halt the sale of vacant properties because the long-term vacancy of those properties does not aid the borrower and hurts both the neighborhood and the municipality in which the property is located.

In addition, there is no reason to halt foreclosures that are re-initiated after Wells Fargo has obtained relief from the Bankruptcy Code's automatic stay. In most instances in which a borrower has filed for bankruptcy and Wells Fargo has received relief from stay in the federal bankruptcy court, there will have been an adjudicatory process pursuant to which Wells Fargo would, by necessity, have established that the borrower has defaulted and Wells Fargo has the right to enforce the default. *See* 11 *U S C.* § 362(d), General Order Relating to Motions for Relief from Stay dated November 25, 2009, www.njb uscourts.gov/dw/localRules/genOrders

For the same reason, there is no reason to halt foreclosure sales that result from contested foreclosures that have been resolved in favor of Wells Fargo. Contested foreclosures have been

adjudicated by the Chancery Court in the county where the property is located and that Court has determined that the sale should go forward.

3. The Appointment Of A Special Master Is Not Necessary To Ensure The Integrity Of The Foreclosure Process.

a. Wells Fargo is already taking steps to confirm the accuracy of previously filed affidavits and any concerns regarding these foreclosure affidavits should be addressed in the context of the specific case.

In late October, 2010, out of an abundance of caution and to provide an additional level of assurance regarding Wells Fargo's processes, the decision was made to submit supplemental affidavits for approximately 55,000 foreclosures, which were pending in 23 judicial foreclosure states. *Jones Aff.*, ¶17. Upon information and belief, because the Office of Foreclosure indicated to Wells Fargo's local foreclosure firms that it is not currently accepting supplemental affidavits in the State of New Jersey, the supplemental affidavits for New Jersey have not been completed.

Wells Fargo has also revised its training and procedures for executing affidavits in new foreclosure filings *Id*, ¶18 Affidavits of indebtedness executed by Wells Fargo continue to be based on information obtained directly from its system of record. *Id.* However, Wells Fargo has implemented additional procedural controls and audits to ensure that the employee executing the affidavit has reviewed the affidavit and personally confirmed its accuracy against Wells Fargo's business records. *Id.*, ¶¶18-20

The signer of each affidavit must read and verify all of the data and statements on the affidavit which, depending on the state, may include the following· foreclosing entity, borrower's name and property address, balance information (including an itemization of all amounts due), signer's name, title, and company information. *Id*, ¶19. If the signer's signature is required to be notarized, the affidavit is notarized based on the state law where the signer is

located. Both the signer and the notary have been trained to follow appropriate state notary laws. *Id*, ¶20 Neither the remediation efforts nor any review by Wells Fargo has found a pending foreclosure in which the borrower was not in payment default or as to which Wells Fargo did not have the right to file the foreclosure. *Id*, ¶21

In light of these steps, there is no reason for this Court to appoint a Special Master and, in particular, to bestow upon him or her the scope of powers contemplated in the OTSC. Any review of supplemental affidavits is best accomplished in the context of the individual foreclosure cases in which they are filed.

b. The Amended Rules of Court will ensure that prospective foreclosures are based on verified data

The Amended Rules under *R* 4:64-1 specifically provide for the submission of a Certification of Diligent Inquiry which requires that the attorney representing the foreclosure plaintiff certify that he or she has spoken with the plaintiff's representative and that the information supporting the foreclosure action is accurate and based on the personal knowledge of that plaintiff's representative. The purpose of the Amended Rules is to ensure that the information being submitted to the Court has been reviewed and is accurate. This Rule revision addresses any and all concerns that the Court may have concerning the accuracy of the information and the integrity of the process on a going-forward basis for new foreclosure actions. A Special Master – at great expense to the targeted banks but at an even steeper cost to New Jersey's economy and taxpayers – could add nothing beyond what the Amended Rules are already assuring.

Because the OTSC appears to address "pending" foreclosure proceedings, every matter that is the *theoretical* subject of this Court's OTSC is already – by definition – *actually* subject to another New Jersey Judge's jurisdiction. This single fact highlights the procedural and practical

problems with the Court's proposal but it also suggests a solution. allow any issues to be addressed under the Amended Rules in the individual, pending foreclosure cases.

With regard to the pending foreclosure cases, on December 20, 2010, the Supreme Court ordered that the same affidavits be provided to attest to the accuracy of the information supporting each of those cases Thus, the Amended Rules, the accompanying Order of the Supreme Court, and the Order of the Acting Administrative Director of the Courts, comprehensively address the concerns animating the OTSC issued by the Court

4. The Proposed Scope of the Master's Powers is Overly Broad.

a. As a national bank, Wells Fargo is already subject to the exclusive visitorial powers of the OCC.

The Court does not need to appoint a Special Master with the power to investigate Wells Fargo's business practices. Congress and the OCC have established an exclusively federal regime governing the exercise of "visitorial" powers over national banks such as Wells Fargo. Federal law defines "visitorial" powers as: (i) inspection of a bank's books and records, (ii) supervision of bank activities; and (iii) enforcement of bank inspection and supervision. 12 *U S C* 484(a); 12 *C F R.* § 7.4000. The OCC has already announced publicly that it is exercising its examination powers to conduct "intensive, on site examinations of the eight largest national bank mortgage servicers Through these examinations we are independently testing the adequacy of governance over their foreclosure process to ensure foreclosures are completed in accordance with applicable legal requirements and that delinquency affidavits and claims that are the basis for the foreclosure are accurate." [December 1, 2010, Testimony of John Walsh, Acting Comptroller of the Currency, before the Committee on Banking, Housing and Urban Affairs, United States Senate.]

The Court will potentially infringe on this exclusive federal jurisdiction if it appoints a

"Special Master" who actually conducts an "in-depth review of [Wells Fargo's] policies, procedures, processes and systems to ensure that sufficient, properly trained staff and adequate quality controls are in place to satisfy compliance . . . ." OTSC at 3 *See Cuomo v The Clearing House Association, L.L.C* , 129 S.Ct 2710, 2721 (2009)(holding that preemption readily extends to "any form of administrative oversight that allows a sovereign to inspect books and records on demand, *even if the process is mediated by a court* through prerogative writs or similar means.")(emphasis added) Although the Court states that the potential inquiry would be undertaken for the stated purpose of ultimately ensuring "the integrity of the foreclosure process," that fact will not save the proposed activities of the Special Master from preemption should such a Special Master be appointed and should his actions be as broad-ranging as suggested by the OTSC.

b. The OTSC would apply to unidentified third parties

The OTSC seeks the appointment of a Special Master not only to investigate the business practices of the "Foreclosure Plaintiffs," but also to investigate "their subsidiaries, servicers, subservicers, specialty servicers, [and] outsource firms . . . ." *See* OTSC at 5. The OTSC does not identify any of these third-party entities, yet nevertheless seeks to bind them to the OTSC, make them subject to the demands of the Special Master, and have the Special Master determine whether "sanctions" should be issued against them. *See* OTSC at 4-6.

The OTSC, as a result, is overbroad in scope to the point that it undermines the constitutionality of the entire proceeding First, there is no mechanism that comports with due process that will provide for jurisdiction over the third-party entities without identifying them by name and putting them on notice of the existence of proceedings against them. Second, the OTSC assumes that there is an agency relationship between the "Foreclosure Plaintiffs" and that the unnamed "servicers, subservicers, specialty servicers, [and] outsource firms" conducted

operations "on behalf of" the "Foreclosure Plaintiffs " *See* OTSC at 4-6. And finally, the OTSC makes the third-party allegations central to the claims against the Foreclosure Plaintiffs (*see, e g* , OTSC at 3) and suggests that the unidentified third-parties themselves may be sanctioned (*see, e g* , OTSC at 6) The OTSC has rendered these unnamed, third-party entities necessary and indispensable parties under the Supreme Court's Rules for mandatory joinder. *See R.* 4:28-1.

B. THE SUSPENSION OF FORECLOSURES IN CONJUNCTION WITH THE APPOINTMENT OF A SPECIAL MASTER WITH BROAD POWERS WOULD VIOLATE THE NEW JERSEY CONSTITUTION.

1. The Court's Proposed Actions Would Violate The Doctrine Of Separation Of Powers.

In response to perceived public policy concerns, the Court has moved beyond its traditional roles of adjudicating disputes and supervising the conduct of attorneys and litigants and taken action that is legislative in nature. Wells Fargo respectfully states that this is contrary to longstanding Supreme Court precedent and it violates the doctrine of separation of powers. The OTSC is framed as an attempt to "restore integrity to foreclosure processing" through a "balancing of the court's supervisory and adjudicatory roles and responsibilities."[3] But this proceeding and the remedies it contemplates are neither adjudicatory nor supervisory.

The actions taken and contemplated by the Court do not fall within its traditional adjudicatory power, as this matter does not arise out of a live dispute between actual parties in a particular uncontested foreclosure action. This action does not involve a party to a pending foreclosure action who has challenged the integrity of submissions by Wells Fargo. Wells Fargo has no adversary in this matter save for the Court and the Special Counsel the Court has appointed to serve as such. Nor does this proceeding fit squarely within the Court's supervisory power, which is limited to the conduct of lawyers and litigation. The OTSC is not directed to a

specific pleading or even to specific litigation. Rather, it is a broad preventative measure, in response to a report by LSNJ, and its threatened remedies would go far beyond any filings in past, present or future litigation, apparently requiring compliance with as-yet-unspecified standards of business conduct before access to the courts of New Jersey is granted. That action has all the characteristics of legislation and none of the characteristics of traditional judicial action under the New Jersey Constitution

The limits to the state judiciary's role and responsibilities are defined in Article III of the New Jersey Constitution:

> The powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution.

N.J. Const art. III. The Court's rule-making power is addressed in Article VI of the Constitution:

> The Supreme Court shall make rules governing the administration of all courts in the State and, *subject to the law*, the practice and procedure in all such courts.

N.J. Const., Art. VI, § II, ¶ 3 (emphasis added). "The phrase 'subject to law' in Article VI, Section II, paragraph 3 of the Constitution thus serves as a continuous reminder that the rule-making power as to practice and procedure must not invade the field of the substantive law as such . . . [The courts] are not to make substantive law wholesale through the exercise of the rule-making power." *Winberry v Salisbury*, 5 N.J. 240, 248, *cert. denied*, 340 U.S. 877 (1950), *New Jersey Dist Court Ass'n, Inc v New Jersey Supreme Court*, 205 N J Super. 582, 586-87 (Law Div. 1985).

The New Jersey Supreme Court recognizes the critical importance of separation of powers:

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[3] Order to Show Cause at 2-4

> No principle is more distinctive of our form of government than the separation of powers among the three coordinate branches. The total power to govern is thus distributed with checks and balances to prevent the despotism which anciently was and today still is characteristic of a system in which all power is concentrated in a single authority. It was the purpose of the Constitution of 1947 to give full expression to this principle and to eliminate the 'diffusion of considerable executive power among the legislative and judicial branches of the government' under the Constitution of 1844 N.J.S.A., Constitution, p. xvi (1954). Except insofar as the prescribed checks and balances themselves authorize, no branch may directly or indirectly impose its will upon another.

Morss v. Forbes, 24 N.J. 341, 381-82 (1957) *See also New Jersey State Bar Ass'n v. N.J.*, 387 N.J. Super. 24, 45 (App. Div. 2006) ("In our judgment, if we were to adopt the approach urged here by plaintiffs, we would ignore those limitations and substitute our judgment for that of the Legislature. That we cannot do.")

The seminal case on separation of powers is *Winberry v. Salisbury*, 5 N.J. 240, *cert. denied*, 340 U.S. 877 (1950). In *Winberry*, the New Jersey Supreme Court interpreted Article VI, Section 2, paragraph 3 of the New Jersey Constitution (1947) to mean that the rule-making power of the Supreme Court is confined to practice, procedure, and administration. 5 N.J. at 245. The Court held that when its rule-making authority is exercised in those areas, it is not subject to conflicting legislation. *Id.* However, the Court also acknowledged that its rule-making power is subject to and exclusive of substantive law (as opposed to procedural law) that is within the domain of the Legislature. The Court defined substantive law as including "much more than legislation, it comprehends also the rights and duties which have come down to us through the common law." *Id.* at 248.

In sum, the OTSC involves not only the manner in which foreclosure claims will be processed by the Courts but rather what business standards and practices must be established and adhered to before the right to foreclosure will be allowed. These are substantive acts for a number of reasons. First, the OTSC is the Court's response to a perceived public policy issue,

not a dispute brought to the courts by actual litigants. Second, the Court's contemplated actions are not limited to scrutinizing the integrity of court filings in any case or cases. Rather, the OTSC provides for appointment of a Special Master to review Wells Fargo's past and present foreclosure practices. While examination of filings with the Court, in the context of a case or in a disciplinary proceeding against an attorney would be within the Court's adjudicative and administrative powers, the contemplated actions purport to address Wells Fargo's business practices generally, in New Jersey and in other states – without an actual dispute. Third, the contemplated actions effectively seek to establish new requirements for conducting business in New Jersey, by, among other things, investigating the training of staff, quality controls, policies, procedures and processes. Fourth, the contemplated actions effectively limit access to the courts to companies that meet its as-yet undefined standards of desirable business practices. As such, the OSTC and the contemplated actions thereunder have all the hallmarks of legislation and is inconsistent with the doctrine of separation of powers.

2. Suspending Foreclosures Indefinitely And Appointing A Special Master Would Violate Due Process.

a. The OTSC provides insufficient notice

Wells Fargo and the other Foreclosure Plaintiffs are in the unusual position of having no complaint against them giving notice of specific claims; no adversary articulating a particular grievance on a particular set of facts; no "who what when where" of allegations of fraud; no specific allegations of a violation of law or Rule in New Jersey at all. Instead, the OTSC recites only a generalized concern with "the accuracy and reliability of [unidentified] documents submitted to the Office of Foreclosures;" a "need to restore integrity to foreclosure processing"; and a need "to prevent and/or cure any potential fraud upon the court." In response to those general concerns, the OTSC would require Wells Fargo to prove the absence of any violations,

or face, among other things, an inability to access the courts of this state. This procedure, designed to remedy a perceived wrong, has created another, depriving the Foreclosure Plaintiffs of their due process rights to notice and a fair hearing.

The due process clause of the Fourteenth Amendment to the United States Constitution guarantees to all parties in litigation the right to know the evidence and contentions advanced against them as well as the perceived facts which inform a judge's decision. The guarantee includes a fair opportunity to meet those proofs, arguments and perceptions of fact. *Goldberg v Kelly*, 397 U.S. 254, 267-71 (1970). The due process values embodied in Article I, paragraph 1 of the New Jersey Constitution require no less. *See Ledezma v A & L Drywall*, 254 N J Super. 613, 618 (App. Div. 1992). Litigants are entitled to fair notice of the claims against them so that a response can be prepared and they can be fairly heard *Nicoletta v North Jersey Dist Water Supply Commission*, 77 N.J. 145, 162 (1978).

The generalized allegations of the OTSC fail to meet this standard. In fact, no attempt is made to identify any matter in New Jersey involving Wells Fargo in which any violation of law occurred. Instead, the OTSC states that the Foreclosure Plaintiffs were selected based on "a public record of questionable practices that this court must address now in its supervisory capacity over the processing of foreclosure matters." The OTSC does not state what the "public record" referred to is, but apparently it is the report of LSNJ – an accumulation of media reports and deposition testimony regarding events largely outside of New Jersey compiled by an entity that represents numerous individuals in foreclosure matters. The closest the OTSC comes to an actual allegation is that deposition testimony in other states, along with testimony before Congress, "has raised serious questions about the accuracy and reliability of documents submitted to courts by lenders and service providers in support of foreclosure complaints;" and that "it appear[s] that the execution of affidavits, certifications, assignments, and other

documents may not have been based on personal knowledge in violation of the rules of Court and may thus be unreliable." Yet, the OTSC does not allege that any particular affidavit, certification or document filed by Wells Fargo was improper. Thus, it has effectively forced Wells Fargo, and the other Foreclosure Plaintiffs, not to respond to any specific alleged violation, but rather to engage in the monumental and constitutionally impermissible task of proving that there was none. *See generally, In re Murchison*, 349 U.S. 133, 136 (1955).

b. The Threatened Remedy of a Filing Injunction Violates Due Process.

The lack of notice and burden to prove the general absence of a violation is compounded by the threatened remedy of a filing injunction, such injunction would stop processing of all pending and future uncontested foreclosure proceedings in which the Foreclosure Plaintiffs, their subsidiaries, servicers, or outsource firms acting on their behalf, are now servicing or have previously serviced the mortgage loan. The very limited circumstances in which a filing injunction would pass constitutional muster are not present here

The Due Process Clause of the Fourteenth Amendment guarantees citizens access to courts to present claims of wrongdoing U.S. Const. amend. XIV, § 1; *Wolff v McDonnell*, 418 U.S. 539, 578-79, 94 S.Ct. 2963, 2985-86, 41 L.Ed.2d 935, 963-64 (1974). Although the phrase "due process" does not appear in the New Jersey Constitution, the New Jersey Supreme Court has construed the expansive language of Article I, Paragraph 1 as guaranteeing that fundamental constitutional right *Cavigliav Royal Tours of Am* , 178 N J 460, 472 (2004). "[T]he complete denial of the filing of a claim without judicial review of its merits would violate the constitutional right to access of the courts." *Rosenblum v Borough of Closter,* 333 N.J. Super. 385, 390 (App.Div 2000) (citing U S. Const. amend XIV, § 1).

Only in limited circumstances is due process not impaired by enjoining litigation. *Rosenblum v. Borough of Closter*, 333 N.J. Super. at 391 "[W]here a pattern of frivolous

litigation can be demonstrated, the Assignment Judge can prevent the complaint from being filed[,]" when other available sanctions, such as monetary penalties, proved unsuccessful as a deterrent. *Id.* at 391-92. *See Parish v Parish*, 412 N.J Super. 39, 54-55 (App. Div. 2010) Additionally, any restraint entered must be circumscribed, not global, and narrowly focused on the issues shown to warrant restraint.

Here, of course, there has been no finding that a past pleading filed by Wells Fargo was improper. As set forth above, there has not even been a specific allegation of same. Nor has there been an examination of the pleadings in the matters that would be stayed or barred from filing, to determine whether they are defective or improper. Instead, the OTSC would impose a global bar, in direct contravention of controlling authority

3. Suspending Foreclosures Indefinitely Would Violate the Contract and Takings Clauses of the New Jersey Constitution.

The contemplated remedies under the OTSC are not just *ultra vires*; they would also invade core protections afforded by the Contract and Takings Clauses of the New Jersey Constitution. The Court contemplates indefinite (1) suspensions of the processing of orders and judgments in uncontested residential mortgage foreclosure actions; (2) suspensions of the issuance of writs of execution and writs of possession; and (3) stays of all pending sheriffs' sales Such action amounts to *de facto* legislation that substantially and unjustifiably interferes with Wells Fargo's right to pursue foreclosure in the event of default on the mortgagor's repayment obligations.

a. The Court's contemplated action would effectively destroy Wells Fargo's contractual right to foreclose in the event of default.

Article IV, Section 7 of the New Jersey Constitution provides that "[t]he Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was

made." N.J. Const art. IV, § 7. The Contracts Clause of the New Jersey Constitution is construed and applied to provide co-extensive protections as those afforded by the United States Constitution. *In re Recycling & Salvage Corp*, 246 N.J. Super. 79, 100 (App.Div. 1991).

The intent of the Contract Clause is to prohibit the state from adopting laws that interfere with contracts between private citizens. The Clause is a product of the drafters' recognition that banks and financiers required some assurance that their credit arrangements would not be abrogated by the state legislature. The drafters knew that the country's economic growth largely depended on providing predictability for those who had money to invest or loan. B. Wright, THE GROWTH OF AMERICAN CONSTITUTIONAL LAW 41, 64 n. 3 (1967), *see also Home Building & Loan Ass'n v Blaisdell*, 290 U.S. 398, 427-28 (1934) (Hughes, C.J). Accordingly, the drafters sought to provide a stable economic environment by adopting the Contract Clause.

The Contract Clause protects private parties against retroactive legislation impairing contractual relations. *Nobrega v. Edison Glen Assocs*, 167 N.J. 520, 538 (2001). New Jersey courts have held that mortgages fall within the protections afforded by the Contract Clause. In *Chase Manhattan Mortgage Corp v Spina*, at issue in a foreclosure action was whether a newly enacted statute which created a higher priority lien could be applied retroactively to the mortgage at issue. 325 N.J. Super 42 (Ch Div. 1998). The court found that to do so would violate the Contract Clause of the New Jersey Constitution *See also, Fidelity Union Trust Co v Multiple Realty & Constr Co*, 131 N.J. Eq 527 (Ch 1942).

To be an unconstitutional impairment of contracts, legislation (1) must substantially impair a contractual relationship; (2) must lack a significant and legitimate public purpose, and (3) must be based upon unreasonable conditions and be unrelated to appropriate governmental objectives. *State Farm Mut Auto Ins Co. v State*, 124 N J. 32, 64 (1991). Here, the substantial impairment factor is easily met insofar as the Court's contemplated indefinite suspension of

uncontested mortgage foreclosure proceedings essentially voids the rights of Wells Fargo and its ability to satisfy its contractual obligations to other investors for which Wells Fargo services loans. *See Chase Manhattan Mortgage Corp v Spina*, 325 N.J. Super. 42, 49 (Ch. Div. 1998) ("States have given every indication that a vested property interest in mortgaged property has been granted to a mortgagee"). Wells Fargo will be unable to carry out its material and legitimate right to foreclose on properties where a mortgagor has defaulted. *See id* at 51.

With regard to the legitimate public purpose and reasonable conditions factors, states "possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed, as a result." *U S Trust Co of N Y v State of N J*, 431 U.S. at 22. "Yet private contracts are not subject to unlimited modification under the police power," and "the existence of an important public interest is not always sufficient to overcome that limitation." *Id* at 21-22. Rather, legislation "must be based upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption" *Id* at 22; *see also Patterson v. Carey*, 41 N.Y.2d 714 (N.Y. 1977) (asserted public purpose must be sufficiently important to warrant interference with contractual rights). "[A] State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." *U S Trust Co of N Y v State of N J*, 431 U.S. at 30.

Here, the contemplated suspension of the mortgage foreclosure proceedings is unnecessary, overly broad and unjustified, and therefore not reasonable, because it would immediately eliminate Wells Fargo's right to pursue foreclosure actions as to those who fail to make their contractual payments. While the OTSC recites that the Court is acting to address a public concern regarding the integrity of the foreclosure process, such concern is more properly addressed through less extreme measures and on an individualized basis as described *supra*. *See id* at 29-30 (repeal of covenant by statute was neither necessary nor reasonable in light of the

circumstances; a less drastic modification would have permitted the contemplated plan).

The Court's contemplated action arises out of a judicially-created presumption of invalidity of all uncontested residential mortgage foreclosure proceedings filed by Wells Fargo. Imposing an indefinite stay of all uncontested foreclosure proceedings while a Special Master investigates Wells Fargo's past and present business practices (1) is not pursuant to any law that was enacted by the Legislature; (2) does not entail any, let alone reasonable, conditions to protect the investment of the lenders; (3) involves a stay for an indefinite period that effectively destroys Wells Fargo's vested contractual rights, and (4) is unattached to any challenge, let alone finding, of non-compliance with court rules. *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 444-48 (1934). In sum, Wells Fargo respectfully states that the Court's contemplated actions are *de facto* legislation and violate the Contract Clause.

b. The Court's contemplated action would constitute an unconstitutional taking

The Court's contemplated suspension of all uncontested residential mortgage foreclosure proceedings would make it commercially impracticable to foreclose so as to effectively appropriate and destroy Wells Fargo's property rights (and the property rights of investors for which Wells Fargo services loans). As such, the Court's contemplated action, if effected, would run afoul of the Takings Clause of the New Jersey Constitution.

Article I, Paragraph 20 of the New Jersey Constitution prohibits the taking of private property without just compensation

> Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.

N.J. Const. art. I, ¶ 20. The protections afforded by the Takings Clause under both the New Jersey and United States Constitutions are coextensive. *Pheasant Bridge Corp v. Twp of*

Warren, 169 N J. 282, 296 (N.J. 2001) (noting coextensive protections afforded under article I, paragraph 20 of the New Jersey Constitution and the Fifth and Fourteenth Amendments of the United States Constitution against the government's taking of property without just compensation) (citing *Littman v Gimello*, 115 N J. 154, 161 (1989)).

Here, the Court's contemplated action amounts to an impermissible regulatory taking with respect to uncontested residential mortgages Wells Fargo (and other investors) have a property right as a mortgagee and the Court's contemplated suspension of foreclosure proceedings would prevent Wells Fargo (and the investors for which it services loans) from recovering its investments in all such proceedings. While the Court's contemplated action is framed to be in the public interest in restoring integrity to the foreclosure process, the Court has improperly shifted the burden to a small class of private parties. The Court is up-ending the established foreclosure framework within which Wells Fargo has operated by *sua sponte* creating a blanket presumption of invalidity of all uncontested foreclosure actions. This "regulation" is not only impermissible as emanating from the judiciary but goes too far.

C. ENTRY OF AN ORDER SUSPENDING ALL FORECLOSURE SALES AND APPOINTING A SPECIAL MASTER WOULD VIOLATE THE RULES OF COURT AND EXCEED THE SCOPE OF THE FORECLOSURE COURT'S JURISDICTION.

1. The OTSC Is Procedurally Inappropriate.

Even if it were appropriate to proceed *en masse* instead of attempting to resolve any issues in the individual foreclosure actions, and putting aside the substantial constitutional concerns addressed above, the OTSC is procedurally and substantively defective under established Rules of Court.

First, the OTSC dispensed with the filing of a complaint, which is the sole mechanism to initiate a civil action in New Jersey. *R.* 4:2-2; *R.* 4:2-1 One of the primary purposes of a

complaint is to put a defendant on notice of the claims against it, including the specific factual allegations upon which the claim is based and the legal rights allegedly violated. *R* 4.5-2 This deficiency is especially apparent with respect to the OTSC because it seeks to reach not only the six named "foreclosure plaintiffs" but also multiple unnamed and ambiguously defined third-parties, some or all of which may be beyond the control of the six "foreclosure plaintiffs" and potentially outside the jurisdictional reach of the New Jersey Court system. The OTSC shifts the burden of proof to Wells Fargo to demonstrate the absence of wrongdoing and compliance with as-of-yet unspecified standards of business conduct. This deprives Wells Fargo of the notice that is required by the Rules of Court (and due process, as described *supra*). *See, e g , Nicoletta v. North Jersey Dist Water Supply Commission*, 77 N.J. 145, 162 (1978); *Avant v. Clifford*, 67 N J. 496, 525 (1975). *See also, Glass v. Suburban Restoration Co.*, 317 N J. Super. 574, 582 (App. Div. 1998) (the complaint must allege sufficient facts to give rise to a cause of action; mere conclusions are inadequate).

Second, the OTSC improperly seeks to stay separate foreclosure proceedings. Rule 4:52-6 provides that "no injunction or restraint shall be granted in one action to stay proceedings in another pending action in the Superior Court, but such relief may be sought on counterclaim or otherwise in the pending action." This Rule bars the current proceeding to the extent that it seeks to stay the pending foreclosure cases This Rule also requires that any stay that would have an impact on an individual foreclosure case must be sought only in that same case.

Third, the OTSC is not supported by a verified complaint or an affidavit as required by the Court Rules. *R.* 4:52-1; *R.* 4:67-1, *et seq* Instead, the OTSC was issued *ex parte* and *sua sponte* in response to an unsigned and unverified whitepaper issued by the LSNJ – which frequently litigates and advocates against lenders and servicers such as the six "foreclosure

plaintiffs" in foreclosure cases in New Jersey.[4]

Fourth, based on the hearsay LSNJ Report, the OTSC suggests that fraud may have occurred in unspecified proceedings There is no basis under the Rules of Court or the substantive law of New Jersey for any action to be based on conclusory allegations of fraud. Instead, fraud must be pled with particularity, and "particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable." *R.* 4:5-8(a); *Gennari v. Weichert Co Realtors*, 148 N.J. 582, 610 (1997); *Rego Industries, Inc v American Mod. Metals Corp*, 91 N.J. Super. 447, 456 (App. Div. 1966).

Last, the OTSC was not served in accordance with *R.* 4:4-3 and *R.* 4.4-4

The OTSC attempts to characterize these procedural infirmities as a relaxation of only one Rule – Rule 4.52-1 (concerning injunctions) Other Rules were not followed as well. The OTSC disregarded a number of fundamental Rules designed to provide due process Service and Filing of Papers, Commencement of Action, Process, General Rules of Pleadings, Parties Plaintiff and Defendant, Joinder, Injunctions, and Summary Actions. *See R.* 1:1-2; *R.* 1:5-1, *R.* 4:2, *R.* 4:4, *R.* 4:5, *R* 4:26, *R.* 4:28, *R.* 4:52; *R.* 4:67, *et al.* Such Rules cannot be relaxed, even by the Court

Rule 1:1-2, which applies generally to relaxation of the Rules, requires that the Rules be "construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay." There must be a case, properly commenced,

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[4] LSNJ routinely represents borrowers against banks and mortgage companies in adversarial proceedings before the New Jersey courts. *See, e g., Trico Mortgage Co, Inc v Forero*, 275 N.J. Super 91 (App Div 1994). Furthermore, beginning in 2010, LSNJ has possessed a vested economic interest in its representation of clients on certain claims, including, *inter alia*, claims arising under the New Jersey Consumer Fraud Act, based on the decision in *Pinto v. Spectrum Chemicals*, 200 N J 580 (2010). *Pinto* held that LSNJ could simultaneously negotiate the merits of its clients' cases together with the issue of attorneys' fees due LSNJ under statutory fee shifting provisions. In other words, LSNJ, when it issued its Report, was operating in important respects as a contingency fee law firm, with similar economic

and involving appropriately joined parties, before a court may invoke relaxation See Rule 1:1-2 (relaxation is permitted only "by the court in which the *action* is pending.") (emphasis supplied). Moreover, relaxation of the Rules must aid and not inhibit fairness to the litigants As noted by the comments to Rule 1:1-2· "This rule may not, however, be used to shortcut litigation in the interests of time-saving, but at the expense of procedural due process" Pressler & Vemiero, Current N.J. Court Rules (Gann), Comment R. 1 1-2.

The Court in this proceeding does not need to relax or disregard the Rules that normally govern. The existing Rules, enhanced by the Amended Rules as to foreclosure proceedings, provide ample means by which to ensure the integrity of the foreclosure system.

2. The Proposed Order And Appointment Of The Special Master Exceed The Court's Jurisdiction.

The Court Rule upon which the entire OTSC is predicated is Rule 1·34-6. OTSC, p. 1 However, the supervisory powers under this Rule may only be invoked by the Court "in uncontested foreclosure matters." *R.* 1:34-6 The OTSC exceeds the scope of the Court's jurisdiction under this Rule. This proceeding, styled as a foreclosure case with a foreclosure docket number, does not bear any of the indicia of a real foreclosure case. In other words, since there is no predicate uncontested foreclosure matter under Rule 1:34-6, there is no basis upon which this Court could invoke its supervisory powers and appoint a Special Master.

Furthermore, the OTSC contemplates suspending or halting all foreclosures sales – including those that have resulted from the adjudication of a contested foreclosure case. Under New Jersey's foreclosures laws, jurisdiction over such sales lies with the Sheriff of the County Court. *N J.S.A* 2A:50-64; *R* 4:65-1, *et seq.* For each of these reasons, the OTSC itself, and the actions it contemplates, exceed the boundaries of New Jersey rules

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incentives, to persuade the court in the hopes of not only bettering the economic position of its clients, but

D. ENTRY OF SANCTIONS IS NOT JUSTIFIED AS THERE IS NO BASIS TO PRESUME THAT FORECLOSURES OF LOANS SERVICED BY WELLS FARGO WERE INAPPROPRIATE.

The Order to Show Cause creates a presumption of invalidity as to all pending uncontested residential mortgage foreclosure proceedings. Based upon that blanket presumption, the Order to Show Cause contemplates awarding sanctions against the Foreclosure Plaintiffs, including Wells Fargo, along with its subsidiaries, servicers, specialty servicers, outsource firms, and even attorneys and law firms acting on their behalf. In addition, the Order to Show Cause contemplates (1) ordering the Foreclosure Plaintiffs to reimburse the Office of Foreclosure for costs incurred for re-handling and re-processing foreclosure files; (2) apportioning fees and costs of the attorney appointed to present arguments supporting appointment of a Special Master and suspension of foreclosure processing; and (3) apportioning fees and costs of a Special Master and any staff such Special Master might require. Neither sanctions nor the imposition of fees and costs is warranted in this case. There has been no finding of any misconduct, let alone egregious conduct, by Wells Fargo, related entities or its counsel. As such, the contemplated sanctions would be contrary to Court Rules and basic notions of fairness.

1. Imposing Sanctions for Unspecified Misconduct in Separate, Unidentified Proceedings is Procedurally Improper and Substantively Unfair.

The Order to Show Cause contemplates awarding sanctions in this proceeding for unspecified misconduct in as-yet-unidentified separate actions. The imposition of such sanctions under those circumstances would be procedurally and substantively improper Procedurally, the various mechanisms for sanctions to be imposed under Court Rules require that an application shall be filed in the action in which a violation is alleged to have occurred. *See, e g*, R. 1:4-8(b) (requiring an application for attorneys fees as a sanction be filed within 20 days following the

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also, at some juncture down the road, its own

entry of final judgment); R 1:4-8(c) (requiring issuance of *sua sponte* order to show cause why a party should not be sanctioned before a voluntary dismissal or settlement of the claims made by or against the pro se party or attorney who is the subject of the order to show cause.); R 1:10-3 (permitting party to apply for relief in the same action when adversary commits contempt of Court).[5] In this case, however, the Order to Show Cause contemplates the imposition of sanctions in this proceeding, which is separate and apart from the unidentified foreclosure actions in which the alleged misconduct took place. For this reason alone the contemplated sanctions are procedurally improper and should not be imposed.

Even if the contemplated sanctions were procedurally appropriate, they do not afford Wells Fargo or its counsel the procedural protections of Rule 1:4-8. Under this Rule, an attorney or a pro se party may be sanctioned for signing, filing, or advocating a certification if the factual allegations do not have evidentiary support, *R.* 1:4-8(a). The Court, *sua sponte*, may also issue an order to show cause why an attorney or pro se party should not be sanctioned for violating the rule *R.* 1:4-8(c). However, before imposing sanctions under either R. 1:4-8(a) or R. 1:4-8(c), the Court must describe the "specific conduct that appears to violate this rule and directing the attorney or pro se party to show cause why he or she has not violated the rule." An award of attorneys' fees as a sanction under Rule 1:4-8 requires findings of fact and conclusions of law as to each element of the award *Alpert, Goldberg v Quinn,* 410 N.J. Super. 510, 547 (App Div. 2009) In this case, however, the sanctions contemplated by the Order to Show Cause would not comport with these requirements. The Order to Show Cause merely states that "the execution of affidavits, certifications, assignments, and other documents in numerous residential mortgage

[5] The only mechanism for punishing a party in a separate action is a Summary Proceeding for Contempt under R 1:10-2. Contempt proceedings must be explicitly designated as such and prosecuted accordingly. This is not a contempt proceeding.

foreclosure actions in New Jersey and elsewhere may not have been based on personal knowledge in violation of the Rules of Court and may thus be unreliable." Order to Show Cause at 3. However, the Court does not describe any specific misconduct that is the subject of the Order to Show Cause. *See id.* The failure to do so denies Wells Fargo and its counsel the procedural protections of Rule 1:4-8 and is fundamentally unfair.

2. Apportionment of Attorneys' Fees and Costs Is Not Warranted

Attorneys' fees and costs should not be apportioned among the Foreclosure Plaintiffs where there is no complainant to this action, no specific allegations of misconduct, and an attorney has been appointed to advocate the concerns expressed by the Court

New Jersey follows the "American Rule" under which a party ordinarily bears its own legal fees. *Dziubek v Schumann*, 275 N.J. Super. 428, 436 (App. Div. 1994). "Unless attorney fees are authorized by statute, court rule, or contract, they cannot be awarded by the Court " *Id.* *R.* 4:42-9 governs Attorneys' Fees· "No fee for legal services shall be allowed in the taxed costs or otherwise," except for eight limited exceptions. The first six exceptions refer to specific instances such as family actions, court funds, probate actions, foreclosure actions (mortgage and tax certificates) and insurance actions that do not apply to this Order to Show Cause proceeding opened by the Court.[6] The remaining two exceptions, Rule 4.42-9(a)(7) and (a)(8), permit fee shifting to the extent permitted by any other Rule or statute.[7]

The procedures prescribed by Rule 1:4-8 apply to an award of costs and fees against a party pursuant the New Jersey Frivolous Litigation Statute, N J.S.A. 2A.15-59.1 The Frivolous

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[6] Attorneys' fees are awardable in an action for the foreclosure of a mortgage N J Ct R 4 42-9(4) As such, the Foreclosure Plaintiffs are entitled to pursue attorneys' fees in the underlying foreclosure actions.

[7] There are various rules that authorize the award of attorneys' fees as sanctions for wrongful litigation conduct but, as with the specifically enumerated actions in Rule 4 42-9, most of those rules are inapplicable here *See, e g*, R 2.11-4 (sanction for violation of appellate rules), R 4 14-8 (failure to attend deposition or serve subpoena), R 4 23-1 to 4 23-4 (discovery sanctions), R 4 46-6 (fees for summary judgment opposed by factual contention raised in bad

Litigation Statute permits an award of fees to a prevailing party if the non-prevailing party's complaint, counterclaim, cross-claim or defense was frivolous. N J S A. 2A:15-59.1(a). Here, an award of fees pursuant to the Frivolous Litigation Statute is improper because this proceeding was opened *sua sponte* by the Court and does not involve an application by a prevailing party in a live dispute. Nor is there any allegation let alone finding that Wells Fargo commenced a foreclosure action in bad faith or without reasonable basis Moreover, the Frivolous Litigation Statute does not extend to false allegations of fact absent a showing of bad faith. *McKeown-Brand v Trump Castle Hotel & Casino*, 132 N.J. 546, 561 (1993).

In sum, there is no basis for deviating from the American Rule and imposing fees in this proceeding due to alleged and unspecified misconduct in separate proceedings.

IV. CONCLUSION

For the reasons discussed above, the Court should not enter the order contemplated by its Order to Show Cause. The actions proposed by the Court are not necessary to ensure the integrity of uncontested foreclosure proceedings in New Jersey. Wells Fargo stands ready to review and resubmit affidavits of indebtedness in the foreclosure cases pending before the Court. The existing Rules of Court provide a constitutionally sound mechanism for the review of those affidavits In contrast, the proceeding initiated by the Court raises fundamental concerns under the New Jersey Constitution and could lead to other serious unintended negative consequences for the State. Wells Fargo stands ready to address any document filed in an individual foreclosure case and to work with the Court to ensure the integrity of the foreclosure process within the framework of the state's existing statutes and Rules of Court.

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faith); R 4 58 (offer of judgment), R 1 10-3 (court may award counsel fees to litigant, upon application, due to adverse party's violation of orders or judgments but not rules of practice)

Respectfully submitted,

Mark S. Melodia
Reed Smith, LLP

Rosemary Alito
K&L Gates

Dated: January 5, 2011

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

AFFIDAVIT OF ALAN JONES

I, Alan Jones, Senior Vice President, Wells Fargo Bank, N A , do hereby declare under oath as follows based on my personal knowledge, except where indicated, and on my review and familiarity with the business records of Wells Fargo Bank, N.A. ("Wells Fargo"):

1. I am Senior Vice President at Wells Fargo in Des Moines, Iowa. I have been in this position for seven (7) years. I am responsible for servicing operations. I have been employed by Wells Fargo since 1995.

2. In my current capacity as Senior Vice President, I am familiar with: (1) the Wells Fargo corporate entities that originate, own and service loans secured by residential home mortgages; (2) Wells Fargo's policies and practices regarding loss mitigation and mortgage loan modification, including but not limited to implementation of the U S Treasury's Home Affordable Modification Program ("HAMP"); (3) the matters set forth herein regarding affidavits of indebtedness filed in judicial foreclosure proceedings.

3. Wells Fargo, Bank, N.A. is a national banking association. It is a wholly owned subsidiary of Wells Fargo & Company, a bank holding company. The vast majority of loans

either owned or serviced by a Wells Fargo & Company affiliates are owned or serviced by Wells Fargo Bank, N.A. There are other Wells Fargo subsidiaries that may have filed foreclosures in the State of New Jersey, which are still pending. Wells Fargo Financial, Inc. through its subsidiaries Wells Fargo Financial New Jersey, Inc. and Wells Fargo Financial America, Inc., Wachovia Bank, N.A., Wachovia Mortgage FSB, and Wachovia Mortgage Corp.

4. Upon information and belief, approximately 80% of the home loans in Wells Fargo's servicing portfolio are serviced for other investors such as Fannie Mae, Freddie Mac, Ginnie Mae, or private securities. The remaining 20% are loans Wells Fargo owns. When Wells Fargo is the servicer of a loan, it undertakes payment collection, loss mitigation (modifications, short sales, deeds in lieu) and collection efforts, including, as a last resort, foreclosure with respect to the loan. If the loan is owned by another entity, Wells Fargo undertakes these activities in accordance with the contracts that govern its relationship with the owner of the loan as well as the loan documents.

5. Upon information and belief, Wells Fargo & Company acquired Wachovia Corporation at the end of December, 2008. Wachovia Bank, N.A. became a wholly owned subsidiary of Wells Fargo & Company. Until March 20, 2010, Wachovia Bank, N A. continued to exist as a separately chartered national bank. However on March 20, 2010, Wachovia Bank. N A. was merged into Wells Fargo Bank, N.A. and Wachovia ceased to exist As a result, there may be foreclosures filed prior to April, 2010 under the name of Wachovia Bank, N A., but Wells Fargo is now the plaintiff in those cases as the successor in interest to Wachovia.

6. Wells Fargo Bank, N.A. also appears as a plaintiff in its capacity as a trustee for the owners of securitized loans. Where Wells Fargo is only the trustee and not the servicer, Wells Fargo plays no role in servicing these loans, and none of the information contained in the

remainder of this affidavit relates to those loans In instances where Wells Fargo is not the servicer and is only the trustee, these loans are serviced by third parties pursuant to contracts, commonly referred to as pooling and servicing agreements or servicing agreements.

7. Upon information and belief, Wells Fargo's delinquency and foreclosure rates in the second quarter of 2010 were 75% of the industry average. Approximately 92% of Wells Fargo's first- and second-mortgage borrowers were current in their payments as of the second quarter of 2010, and less than 2% of the owner-occupied servicing portfolio had gone to a foreclosure sale between June, 2009 and June, 2010.

8. From January 2009 through September 30, 2010, Wells Fargo provided homeowners with 556,868 active trial or completed loan modifications Some of these modifications were made through the well publicized U.S. Treasury's Home Affordable Modification Program ("HAMP"). However, not all loans serviced by Wells Fargo are eligible for modification under HAMP, and approximately 88% of the modifications provided by Wells Fargo were made outside of HAMP.[1] Wells Fargo has also assisted more than 100,000 unemployed customers with short-term forbearance agreements.

9. Wells Fargo is able to communicate with 80% of its borrowers who are more than 60 days delinquent. Of those borrowers who choose to work with Wells, approximately 70% are able to avoid foreclosure.

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[1]Determining whether a loan is eligible for HAMP modification requires the servicer to apply a series of modifications to determine if an affordable monthly payment (as defined by HAMP) for the borrower can result If these modifications result in an affordable monthly payment then the servicer conducts a test approved by the Treasury to determine whether the modification is in the best interest of the investor for the loan If the modification is in the best interest of the investor, and if the pooling and servicing contracts agreements with the investor permit the modification, then the modification is implemented.

10. From January 1, 2009 through June 30, 2010 Wells Fargo completed approximately 60,000 HAMP and non-HAMP modifications that involved principal forgiveness totaling more than $3.2 billion.

11. Since June, 2008, Wells Fargo has attended or held six home preservation workshops in the State of New Jersey. The purpose of a home preservation workshop is to connect borrowers with payment difficulties directly with loss mitigation specialists in order to determine if a modification of the loan is possible Wells Fargo is hosting another home preservation workshop on January 12-13, 2011 at the Meadowlands Exhibit Center.

12. If a loan is referred to foreclosure, Wells Fargo completes quality assurance reviews to ensure that it has undertaken all of its internally prescribed as well as legally prescribed loss mitigation efforts Wells Fargo performs a quality assurance review of loans referred to foreclosure to ensure it has made all required borrower contacts and solicitations, it validates that correct income and expense information has been captured, it validates that there is evidence that retention or liquidation (short sale/deed in lieu), if necessary, have been offered, and that the loan was not actively being reviewed for a workout solution at the time of referral. Additionally, Wells Fargo hires local New Jersey counsel to handle the foreclosure action, who ensure title is correctly in the name of the plaintiff and all other legal processes are properly followed.

13 Even after the foreclosure process is initiated, Wells Fargo continues attempts to work with borrowers In addition to loss mitigation efforts, in New Jersey Wells Fargo permits a borrower to reinstate a loan by paying all past due amounts and foreclosure related costs right up until the date of sale.

14. On a nationwide basis, the average borrower was 16 months delinquent at the time of the foreclosure sale in November, 2010.

15. Wells Fargo's records show that on a nationwide basis, in the late stages of foreclosure, approximately 25% of the properties are already vacant.

16. The loan balance information included in affidavits of indebtedness comes directly from the mortgage servicing computer program that houses all loan balance and related information of record for mortgage loans serviced by Wells Fargo.

17 In late October, 2010, out of an abundance of caution and to provide an additional level of assurance regarding Wells Fargo's processes, the decision was made to submit supplemental affidavits for approximately 55,000 foreclosures, which were pending in 23 judicial foreclosure states Upon information and belief, because the Office of Foreclosure in New Jersey indicated to our local foreclosure firms that it would not accept supplemental affidavits in the State of New Jersey, the supplemental affidavits for New Jersey have not been completed.

18. Wells Fargo has also revised its training and procedures for executing affidavits in new foreclosure filings. Affidavits of indebtedness executed by Wells Fargo continue to be based on information obtained directly from its system of record. However, Wells Fargo has implemented additional procedural controls and audits to ensure that the employee executing the affidavit has reviewed the affidavit and personally confirmed its accuracy against Wells Fargo's business records.

19. The signor of each affidavit must read and verify all of the data and statements on the affidavit, which depending on the state may include the following. foreclosing entity,

borrower's name, property address, balance information (including an itemization of all amounts due), signor's name, title, and company information.

20 If the signer's signature is required to be notarized, the affidavit is notarized based on the state law where the signer is located If the state in which the execution process is taking place requires additional steps for a proper notarization, then both the affiant and the notary have been trained to follow the process required by that state.

21. Neither the remediation efforts nor any review by Wells Fargo has found a pending foreclosure in which the borrower was not in payment default or as to which Wells Fargo did not have the right to file the foreclosure.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. EXECUTED THIS 5 DAY OF January, 2011 AT DES MOINES, IOWA

Alan W. Jones

STATE OF IOWA

COUNTY OF Polk

On this 5th day of January, 2011, before me, a Notary Public, personally appeared Alan W Jones, to me known to be the person named in and who executed the foregoing instrument, and acknowledged that he/she/they executed the same as his/her/their voluntary act and deed.

Mary H. Crouse

Notary Public

Print Name: Mary H. Crouse

MARY H. CROUSE
Commission Number 727027
My Commission Expires
February 23, 2013

(Seal, if any)

My commission expires: 2/23/13

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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 OF SERVICE**

I certify that on this date, I caused the original and two copies of the following documents to be sent for filing via hand-delivery to the Acting Clerk of the Superior Court, 25 Market Street, Trenton, New Jersey 08625:

1 Wells Fargo Bank, N.A 's Appearance and Response to Order to Show Cause.

2 Affidavit of Alan Jones;

3 R. 1.4-4(c) Certification; and

4 This Certification of Service.

I further certify that on this date, I caused copies of the foregoing documents to be served via hand-delivery on:

The Chambers of the Honorable Mary C. Jacobson, P J.Ch.
210 South Broad Street
Trenton, New Jersey 08625

Edward J. Dauber, Esquire
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.

Diane A Bettino

Dated: January 5, 2011

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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 **ATTORNEY CERTIFICATION**

1 I am an attorney-at-law of the State of New Jersey and a partner with the law firm of Reed Smith LLP, attorneys for Wells Fargo Bank, N A in the within action.

2. I make this Certification pursuant to R. 1:4-4(c) so that the Court may accept Mr. Jones' PDF signature on his Certification An original signature will be filed if requested by the Court or a party

3. Annexed to the Affidavit of Alan Jones is a PDF of his signature. On this date, I spoke to Mr. Jones and he acknowledged the genuineness of his signature

I hereby 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 may be subject to punishment.

Diane A Bettino

Dated January 5, 2011

ReedSmith

SUPERIOR COURT OF N.J.
REC'D
JAN 05 2011

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January 5, 2011

Via Hand-Delivery

Acting Clerk of the Superior Court of New Jersey
25 Market Street
Trenton, New Jersey 08625

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

Dear Sir/Madam

This firm represents Wells Fargo Bank, N A in the above-referenced matter. Enclosed please find the original and two copies of:

1 Wells Fargo Bank, N.A 's Appearance and Response to Order to Show Cause;

2. Affidavit of Alan Jones,

3. R 1 4-4(c) Certification, and

4 Certification of Service

Kindly file same and return a filed stamped copy to me in the enclosed self-addressed stamped envelope Please charge our Superior Court account # 141013 for any filing fees.

Thank you for your time and assistance in this matter

Very truly yours,

Diane A. Bettino

Enclosures

cc The Chambers of the Honorable Mary C. Jacobson, P J.Ch *(Via Hand-Delivery)*
Edward J Dauber, Esquire *(Via Hand-Delivery)*

EXHIBIT 11

SUPREME COURT OF NEW JERSEY

It is ORDERED that retired Assignment Judge Walter R Barisonek, serving on recall pursuant to N.J S.A. 43:6A-13 by December 20, 2010 Order of the Supreme Court, during the time period set forth in that order is hereby assigned as a Superior Court judge to serve as Special Master pursuant to Administrative Order 01-2010, in In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities; this supplements the assignment portion of the Court's December 20, 2010 Order.

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: March 1, 2011