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March 28, 2011

VIA EMAIL AND U.S. MAIL

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

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

Letter Brief Submitted in Opposition to Legal Services of New Jersey's Motion to Intervene

Dear Judge Jacobson:

Please accept this letter brief in lieu of a more formal brief in response to the motion to intervene filed Friday, March 25, 2011, by Legal Services of New Jersey ("Legal Services") For the reasons detailed below, this office opposes the motion to intervene.[1]

[1] Procedurally, this office notes that Legal Services' motion to intervene is untimely, considering that this matter has been pending since December 20th and Your Honor set the March 29th hearing date for the Order to Show Cause in a Scheduling Order dated February 24th. Thus, Legal Services has had ample time and notice of this proceeding and the hearing date. Further, each of the several earlier Scheduling Orders entered by Your Honor in this matter, all of which were made publicly available on the Judiciary's website, expressly noted that the reason for the adjournments of the hearing date was for this office to continue settlement discussions with counsel for the Six Respondents Additionally, it was not until mere days before this office filed its March 18th Letter Brief that Legal Services reached out to this office and advised of the possibility that it would file a motion to intervene. Thus, it is inaccurate for Legal Services to imply that numerous calls went unanswered by this office. *See* Certif. of Margaret Lambe Jurow ¶¶ 8, 11. There was one call and it was responded to within a matter of days. However, should Your Honor deem Legal Services' submission to be relevant to the purpose of the Order to Show Cause, then this office agrees that the timing of Legal Services' motion should not be an issue.

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Initially and significantly, it must be emphasized that Legal Services does not take issue with the Special Master process as detailed in the Recommended Stipulation submitted by this office on March 18, 2011. The thrust of Legal Services' submission is its concern that the stipulated process should not impinge on the individual rights of any individual homeowner subject to foreclosure In fact, the Recommended Stipulation does not do so and is not in any way intended to do so Thus, Legal Services' motion to intervene misapprehends both the purpose and scope of Your Honor's December 20, 2010 Order to Show Cause and the scope and effect of the Recommended Stipulation The purpose of the Order to Show Cause was to address and cure the systemic problems undermining the reliability of sworn documents submitted to the Judiciary in uncontested residential mortgage foreclosure matters. The Recommended Stipulation was conceived and designed to effectuate that purpose, which it does. To the extent that there is any notion that the Recommended Stipulation process may be intended to affect any individual foreclosure cases, this office has no objection to Your Honor including in any Order implementing the Recommended Stipulation language making it clear that the processes described in the Recommended Stipulation shall in no way curtail the individual rights of homeowners in their own foreclosure cases.

I. LEGAL SERVICES' MOTION MISAPPREHENDS THE PURPOSE OF THE DECEMBER 20th ORDER TO SHOW CAUSE

Legal Services' motion to intervene should be denied because the majority of the relief Legal Services requests is beyond the scope of Your Honor's December 20th Order to Show Cause The impetus for the December 20th Order to Show Cause was the acknowledged need for the Judiciary to address the specific issue of sworn documents being submitted to the Judiciary that were either

not based on the personal knowledge of the signatory or were executed in a fashion that undermined the integrity and solemnity of the judicial process *See* Admin. Order 01-2010 at 3-5 This phenomenon is generally known as "robo-signing."

Legal Services' motion to intervene loses sight of this purpose of the Order to Show Cause and demands relief beyond the Order to Show Cause's scope First and foremost, Legal Services' motion focuses on requesting intervention for purposes of protecting the rights of individual borrower-defendants in individual foreclosure litigations LSNJ Brief at 2-5. This position misunderstands the purpose of the Order to Show Cause, which was to address a system-wide solution to the "robo-signing" issue. Indeed, nothing in the Order to Show Cause or the Recommended Stipulation precludes or inhibits individual borrower-defendants from seeking any recourse or relief they see fit. By its terms, the Order to Show Cause only applies to uncontested residential mortgage foreclosure cases, and any individual contested residential mortgage foreclosure matter, either pending or yet-to-be filed, remains totally unaffected by either the Order to Show Cause or the process envisioned in the Recommended Stipulation. In addition, as noted above, even with respect to uncontested cases, the Recommended Stipulation is not dealing with any individual case but is aimed at ensuring that the Respondents' processes are now such that they are designed and being implemented in such a way as to generally result in documentation being provided to the Judiciary that is reliable. This in no way affects the right of any homeowner, even in uncontested cases, to take any steps he or she deems appropriate For these reasons, Legal Services' motion to intervene does not meet the standards for intervention contained in either *Rules* 4.33-1 or 4.33-2

because Legal Services' claimed interest does not present issues of law or fact in common with the Order to Show Cause

Furthermore, as noted by this office in its March 18th Letter Brief, the proceeding and process originating from the December 20th Order to Show Cause is merely one of numerous oversight processes being undertaken all around the country to address problems in the foreclosure system Mar 18th Letter Brief at 5-7. A full-scale judicial investigation into all of Respondents' mortgage and foreclosure practices, as urged by Legal Services, would be both (1) entirely duplicative of numerous federal and multi-state efforts already underway; and (2) well beyond the capabilities and role of the Judiciary The court system is not suited for investigative operations, which are best left to the executive and legislative branches, which have both the background and resources necessary for such open-ended endeavors The Judiciary's role in this process, as described and acknowledged in the Order to Show Cause, is merely to use its supervisory powers to ensure that the specific documents being submitted to it comply with the Judiciary's standards to ensure personal knowledge of the affiant.

Thus, this office respectfully submits that Legal Services' arguments in support of its motion to intervene go beyond the scope of the December 20th Order to Show Cause This office would have no objection, however, to Legal Services' motion papers being referred to Judge Williams in his capacity as Special Master, so that, should there be any information contained therein that is relevant to his undertaking, Judge Williams would be able to give it appropriate consideration

II. LEGAL SERVICES' MOTION UNDERSTATES THE FULL SCOPE AND EFFECT OF THE SPECIAL MASTER'S ROLE UNDER THE RECOMMENDED STIPULATION

As noted above, much of the justification Legal Services' cites for its purported need to intervene stems from issues beyond the scope of the December 20th Order to Show Cause Additionally, however, Legal Services' general critique of the Recommended Stipulation demonstrates an incorrectly limited and narrow view of the Recommended Stipulation

Specifically, Legal Services describes at length general concerns about the need for accuracy and reliability in filings made in residential mortgage foreclosures. *See* LSNJ Brief at 7-11 Legal Services overlooks the details of the Special Master process set forth in the Recommended Stipulation, which address these concerns at length. While the extensive Special Master process envisioned by the Recommended Stipulation speaks for itself, it is worth noting the specific types of information that Respondents will have to provide to satisfy the Special Master in the first instance. *See* Rec. Stip. ¶ 4. These include information about Respondents' authority to act on behalf of mortagees; evidence that Respondents' records keeping systems provide accurate, up to date information, description of Respondents' process for ensuring all affiants' personal review of information in sworn documents; statistical detail of Respondents' document execution processes; information about Respondents' employee training programs and quality assurance procedures, and ensuring that Respondents are able to effectively and timely communicate with foreclosure counsel. *Id* Legal Services overlooks all of this detail that is included as part of the Prima Facie Showing envisioned by the Recommended Stipulation *Id* ¶¶ 4-6. In addition to the types of information specifically delineated in the Recommended Stipulation, the Special Master may request any

additional information that he feels is required for the Respondent to meet the Prima Facie Showing. *Id* ¶ 6 All of this will have to be presented under oath by way of certification or affidavit, and the records presented will have to meet the Business Records test *Id* ¶ 4 A

Legal Services also overlooks the wide powers and discretion given the Special Master in the Performance Review phase of the Special Master process set forth in the Recommended Stipulation. *Id.* ¶ 7. This phase allows the Special Master to review sample filings in both pending and new residential mortgage foreclosure cases, request supplemental information if unsatisfied, interview relevant Respondent personnel, and even recommend to Your Honor that any particular Respondent's prosecution of uncontested residential mortgage foreclosure matters be suspended until the Respondent satisfies the Special Master's concerns about its processes. *Id.* Thus, the Special Master process set forth in the Recommended Stipulation provides significant ability and opportunity for the Judiciary to attain comfort over Respondents' respective document execution practices

Furthermore, the fact that the Honorable Richard J. Williams is the intended Special Master provides a high level of assurance that the public interest will be safeguarded in terms of what will be submitted to the Judiciary at the end of the process. Judge Williams's stellar credentials are summarized in this office's March 18th Letter Brief at page 10. Intervention by Legal Services as a party is not only unlikely to add anything to the Special Master processes envisioned by the Recommended Stipulation, but it is difficult to see how Legal Services could play a role in the processes which are envisioned as ones between the Special Master and each of the individual Respondents. Rec. Stip. ¶ 8.

III. THIS OFFICE AGAIN RECOMMENDS THAT BROAD-BASED PUNITIVE SANCTIONS ARE NEITHER WARRANTED NOR NECESSARY AT THIS TIME

This office described at length in its March 18th Letter Brief why broad-based punitive sanctions against Respondents are not recommended at this time. Mar 18th Letter Brief at 16-17. As set forth therein, judicial sanctions would be more effective if imposed by individual judges in individual residential mortgage foreclosure cases, should they be warranted. Nothing in the Recommended Stipulation forecloses such sanctions, if found appropriate by the judge presiding over that particular matter.

Moreover, before any sanctions could be imposed by the Judiciary here, there would have to be an adversary process and a hearing, which would consume substantial Judicial financial and other resources Since there are numerous executive investigations pending all over the country which may themselves ultimately lead to penalties, sanctions, or monetary settlements, undertaking the effort to impose broad-based sanctions in this setting would be duplicative and unnecessary

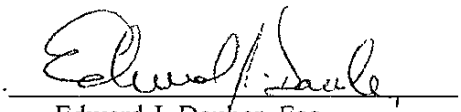
Finally, as noted above, nothing in the Order to Show Cause or the Recommended Stipulation prohibits individual borrower-defendants from contesting their cases, bringing individual lawsuits against lenders or servicers, or joining class action lawsuits to seek penalties or damages. Indeed, numerous such lawsuits are already pending in New Jersey, as well as throughout the nation, and are a better vehicle for such financial relief than the instant proceeding

CONCLUSION

For the foregoing reasons, this office respectfully requests that Your Honor deny the motion to intervene of Legal Services of New Jersey.

Respectfully submitted,

GREENBERG DAUBER EPSTEIN & TUCKER
A Professional Corporation
Court Appointed Counsel

By. 
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