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R. WILLIAM POTTER  
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PETER D. DICKSON  
MEMBER N.J. AND D.C. BARS

March 28, 2011

By messenger

The Deputy Clerk  
General Equity Division  
Superior Court, Mercer County  
210 S. Broad Street, 5<sup>th</sup> Floor  
P.O. Box 8068  
Trenton, NJ 08650

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

Dear Deputy Clerk:

Please accept for filing the enclosed notice of motion to intervene, together with the Certifications of Jyll S. Jakes and R. William Potter and the letter brief in support of the motion.

Please receipt the extra copy enclosed and return to the messenger.

Please debit the Potter and Dickson Attorney Collateral Account 140852 for the filing fee.

Thank you.

Respectfully submitted,

POTTER AND DICKSON



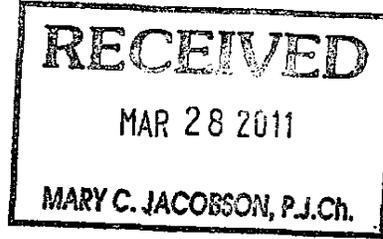
By R. William Potter

RWP/erd

Enclosures

cc: Counsel on the notice of motion

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Attorneys for Jyll S. Jakes, individually and  
as representatives of a prospective class of mortgagors  
in uncontested residential foreclosure matters

IN THE MATTER OF RESIDENTIAL  
MORTGAGE PLEADING AND  
DOCUMENT IRREGULARITIES

: SUPERIOR COURT OF NEW JERSEY  
: CHANCERY DIVISION  
: MERCER COUNTY  
:  
: DOCKET NO. F-059553-10  
:  
: Civil Action  
:  
: **NOTICE OF MOTION**  
: **FOR LEAVE TO INTERVENE**

To: Edward J. Dauber, Esq.  
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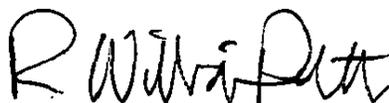
PLEASE TAKE NOTICE that pursuant to R. 1:6-2(b)(1), the undersigned attorneys for Jyll S. Jakes make application to the Honorable Mary Jacobson, Superior Court of New Jersey, Chancery Division-General Equity Part, Mercer County Courthouse, 210 S. Broad Street, 5<sup>th</sup> Floor, Trenton, NJ 08650, for an order pursuant to R. 4:33-1, or in the alternative R. 4:33-2, to intervene in the above matter both on behalf of the individual movant and as representatives of a prospective class of unrepresented mortgagors in contested and uncontested residential foreclosure matters, presently scheduled to be heard on Tuesday, March 29, 2011 at 2:00 p.m. R. 4:32-1 provides that one or more members may sue or be sued as a class if (a) they are so numerous that joinder is impractical, there are common questions of fact and law, that the claims and defenses of the representatives are typical of the class and that the representative parties will fairly and adequately protect the class and (b) the prosecution of separate actions would establish incompatible standards of conduct for the parties opposing the class, the party opposing the class has refused injunctive or declaratory relief for the class as a whole and

common questions predominated over the specific.

In support of this Motion, movant will rely upon the Certification of Jyll S. Jakes and the enclosed letter brief.

Respectfully submitted,

POTTER AND DICKSON



By R. William Potter

Dated: March 28, 2011

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Motion to Intervene, together with the letter brief in support thereof, were served by fax and by first class mail upon the following at the addresses and fax numbers indicated as follows this 28<sup>th</sup> day of March 2011:

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March 28, 2011

BY FAX TO COURT AND COUNSEL

The Hon. Mary Jacobson, J.S.C.  
Chief Judge, General Equity Division  
Superior Court, Mercer County  
210 S. Broad Street, 5<sup>th</sup> Floor  
P.O. Box 8068  
Trenton, NJ 08650

Re: In the Matter of Residential Mortgage Pleading and Document Irregularities  
Docket No. F-059553-10  
*Letter brief in support of motion to intervene*

Dear Judge Jacobson:

The law firm of Potter & Dickson, along with co-counsel, Mr. Mark J. Malone, Esq. of the Law Offices of James F. Villere, Jr., represent the movant, Ms. Jyll S. Jakes, who resides at 12 South Street, Sea Bright, NJ 07760. See certification of Ms. Jakes in support of the motion to intervene.

Ms. Jakes is an unemployed homeowner who is again facing foreclosure by Citimortgage ("Citi") which is one of the respondents in this Order to Show Cause proceeding. Jakes certification at ¶¶ 6, 7, 20, 22, 23, and 30. Citi foreclosed on her home in an uncontested foreclosure action and later "sold" the property at sheriff's sale in February 2009, which sale was later rescinded. Jakes certification at ¶¶ 17-19.

Despite these setbacks, Ms. Jakes has availed herself of various mortgage modification and mediation programs, including the Home Affordability Mortgage Program (“HAMP”) in her continuing effort, so far in vain, to secure modification of her mortgage payments in such as way as to stave off further foreclosure threats while she secures new employment. Jakes Certification at ¶¶ 21, 22, 31, 32, 33 and 37.

Ms. Jakes seeks to intervene as of right, pursuant to R.4:33-1 or in the alternative through permissive intervention pursuant to R.4:33-2.

Rather than repeat the voluminous legal briefs already before this court, Ms. Jakes incorporates by reference the letter brief submitted by Legal Services of New Jersey on March 24, 2011.

Intervention is being sought at this time because the proposed “Recommended Stipulation” (“RS”) negotiated by special counsel, Mr. Edward J. Dauber, Esq., with the six (6) respondent banking, mortgaging and loan servicing entities is not adequate to protect Ms. Jakes’ interest nor the interest of others similarly situated. Thus, Ms. Jakes seeks to intervene with the intention of securing improvements to the RS or in opposing its adoption, if necessary.

Her specific objections to the RS are as follows:

1. The remedies the RS recommends are entirely prospective. As such, the proposed remedies do not address, nor do they provide any means or intention to address or redress, any of the false, fraudulent, inaccurate or erroneous foreclosures which have

occurred or were threatened to occur to date (including her own), due to or based upon the documented robo signing practices of the respondents. This RS also does nothing to recoup illegal and excessive fees charged in the foreclosure proceedings that have been concluded.

2. The proposed powers of the Special Master (SM) are too limited to assure compliance in the future. For example the SM's powers do not appear to include the right and power to conduct evidentiary hearings, subpoena or otherwise compel the attendance of witnesses, subpoena documents, hold respondent officials in contempt or otherwise to engage in whatever evidence gathering or fact finding may be necessary to serve the interests of justice.

3. The costs and fees of the SM should not be subject to review and objection by the respondents, as such a process fairly invites an unseemly process in which the respondents are overseeing the payment and costs, and thus by extension the actions, of the SM who is designated to supervise the settlement terms.

4. The term of the SM is limited to one year which will be woefully insufficient to complete his work, particularly since the SM should as part of his assignment hold hearings and compel witnesses or the production of evidence. The limitation invites dilatory or delaying tactics by respondents. By contrast, the period for discovery in a Track 4 case in the Law Division is 450 days.

5. While the intervenor has no objection to the specific recommendation that

Judge Richard J. Williams be designated as the SM, it would seem more appropriate for the court to consider a wide range of qualified applicants, including both active and retired judges and prosecutors, for this important position, with an emphasis on someone who is experienced in these often arcane issues.

6. Similarly, while the intervenor wishes to be clear that she does not dispute the competence or hard work of Mr. Dauber of his law firm, the recommendation that Mr. Dauber and his law firm continue to serve as special counsel to the special master and with all costs and fees to be paid by the respondents creates a serious conflict of interest in the negotiation of a settlement which would specifically benefit the special counsel. Thus, the court should seek and consider qualified counsel for this position and not consider Mr. Dauber's law firm.

7. The remedies set forth in the RS rely extensively on a planned series of requests for certifications to be submitted by respondents' officials, agents and employees in which they will attest to their new and improved foreclosure procedures. Reliance on these out of court statements seems to invite a repetition of the problems associated with robo signing certifications in the past.

8. The RS does not provide any means nor intention to seek to recoup any of the costs which were wrongly incurred by homeowners, such as Ms. Jakes, who experienced false or fraudulent uncontested foreclosures in the past, nor does the RS seek to impose any sanctions for a pattern of robo signing uncontested foreclosures by the respondents.

9. The court should be mindful that charging an excessive fee or filing a robo-signed certification or affidavit in support of a foreclosure, whether contested or uncontested, are demonstrable acts of fraud. These are intentional misstatements of material fact, made with intent to deceive the homeowner and the court, with the intent that they be relied upon to expedite an unlawful foreclosure and assess unlawfully excessive fees and costs, which misstatements are in fact relied upon, causing monetary damages to the homeowner and damage to the integrity of the court system. Nolan v. Lee Ho, 120 N.J. 465, 472 (1990) (citing Jewish Center of Sussex County v. Whale, 86 N.J. 619, 625 (1981)); Foont-Freedefeld v. Electro-Protective, 126 N.J. Super. 254, 257 (App. Div. 1973); aff'd, 64 N.J. 197 (1974). Punitive damages are available in fraud cases in which the plaintiff establishes that the defendant's conduct was "actuated by actual malice or accompanied by a wanton and willful disregard of persons who might foreseeably be harmed by those acts or omissions." N.J.S.A. 2A:15-5.12(a); Nappe v. Anshelewitz, Barr, Ansell & Bonello, 97 N.J. 37, 49 (1984). See also Rosenblit v. Zimmerman, 166 N.J. 391 (2001) (fraud includes withholding material information in litigation). These are also demonstrable acts of equitable fraud, which would justify rescinding the judgments of foreclosure and refunding the excessive fees and costs. Foont-Freedefeld v. Electro-Protective, *supra*.

10. Furthermore, the court should also be mindful that any officer of any lender or servicer that engages in fraud is "liable to persons injured by his own torts, even though

he was acting on behalf of a corporation and his intent was to benefit the corporation, and he derives no personal benefit." Glenfed Financial v. Penick Corp., 276 N.J. Super. 163 (App. Div. 1994)(conversion); Van Dam Egg Co. v. Allendale Farms, 199 N.J. Super. 452 (App. Div. 1985)(citations omitted; see also Sensale v. Applikon Printing & Dyeing Corp., 12 N.J. Super. 167, 175 (App. Div. 1951).

11. The RS permits the resumption of foreclosures without the taking of any sworn testimony from the respondents, subject to cross examination by counsel, from any respondents or from any respondent officials. The court should proceed to schedule evidentiary hearings on the RS subject to such "live testimony."

12. The RS was negotiated without the benefit of any formal evidence being considered or introduced and therefore may fairly be characterized as based on the good will and good faith of the respondents who were negotiating with the special counsel out of the public eye.

13. The RS was negotiated without any public process or any consultation with any "live clients" such as victims of robo-signing foreclosures, and there is no provision for the creation of an "advisory board" of affected or victimized homeowners and other interested parties.

14. In addition to an evidentiary hearing, the court should direct that the RS will not be adopted in any form until there have been open public hearings where members of the interested public are invited to present their comments on the adequacy of the

remedies and process contained therein.

Respectfully submitted,

POTTER AND DICKSON

A handwritten signature in black ink, appearing to read "R. William Potter". The signature is written in a cursive style with a large initial "R" and a long horizontal stroke at the end.

By R. William Potter

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as representatives of a prospective class of mortgagors  
in uncontested residential foreclosure matters

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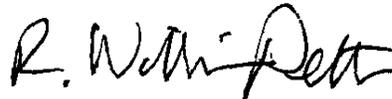
IN THE MATTER OF RESIDENTIAL	:	SUPERIOR COURT OF NEW JERSEY
MORTGAGE PLEADING AND	:	CHANCERY DIVISION
DOCUMENT IRREGULARITIES	:	MERCER COUNTY
	:	
	:	DOCKET NO. F-059553-10
	:	
	:	Civil Action
	:	
	:	<b>CERTIFICATION OF</b>
	:	<b>R. WILLIAM POTTER</b>

---

I am R. William Potter, counsel for the intervenor, Jyll S. Jakes, in this matter. I have personal knowledge of the facts in this certification.

I certify that Jyll S. Jakes acknowledged to me the genuineness of her signature on the included certification, and I will serve or file a copy with the signature affixed if the Court or any party requests.

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.



---

R. William Potter

Dated: March 28, 2010

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Attorneys for Jyll S. Jakes, individually and  
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in uncontested residential foreclosure matters

IN THE MATTER OF RESIDENTIAL  
MORTGAGE PLEADING AND  
DOCUMENT IRREGULARITIES

: SUPERIOR COURT OF NEW JERSEY  
: CHANCERY DIVISION  
: MERCER COUNTY  
:  
: DOCKET NO. F-059553-10  
:  
: Civil Action  
:  
: **CERTIFICATION OF**  
: **JYLL S. JAKES**

I, Jyll S. Jakes, am an adult resident of the State of New Jersey, and certify as follows:

1. My full name is Jyll S. Jakes.
2. I reside at 12 South Street, Sea Bright, NJ 07760.
3. I purchased my residence on or about March 26, 2002 for \$225,000.
4. I obtained a mortgage for \$225,000 to finance the purchase of my home from

Wells Fargo on or about March 2002.

5. In July 2005 I refinanced my mortgage with ABN AMRO for \$300,000. My mortgage payments were \$1750.00/month.

6. In September 2007 Citimortgage took over the servicing rights to my loan from ABN AMRO. In 2007 my loan was down to \$290,000 when Citimortgage bought the servicing

rights.

7. In February 2006, I was laid off from my job as a corporate bond trader at Pyxis Securities in Fair Haven, NJ.

8. In December 2007 I was no longer able to make payments to Citimortgage.

9. In March 2008, I found a job back in my profession and called Citimortgage to ask for a forbearance.

10. In March 2008 Citimortgage filed a Lis Pendens on my mortgage.

11. In April 2008 I retained Lee Perlman, an attorney, to represent me in a bankruptcy. I advised all my creditors of this fact.

12. In late 2008 I was being contacted by Citimortgage for a forbearance. I applied for a forbearance from Citimortgage.

13. Throughout 2008 - 2009 I was also being contacted by Citimortgage to try and collect my past due mortgage payments.

14. On November 24, 2008 Joe Lutz of Citimortgage acknowledged receipt of my documents for a forbearance plan.

15. From November 2008 through March 2010 the mortgage was put through several forbearance reviews and TRIAL MODIFICATIONS.

16. On February 2, 2009 while in modification process my home was sold to Citibank for \$100.00 on and I had a big red notice stuck on my front door ordering me to vacate the premise on March 2, 2009.

17. On February 20, 2009 I received a letter from Fein, Such, Kahn and Shepard, that the sale had been set aside by Judge Thomas Cavanaugh.

18. Between February 2009 and March 2010 I was making payments on the trial modification plan. I was continually harassed by Citimortgage via phone and mail advising me to pay the full amount past due. I also was given forced place insurance by Citimortgage at 3 times the rate of my previous insurer.

19. On or about October 2009 I was sent letters that another Sheriff's sale had occurred. I had many emails with the lawyers for Citimortgage regarding this. I am still unclear if it was another Sheriff's Sale, or a mistake. Nevertheless, I missed many more days of work getting this straightened out.

20. In December 2009 I was let go from my position as a Director at Maxim Group, Inc. I was hired a month later at Seidel and Shaw, LLC.

21. During the period between January 2009 and April 2010 I was told to send and resend the same paper work at the expense of days off from work and much stress from making payments not knowing if I was going to get a permanent HAMP modification.

22. In April 2010 I received a FLAWED PERMANENT MODIFICATION, which I signed because I wanted the foreclosure actions to cease. Under protest I continued making HAMP mortgage payments to Citimortgage.

23. In June 2010 I lost my job at Seidel Shaw Securities.

24. In July 2010 I was unable to continue making mortgage payments to Citimortgage. I asked for forbearance and was told they would be sending out documents for me to fill out.

25. In September 2010 I received a Notice of Default even though I was being verbally assured that a forbearance was being considered.

26. In December 2010 I was told that my home was being scheduled for liquidation. On January 11th, 2011 I sent out a qualified written request.

27. On March 21, 2011 I received a package of papers from Citimortgage that makes almost no sense. They represent that it is all the information I requested. I can attest that it is not. They also make the claim that I do not have a right to know many items that I requested. They have a different interpretation of RESPA.

28. My monthly home mortgage payments were \$1750.72 in 2005. In 2010 under HAMP modification they are \$1660.00 including taxes, FORCED PLACE INSURANCE, and flood according to my credit report. Under the HAMP loan I was supposed to be making payments of \$1550.00 per month. Yet another fraudulent discrepancy.

29. Although I have been diligently seeking employment I have remained unemployed since June 2010. My reputation has been irreparably harmed by Citimortgage's relentless fraudulent actions. I am seeking employment outside of my field of 15 years.

30. As a result of my unemployment I fell behind in my mortgage payments which resulted in a notice of foreclosure from Citimortgage on or about December 2010.

31. Upon receiving this notice, I promptly availed myself of whatever possible remedy I could find for obtaining forbearance, mortgage forgiveness, or loan modification through such programs as Home Affordable Mortgage Program (HAMP).

32. For example, I have stacks of documents, phone records and email and written correspondence that outline just a small amount of the effort it took me to try and effect a performing loan with Citimortgage and how, in writing and phone conversations, I was lead to believe they were working on a modification with me while their true goal was to foreclose on

my home and still take HAMP tax dollar incentive money, and collect money from me, and not pay the true owner of my note.

33. However, Citimortgage refused to negotiate in good faith, as seen in the following: as evidenced by years of not complying with the guidelines under HAMP, refusing to prove their claims they are the true investor in my loan, abusive customer service practices designed to appear as if they acting in good faith, foreclosing on my home while still accepting trial modification payments, delaying permanent modification by extending trial modifications, and finally by making a flawed permanent modification and then after protesting terms of modification resume foreclosing. Ultimately making a credit bid and selling my home to themselves via Sheriff's Sale.

34. In particular, as I found out through my own investigations, Citi was using a "robo signer" in lieu of the holder of the note and to attest to personal knowledge of their fraudulent claims that they own my note and have a right to foreclose.

35. Further investigations and research lead me to understand that my loan has been bought and sold without my consent or knowledge and that Citimortgage has been the servicer of my loan collecting monies from me that do not rightfully belong to them.

36. In March of 2011 Citimortgage claimed IN WRITING that my loan has not been recorded with MERS, yet my address is shown as being active since March 2008 on the MERS ID website, the same month and year that Citimortgage filed the Lis Pendens on my mortgage in the original foreclosure action.

37. I continue to correspond with Citimortgage in an effort to have them document that I have been paying the correct interested party on my loan.

38. At the same time, I remain threatened by foreclosure proceedings which according to my credit report from Experian and Transunion have been reported as in a foreclosure proceedings as of January 2011 even though no Lis Pendens has been filed.

39. Citimortgage has not shown me that they are in possession of my mortgage deed and note or that they can prove that my loan has not been securitized without my permission or knowledge. My belief is that they have been misrepresenting themselves as the true investor, and that they also have not shown my true investor the correct amount I owe on my mortgage.

40. I am intervening in this proceeding to protect my interests and to the extent authorized by the court the interests of others similarly situated.

I hereby certify that the foregoing statements by me are true. I am aware that if any of this statement is willfully false, I am subject to punishment.

Dated: March 28, 2011.

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Jyll S. Jakes

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Dated: March 28, 2011.

  
\_\_\_\_\_  
Jyll S. Jakes

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Attorneys for Jyll S. Jakes, individually and  
as representatives of a prospective class of mortgagors  
in uncontested residential foreclosure matters

IN THE MATTER OF RESIDENTIAL  
MORTGAGE PLEADING AND  
DOCUMENT IRREGULARITIES

: SUPERIOR COURT OF NEW JERSEY  
: CHANCERY DIVISION  
: MERCER COUNTY  
:  
: DOCKET NO. F-059553-10  
:  
: Civil Action  
:  
: **ORDER GRANTING MOTION**  
: **FOR LEAVE TO INTERVENE**

THIS MATTER being opened to the Court by counsel for the Intervenor, Jyll S. Jakes, on  
March 28, 2011, and the Court having considered the motion and certifications and letter brief in  
support of the motion, and having considered the papers filed in response to the motion, and  
upon good cause having been shown,

IT IS, on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, ORDERED as follows:

1. The motion to intervene by Jyll S. Jakes is hereby GRANTED, and
2. A copy of this order shall be served on all counsel of record herein within seven  
(7) days of its filing.

\_\_\_\_\_  
Mary Jacobson, J.S.C.

- ( ) motion was opposed  
( ) motion was unopposed