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**Rita E. Robles-Navas**  
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Vice Presidents and  
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Andrea Auerbach  
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David McMillin  
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Joshua Spielberg  
Margaret Lambe Jurow  
Rebecca Schore

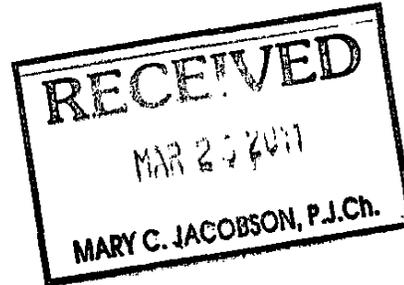
**Supervising Attorneys**  
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March 24, 2011



Hon. Mary Jacobson, J.S.C.  
Chief Judge, General Equity Division  
Superior Court, Mercer County  
210 South 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  
Order To Show Cause Return Date 3/29/2011 at 2:00 p.m.**

Your Honor:

Enclosed please find an original and one copy of:

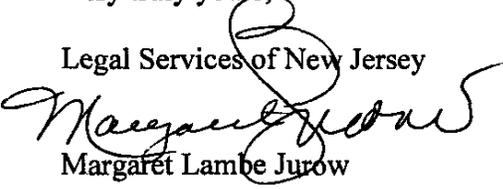
- 1) Notice of Motion for Leave to Intervene, Foreclosure Case Information Statement;
- 2) Certification in Support of Intervention; and
- 3) Letter Brief; and
- 4) Certification of Service.

Kindly file and return a copy marked "filed" in the enclosed self-addressed, stamped envelope. Thank you for your assistance.

**Please note that pursuant to R. 1:13 no filing fees may be charged because the defendant is represented by a legal services office.**

Very truly yours,

Legal Services of New Jersey

  
Margaret Lambe Jurow

Enclosures

 <p><b>FORECLOSURE CASE INFORMATION STATEMENT (FCIS)</b></p> <p>Use for initial Chancery Division — General Equity foreclosure pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information is not furnished or if attorney's signature is not affixed.</p>	FOR USE BY CLERK'S OFFICE ONLY
	PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA <input type="checkbox"/> MO
	RECEIPT NO:
	AMOUNT:
	OVERPAYMENT:
	BATCH NUMBER:
BATCH DATE:	

**SECTION A: TO BE COMPLETED BY ALL PARTIES**

<b>CAPTION</b> IN THE MATTER OF RESIDENTIAL MORTGAGE PLEADING AND DOCUMENT IRREGULARITIES	<b>COUNTY OF VENUE</b> Mercer  <b>DOCKET NUMBER (When available)</b> F-059553-10
<b>NAME(S) OF FILING PARTY(IES)(e.g., John Doe, Plaintiff)</b>	<b>DOCUMENT TYPE</b> <input type="checkbox"/> COMPLAINT <input type="checkbox"/> ANSWER <input checked="" type="checkbox"/> OTHER
<b>ATTORNEY NAME (IF APPLICABLE)</b> REBECCA SCHORE	<b>FIRM NAME (If applicable)</b> LEGAL SERVICES OF NEW JERSEY
<b>MAILING ADDRESS</b> 100 Metroplex Drive, Edison, NJ 08818	<b>DAYTIME TELEPHONE NUMBER</b> (732) 592-9100

**SECTION B: TO BE COMPLETED BY PLAINTIFF TO INITIAL COMPLAINT**

<b>FORECLOSURE CASE TYPE NUMBER</b> <input type="checkbox"/> 088 IN PERSONAM TAX FORECLOSURE <input type="checkbox"/> 089 IN REM TAX FORECLOSURE <input checked="" type="checkbox"/> 0RF RESIDENTIAL MORTGAGE FORECLOSURE <input type="checkbox"/> 0CF COMMERCIAL MORTGAGE FORECLOSURE <input type="checkbox"/> 0CD CONDOMINIUM OR HOMEOWNER'S ASSOCIATION LIEN FORECLOSURE <input type="checkbox"/> 091 STRICT FORECLOSURE <input type="checkbox"/> 0FP OPTIONAL FORECLOSURE PROCEDURE (NO SALE)	<b>IS THIS A HIGH RISK MORTGAGE PURSUANT TO P.L.2009,c.84 AND P.L.2008,c.127</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  <b>PURCHASE MONEY MORTGAGE</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  <b>RELATED PENDING CASE</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO IF YES, LIST DOCKET NUMBERS:
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<b>FULL PHYSICAL STREET ADDRESS OF PROPERTY:</b>   ZIP CODE:                      COUNTY:	<b>MUNICIPALITY CODE(*)</b>  <b>MUNICIPAL BLOCK:</b>  (LOTS):
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**ALL FILING PARTIES MUST SIGN AND PRINT NAMES(S) AND DATE THE FORM BELOW**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

ATTORNEY/SELF REPRESENTED SIGNATURE 	PRINT ATTORNEY/SELF REPRESENTED NAME REBECCA SCHORE	DATE 3/24/11
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\*The Municipality Codes are available at [http://www.judiciary.state.nj.us/forms/CN11343\\_municodes\\_11-9-2009.pdf](http://www.judiciary.state.nj.us/forms/CN11343_municodes_11-9-2009.pdf)



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**Fax: 949-823-6994**  
**Attorneys for One West Bank, FSB**

SIR/MADAM:

**PLEASE TAKE NOTICE** that pursuant to R. 1:6-2(b)(1), the undersigned attorneys for Edward and Patricia Verdon, Barbara A. and Quentin McKenzie, John Sciandra, Vivian A. Gazdalski, Wayne and Deborah Mackin, Marilyn Crocker, Judith Gannon and Oscar Garrido, [hereinafter “the Movants”] make application to the Honorable Mary Jacobson, Superior Court of New Jersey, Chancery Division-General Equity Part, Mercer County Courthouse, 210 So. Broad Street, 5<sup>th</sup> Floor, Trenton, New Jersey 08650, for an order pursuant to Rules R. 4:33-1, or in the alternative R. 4:33-2, to intervene in the above matter both on behalf of the individual movants 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.

**PLEASE TAKE FURTHER NOTICE** that the movants seek leave to intervene as of right pursuant to Rule 4:33-1. “The rule respecting intervention as of right should be liberally construed.” Atlantic Employers Inc. Co. v. Tots & Toddlers Pre-School Day Care Center, Inc., 239

N.J. Super. 276, 280 (App. Div. 1990). R. 4:33-1 provides for intervention as of right where the movant meets four criteria: one, he or she has interest relating to the property or transaction which is the subject of the litigation; two, he or she is “so situated that the disposition of the [litigation] may . . . impair or impede his ability to protect that interest”; three, his or her interest is not “adequately represented by existing parties”; and four, the application to intervene is timely.

Builders League of South Jersey, Inc. v. Gloucester County Utilities Authority, 386 N.J. Super. 462, 468-469 (App. Div. 2006), certif. denied, 189 N.J. 428 (2007) “As the rule is not discretionary, a court must approve an application for intervention as of right if the four criteria are satisfied.”)

In the alternative to intervention as of right under Rule 4:33-1, the movants seek permissive intervention under Rule 4:33-2.

#### **INTEREST RELATING TO THE PROPERTY OR TRANSACTION**

The rule “simply requires the applicant to claim ‘an interest’ relating to the property . . . which is the subject of the action.” Atlantic Employers, supra, 239 N.J. Super. at 280.

The movants are all defendants in presently pending residential foreclosure cases whose interests will be affected by the order and outcome in this matter.

#### **THE DISPOSITION OF THIS MATTER MAY IMPEDE HIS OR HER ABILITY TO PROTECT THAT INTEREST**

Each movant is a homeowner who is a defendant in a presently pending residential mortgage foreclosure action who has not filed an answer to the foreclosure complaint or whose answer has been deemed “uncontested.” Notwithstanding these homeowners’ acknowledgment that their home secures an obligation, they retain the right to cure any default and the right to participate in mediation. An accurate accounting of their arrearages (also called the cure amount) is a necessary precondition to the exercise of a cure and meaningful loss-mitigation negotiations. The public record as recounted in the court’s Administrative Order casts doubt on the accuracy and reliability

of the information in the individual foreclosure complaints concerning the amount due and the proper parties.

**MOVANTS' INTERESTS ARE NOT ADEQUATELY PROTECTED BY EXISTING PARTIES**

The process to consider this court's order to show cause in this matter has to date been characterized in part by an absence of any public court hearings on the subject matter prior to the scheduled March 29, 2011, return date of the OTSC; apparent interactions between Mr. Dauber and the plaintiffs, which were not public, and which may be presumed to have led up to the recommended stipulation; a recommended stipulation which was posted publicly on the Judiciary website late on March 18, 2011, just 11 days before the scheduled return date; absence of any invited or defined opportunity for comment by the public, and more specifically and significantly by homeowners threatened with or in foreclosure and not represented by an attorney.

**TIMELINESS**

This application is timely under the circumstances. LSNJ is a not for profit corporation that supports and coordinates New Jersey's Legal Services system, consisting of a network of six regional Legal Services programs in addition to LSNJ. The Legal Services system is New Jersey's primary provider of free legal assistance to low-income people in civil matters. Since 2002, LSNJ has operated a statewide anti-predatory lending and foreclosure defense project focused on protecting homeowners from unwarranted and illegal foreclosure. LSNJ can only meet a small fraction of the need of low income unrepresented people and as such has concerns about how court procedures affect homeowners in general and especially as they relate to persons whom LSNJ cannot represent and who will remain unrepresented. To date there have been no public court hearings on the subject matter of the actions taken by the court on December 20, 2011 including this OTSC. The first public hearing is now scheduled for Tuesday, March 29, 2011, return date of the OTSC. The interactions between Mr. Dauber and the plaintiffs, which were not public, appear to

have led up to the recommended stipulation which was posted publicly on the Judiciary website late on March 18, 2011, just 11 days before the scheduled return date. LSNJ's phone calls to Mr. Dauber were not returned until two days prior to his filing of the recommended stipulation. Even then Mr. Dauber did not reveal anything about the substance of his position or that of the foreclosure plaintiffs. LSNJ's first notice of the substance of Mr. Dauber's recommended stipulation was when it was posted on the Judiciary website last Friday March 18, 2011, only three business days before today. LSNJ reviewed the recommended stipulation immediately and proceeded as diligently as possible to present the within motion on behalf of our clients. Given the lack of response from Mr. Dauber, LSNJ had no choice but to wait until more information was made known about the positions of the parties and Mr. Dauber and what the shape of the proceeding before the trial court would be before taking any action to intervene in this matter. There has been no invited or defined opportunity for comment by the public, and more specifically and significantly by homeowners threatened with or in foreclosure and not represented by an attorney. Thus, the within motion is the only opportunity for public participation and transparency in this matter. In foreclosure actions, the motion to intervene is generally considered timely if filed prior to the entry of final judgment. Government Security Co. v. Waire, 94 N.J. Super. 586 (App. Div.), certif. denied, 50 N.J. 84 (1967); Morsemere Fed. Sav. & Loan Ass'n v. Nicolaou, 206 N.J. Super. 637 (App. Div. 1986). Intervention may even be allowed after judgment if necessary to preserve some right which cannot otherwise be protected. Warner Co. v. Sutton, 270 N.J. Super. 658, 637 A.2d 960 (App. Div. 1994); Chesterbrooke Ltd. Partnership v. Planning Bd. of Township of Chester, 237 N.J. Super. 118, 567 A.2d 221 (App. Div. 1989) ("Intervenors-objectors here filed their intervention motion immediately after learning of the Board's decision not to file an appeal. Because they sought intervention solely to appeal the judgment, their motion was timely. They met all criteria in R. 4:33-1. They were entitled to intervention as of right.")

**PLEASE TAKE FURTHER NOTICE** that in support of this Motion, movants will rely upon the Certification of Margaret Lambe Jurow.

**PLEASE TAKE FURTHER NOTICE** that oral argument is requested.

**PLEASE TAKE FURTHER NOTICE** that this motion shall be deemed uncontested unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought.

LEGAL SERVICES OF NEW JERSEY

By:



MARGARET LAMBE JUROW

Dated: 3-24-2011

**LEGAL SERVICES OF NEW JERSEY**

**BY: Margaret Lambe Jurow, Esq.**

**100 Metroplex Drive, Ste 402**

**Edison, NJ 08818**

**(732) 572-9100**

**Attorneys for Edward and Patricia Verdon, Barbara A. and Quentin McKenzie**

**John Sciandra, Vivian A. Gazdalski, Wayne and Deborah Mackin,**

**Marilyn Crocker, Judith Gannon and Oscar Garrido,**

**Individually and as representatives of a prospective class**

---

	:	<b>SUPERIOR COURT OF NEW JERSEY</b>
	:	<b>CHANCERY DIVISION</b>
<b>IN THE MATTER OF RESIDENTIAL</b>	:	<b>MERCER COUNTY</b>
<b>MORTGAGE PLEADING AND</b>	:	
<b>DOCUMENT IRREGULARITIES</b>	:	<b>DOCKET NOS.: F-059553-10</b>
	:	
	:	<b>Civil Action</b>
	:	
	:	<b>CERTIFICATION IN SUPPORT</b>
	:	<b>OF INTERVENTION</b>

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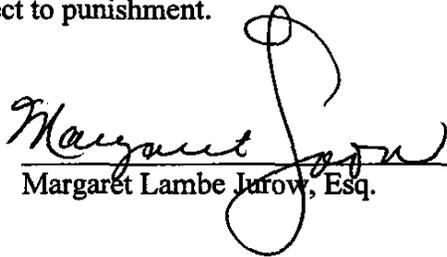
Margaret Lambe Jurow, of full age, hereby certifies as follows:

1. LSNJ is a not for profit corporation that supports and coordinates New Jersey's Legal Services system, consisting of a network of six regional Legal Services programs in addition to LSNJ.
2. The Legal Services system is New Jersey's primary provider of free legal assistance to low-income people in civil matters.
3. Since 2002, LSNJ has operated a statewide anti-predatory lending and foreclosure defense project focused on protecting homeowners from unwarranted and illegal foreclosure.
4. LSNJ can only meet a small fraction of the need of low income unrepresented people and as such has concerns about how court procedures affect homeowners in general and especially as they relate to persons whom LSNJ cannot represent and who will remain unrepresented.

5. To date there have been no public court hearings on the subject matter of the actions taken by the court on December 20, 2011 including this OTSC.
6. The first public hearing is now scheduled for Tuesday, March 29, 2011, return date of the OTSC.
7. The interactions between Mr. Dauber and the foreclosure plaintiffs, which were not public, appear to have led up to the recommended stipulation which was posted publicly on the Judiciary website late on March 18, 2011, just 11 days before the scheduled return date.
8. LSNJ's phone calls to Mr. Dauber were not returned until two days prior to his filing of the recommended stipulation. Even then Mr. Dauber did not reveal anything about the substance of his position or that of the foreclosure plaintiffs.
9. LSNJ's first notice of the substance of Mr. Dauber's recommended stipulation was when it was posted on the Judiciary website last Friday March 18, 2011, only three business days before today.
10. LSNJ reviewed the recommended stipulation immediately and proceeded as diligently as possible to present the within motion on behalf of our clients.
11. Given the lack of response from Mr. Dauber, LSNJ had no choice but to wait until more information was made known about the positions of the parties and Mr. Dauber and what the shape of the proceeding before the trial court would be before taking any action to intervene in this matter.
12. There has been no invited or defined opportunity for comment by the public, and more specifically and significantly by homeowners threatened with or in foreclosure and not represented by an attorney. Thus, the within motion is the only opportunity for public participation and transparency in this matter.

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

Dated: 3/24/2011

  
Margaret Lambe Jurow, Esq.

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and Assistant General Counsel  
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March 24, 2011

Hon. Mary Jacobson, J.S.C.  
Chief Judge, General Equity Division  
Superior Court, Mercer County  
210 South 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  
Order To Show Cause Return Date 3/29/2011 at 2:00 p.m.**

Your Honor:

Pursuant to intervenor's motion for leave to intervene in this matter, we ask that this letter brief be accepted and considered in relation to the March 29, 2011 proceeding concerning the trial court's Order To Show Cause (OTSC). The stated purpose of the OTSC was to restore integrity to the judicial foreclosure process and protect the due process rights of the affected parties by resolving endemic questions about the reliability and accuracy of pleadings submitted to the Office of Foreclosure. Nothing in the OTSC purported to or in fact effectuated change in the procedures for carrying out individual foreclosure actions. Nothing in the OTSC in any way curtailed any homeowner's rights to due process and justice in individual foreclosure proceedings and more specifically to be able to challenge and receive a judicial determination

concerning the accuracy, reliable, or compliance with applicable court rules of any pleading or other document filed in such individual foreclosure proceedings. The terms of the recommended stipulation (RS) set forth procedures, including various sampling and certification methodologies, which will or may affect the overarching rights of plaintiffs, and their agents and assigns, in these individual foreclosure proceedings. Some of these provisions could be interpreted as superseding homeowner – defendants’ rights under existing court rules and procedures. Conversely, at no point does the RS affirm that such rights survive the RS.

The process to consider the OTSC in this matter has to date been characterized in part by:

1. Absence of any public court hearings on the subject matter prior to the scheduled March 29, 2011, return date of the OTSC.
2. Apparent interactions between Mr. Dauber and the foreclosure plaintiffs, which were not public, and which may be presumed to have led up to the recommended stipulation.
3. A recommended stipulation which was posted publicly on the Judiciary website late on March 18, 2011, just 11 days before the scheduled return date.
4. Absence of any invited or defined opportunity for comment by the public, and more specifically and significantly by homeowners threatened with or in foreclosure and not represented by an attorney.

The intervenors as well as the class they are proposed to represent, consists of homeowners who have not filed answers or whose answers have been deemed “uncontested”. Notwithstanding these homeowners’ acknowledgement that their home secures an obligation, they retain the right to cure any default and the right to participate in mediation. An accurate accounting of their arrearages (also called the cure amount) is a necessary precondition of the exercise of a cure and meaningful loss-mitigation negotiations.

Intervenors seek to be heard here because the RS negotiated and submitted by Mr. Dauber without their input is silent or ambiguous on several critical issues pertaining to the individual foreclosure actions that they must face. As more fully explained below, the intervenors respectfully request that in considering how to rule on the terms of the original OTSC and the RS, the final order entered by the trial court specifically provide that:

1. The full list of cases involving these foreclosure plaintiffs which is called for in the RS must be made public as soon as it is submitted to this court or any special master;
2. Each defendant homeowner in any foreclosure case containing any inaccurate or unreliable document has a right to challenge the accuracy, veracity or reliability of any pleading in such a proceeding, and to challenge entry of judgment based upon any pleading or document which is inaccurate, untrue or unreliable;
3. To correct previous inaccurate and unreliable pleadings and submissions of evidence in support of pending motions, foreclosure plaintiffs must proceed by motion in the individual case, on notice to the defendant homeowner, consistent with applicable court rules and without regard to whether default has already been entered, and such notice shall contain the telephone number for the Legal Services of New Jersey Mortgage Foreclosure Hotline, 1-888-989-5277.
4. Substitution of a party must always be made by motion pursuant to R.4:34-1 et seq. where the plaintiff never had standing, or was named by mistake and someone else held the note or was the mortgagee at the time the complaint was filed, the complaint should be dismissed.
5. Foreclosure plaintiffs shall provide a complete account history to any homeowner requesting to participate in the court mediation program;

6. Certifications must comply with the Rules of Evidence;
7. Future misconduct, including the submission of any pleading or document that fails to comply with applicable court rules, shall result in the imposition of sanctions by the trial court pursuant to R.1:4-8.

#### **I. INDIVIDUAL JUSTICE IS PARAMOUNT**

While residential mortgage foreclosure in some states is non-judicial, the New Jersey legislature has seen fit to make foreclosure a judicial process – a process that requires all of the same elements of due process inherent in any court matter, such as the requirements of standing, evidence, burden of proof and the opportunity to present a defense. Despite the current economic climate and a court system overburdened with a voluminous foreclosure docket, due process in individual foreclosure actions is no less significant to individual homeowners or to the validity of the judicial system as a whole than in any other judicial matter.

“In New Jersey, as elsewhere, ‘[t]he essential components of due process are notice and an opportunity to be heard.’” First Resolution Inv. v. Seker, 171 N.J. 502, 513-14, 795 A.2d 868(2002) (quoting Mettinger v. Globe Slicing Mach. Co., 153 N.J. 371, 389, 709 A.2d 779 (1998)). “Fundamentally, due process requires an opportunity to be heard at a meaningful time and in a meaningful manner.” Doe v. Poritz, 142 N.J. 1, 106, 662 A.2d 367 (1995).

“At a minimum, due process requires that a party in a judicial hearing receive ‘notice defining the issues and an adequate opportunity to prepare and respond.’” H.E.S. v. J.C.S., 175 N.J. 309, 321, 815 A.2d 405 (2003) (quoting McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546, 559, 626 A.2d 425 (1993)). “There can be no adequate preparation where the notice does not reasonably apprise the party of the charges, or where the issues litigated at the hearing differ substantially from those outlined in the notice.” Dep’t of Law and Pub. Safety v. Miller, 115 N.J.

Super. 122, 126, 278 A.2d 495 (App. Div. 1971). Due process is “a flexible [concept] that depends on the particular circumstances.” Doe, supra, 142 N.J. at 106, 662 A.2d 367.

The process set forth in the RS for increasing the likelihood of the accuracy and reliability of pleadings consists of closed communications between the Foreclosure Plaintiffs and the Special Master with no opportunity for homeowner participation. The order in this proceeding must make clear that individual homeowners remain entitled to justice in their individual foreclosure actions, and remain able to challenge entry of judgment in their own cases as to amount, standing and any other contested matter.

**II. ANY AMENDMENTS TO PLEADINGS AND SUBMISSIONS OF EVIDENCE IN SUPPORT OF PENDING MOTIONS OR APPLICATIONS IN INDIVIDUAL FORECLOSURE PROCEEDINGS MUST BE MADE BY MOTION ON NOTICE TO THE HOMEOWNER, AND MUST BE CONSISTENT WITH APPLICABLE COURT RULES.**

Where a foreclosure plaintiff seeks to amend a pleading to correct a pleading deficiency related to the issues raised in the OTSC (e.g., lack of personal knowledge or inaccurate information in the original pleading), the homeowner must be given notice that the pleading is being filed for that reason, and must otherwise be consistent with applicable court rules as detailed below. The plaintiff's Notice of Motion must contain the telephone number for Legal Service of New Jersey's Mortgage Foreclosure Hotline, 1-888-989-5277, so that the homeowner can seek legal assistance with regard to the amendment.

Where a foreclosure plaintiff seeks to amend a complaint, the plaintiff must also comply with R. 4:9-1 et seq. which permits an amendment as of right at any time before a responsive pleading is filed or by motion thereafter. Pursuant to R.4:9-1, the defendant may respond to the amended complaint within the time remaining for response to the original pleading or within 20

days after service of the amended pleading, whichever period is longer. Service – even on defendants who have defaulted - must be made in the manner of original service pursuant to R. 1:5-1, R. 4:4-4 and R. 4:4-5.

Motions, including motions for entry of judgment (and the documents in support thereof), must be served on all mortgagors, regardless of whether they have defaulted and on all parties who have appeared, including where answers have been stricken or rendered noncontesting (4:64(d)(1)(A) and (B)). In the foreclosure context, motions must be accompanied by the notice specified in R. 4:64-9, which expressly notifies the homeowner of the right to file a written answers or objection. The court should make clear that an amendment to a certification or affidavit filed in support of a motion is tantamount to amendment of the motion itself, and therefore must be accomplished by Notice of Motion. Substitution of a party must always be made by motion pursuant to R. 4:34-1 et seq.

Where the plaintiff never had standing, or was named by mistake and someone else actually held the note or was the mortgagee at the time the complaint was filed, the complaint should be dismissed. In the recent matter of Bank of New York v. Raftogianis, the Chancery Division recognized that dismissal without prejudice is usually appropriate where a foreclosure complaint is filed by a plaintiff who lacks standing:

As a routine matter, any complaint for foreclosure should be filed in the name of the individual or entity with the authority to enforce the underlying debt. In actions involving a negotiable note, plaintiff should generally be in a position to establish that it did have possession of the note as of the date the complaint was filed as required by the UCC. Where that cannot be established, the complaint may be subject to dismissal, without prejudice to the filing of a new action. There is simply no reason for this court to disregard the substantive provisions of the UCC. Equity follows the law. See Dunkin' Donuts of America Inc. v. Middletown Donut Corp., 100 N.J. 166, 183-85 (1985).

--- N.J. Super. ---, 2010 WL 5829240 (Ch. Div. 2010).

The Court noted that the filing date of the complaint can affect the homeowner's substantive rights:

For a variety of reasons, litigants facing foreclosure should be able to confirm that a complaint is properly filed by an individual or entity with the authority to proceed. The date of filing can affect substantive rights, and those involved should have the ability to confirm that filing was proper. By way of example, the Fair Foreclosure Act, N.J.S.A. 2A:50-53-72, provides that a debtor's right to cure a default with respect to a residential mortgage, without being responsible for the lender's fees and costs, will end when the complaint is filed. See N.J.S.A. 2A:50-56(c)(5), (6) and (7). Similarly, N.J.S.A. 46:10B-50 now provides that certain borrowers facing foreclosure have the right to a six month forbearance, effective with the filing of a foreclosure complaint. In any event, it is generally appropriate for one who is seeking the court's assistance in forcing the sale of property to proceed with some degree of transparency.

Id. See also Wells Fargo v. Ford, --- N.J. Super.---, 2011 WL 250561 (App. Div. 2011).

### **III. THE CONTENT OF AMENDED DOCUMENT MUST BE BOTH ACCURATE AND RELIABLE**

#### **A. Accuracy**

Filing false pleadings is not a mere technicality or a wrong with no victim. On a widespread basis, it devalues the judicial system, renders judgments unreliable and potentially void, and could leave properties sold at sheriff's sale uninsurable and therefore unsalable. On an individual basis, false pleadings in the foreclosure context also impede the homeowners' right to cure and ability to negotiate repayment arrangements or loan modifications with the proper party.

The significance of the homeowner's right to cure and of the foreclosure plaintiff's obligation to accurately identify the cure amount cannot be overstated because it dictates whether the homeowner will act or believe action is futile. The New Jersey legislature has repeatedly

recognized that the best interests of all involved – foreclosure plaintiffs, homeowners, the court system, and society in general – are best served when homeowners have a real opportunity to cure defaults and remain in their homes. For example, the New Jersey Fair Foreclosure Act provides in part:

The Legislature hereby finds and declares it to be the public policy of this State that homeowners should be given every opportunity to pay their home mortgages and thus keep their homes; and that lenders will be benefited when residential mortgage debtors cure their defaults and return defaulted residential mortgage loans to performing status.

N.J.S.A. 2A:50-54. Similarly, the New Jersey Mortgage Stabilization and Relief Act, enacted in 2009 in response to the foreclosure crisis, expressly states in pertinent part:

The Legislature finds and declares that:

- a. Many thousands of New Jersey homeowners are at risk of losing their homes as a result of mortgage foreclosures.
- b. Foreclosures involve the loss of a family's home, often the family's most valuable financial asset, and foreclosures especially undermine the health and economic vitality of the urban neighborhoods in which a disproportionate share of foreclosures take place.
- c. **Foreclosures result in the loss of millions of dollars in assets, not only those of the homeowners who are the victims of foreclosure, but also adversely affect the property values of homes located in the vicinity of foreclosed properties.**
- d. **The loss of a house often results in abandonment of properties, leading to significant costs and lost revenue for local governments, as well as harm to the neighborhoods in which properties are abandoned.**
- e. **Many of these foreclosures could be avoided if homeowners had greater access to high-quality, in-person foreclosure prevention counseling, emergency financial assistance, or additional time during which to negotiate loan modifications or obtain refinancing.**
- f. There is a compelling public policy need for the State of New Jersey to provide the means by which homeowners can obtain mortgage

related counseling, emergency financial assistance, and time to adjust their finances in order to increase their ability to retain their homes, and to protect local governments and neighborhoods from the negative social, economic, and fiscal consequences of foreclosure and property abandonment. . . .

N.J.S.A. 55:14K-22 et seq. (emphasis added).

Accurate information also facilitates loan modifications, which in almost all instances are better for all parties involved than foreclosure. The Center for Responsible Lending yesterday issued a report entitled, “Fix or Evict? Loan Modifications Return More Value than Foreclosures” available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/fix-or-evict.pdf>. The report concludes that payment-reducing loan modifications would return more value to investors than foreclosures, even at high modification re-default rates.

Many of the foreclosure plaintiffs allege that they reviewed their foreclosure pleadings and ascertained that no homeowner was subjected to foreclosure unless their records showed that the homeowner was in default. Importantly, however, they do not claim that their internal reviews proved the sworn statements were truthful as to the amount due or the identity of the proper plaintiff – the issues critical to the homeowner’s right to cure or ability to negotiate a loan modification. The court should order foreclosure plaintiffs to provide a complete account history when a homeowner challenges the cure amount or requests to participate in the court mediation program. An accurate accounting of the cure amount in time to actually exercise the right and access to someone with settlement authority is critical to effectuating these legislative goals. Any notion of due process in the foreclosure context must incorporate these policy concerns.

## **B. Reliability**

The Rules of Evidence apply in all court proceedings, including uncontested foreclosure proceedings. N.J.R.E. 101(a)(2). The court shall exercise reasonable control over the presentation of evidence for the effective ascertainment of the truth. N.J.R.E. 611(a).

Many of the irregular and false documents submitted to the court purport to be “business records” and the certifications submitted to the court contain little more than bald conclusions to that effect. To establish that a document falls within the hearsay exception for business records, the affiant must have personal knowledge of the following:

1. that the writing or other record of an act event or condition was made at or near the time of observation by a person with actual knowledge or with information supplied by such a person;
2. in the regular course of the observer’s business;
3. that it was the regular practice of that business to make that record; and
4. that the source of the information and the method of recording and the circumstances of the preparation of the record indicate that the record is trustworthy.

N.J.R.E. 803(c)(6).

Not every record prepared by a commercial entity is admissible under the business record hearsay exception to the Rules of Evidence. Mahoney v. Mahoney, 39 N.J. 208 (1963). Carryover entries, for example, do not meet the exception. Adams v. N.J. State Fair, 71 N.J. Super. 491, 504 (App. Div. 1962).

The relevant personal knowledge of the affiant is personal knowledge of (a) the foundation and authenticity of each source of underlying facts (which includes grounds establishing the accuracy and security of information stored in computer systems based on actual *knowledge about the computer system(s)* – and not statements of a third party, other than reports from knowledgeable

co-workers in the ordinary course of business), and (b) the grounds for establishing the business records exception or another exception to the hearsay rule.

In furtherance of ensuring that there are no (or fewer) further violations, affiants should be required to keep log books of all certifications, like those required of notaries public.

**IV. THE CONSEQUENCES OF FUTURE MISCONDUCT MUST BE CLEAR**

The New Jersey court rules related to foreclosure have been amended several times in the recent past due to sloppy practice.

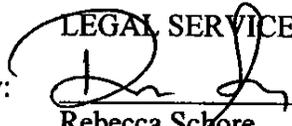
The RS is ambiguous with regard to the imposition of sanctions for future misconduct. Nothing in the OTSC authorized barring or inhibiting such sanctions.

The court's order must make clear that in case of any future misconduct, the R.1:4-8 power to sanction remains in effect when improper certifications, statements or other practices are evident. To be effective these generally have to be on the court's own initiative under R.1:4-8(c). Monetary sanctions should be awardable to the opposing party and the judiciary, to be used to finance the Special Master or the administrative costs of the Office of Foreclosure and the Superior Court Clerk.

**CONCLUSION**

For the reasons set forth above, Intervenor respectfully request that the Court enter the Order submitted herewith.

Respectfully submitted,

By:  LEGAL SERVICES OF NEW JERSEY  
Rebecca Schore

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IN THE MATTER OF RESIDENTIAL  
MORTGAGE PLEADING AND  
DOCUMENT IRREGULARITIES

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: SUPERIOR COURT OF NEW JERSEY  
: CHANCERY DIVISION  
: MERCER COUNTY  
:  
: DOCKET NOS.: F-059553-10  
:  
: Civil Action  
:  
: **CERTIFICATION OF SERVICE**  
:

Maria S. Giovene, of full age, hereby certifies as follows:

1. I am employed by Legal Services of New Jersey as an Administrative Assistant.
2. On March 24, 2011, I caused an original and one copy of Notice of Motion for Leave

to Intervene, Foreclosure Case Information Statement, Certification in Support of Intervention,

Letter Brief and Certification of Service to be delivered by Lawyers Service to:

Honorable Mary C. Jacobson, J.S.C.  
Superior Court of New Jersey  
210 S. Broad Street, 5<sup>th</sup> Floor  
P.O. Box 8068  
Trenton, New Jersey 08650

3. I also caused a copy of the Notice of Motion for Leave to Intervene, Foreclosure

Case Information Statement, Certification in Support of Intervention, Letter Brief and Certification

of Service to be delivered by facsimile and regular mail to:

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I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
\_\_\_\_\_  
Maria S. Giovane

DATED: March 24, 2011