



3. Actual false statements about when and how a loan has been transferred since its origination.
4. False identification of signatory.
5. Forged signatures.
6. Execution outside the presence of a notary, who nevertheless notarizes the signature.

On a national scale these kinds of irregularities in preparation of documents to support mortgage foreclosures manifested themselves in a practice that became known as “robo-signing,” where a person would sign hundreds of affidavits or certifications a day with no personal knowledge of the contents of any of them. In many instances the underlying facts asserted in the documents submitted to support foreclosures may have actually been true but because of the false representations concerning the process by which the documents were created, there was no way for courts to be able to separate assertions that were accurate from those that were not.

If each uncontested mortgage foreclosure were to be heard by a judge with the presentation of oral testimony, the judge could cross-examine the witnesses to determine the reliability and veracity of testimony presented. However, uncontested foreclosures represent over 90% of all residential mortgage foreclosure proceedings pending in New Jersey and presentation of oral testimony is not a sensible or practical way to resolve the thousands of foreclosures filed every year. Therefore courts have traditionally relied upon the truthfulness of affidavits or certifications submitted to support a mortgagee’s request for a judgment of foreclosure. When confidence in the reliability of such submissions is lost, the court must be persuaded by the mortgagee that it has processes and procedures in place that will restore the necessary confidence to justify the court’s reliance on documents submitted.

Toward that end, on December 20, 2010, General Equity Judge Mary C. Jacobson, designated by the Chief Justice to oversee uncontested foreclosure cases in the State, entered an Order to Show Cause directed at: Bank of America, d/b/a BAC Home Loan Servicing, LP; Citibank, N.A. and Citi Residential Lending, Inc.; GMAC Mortgage, LLC; JPMorgan Chase Bank, N.A. and Chase Home Finance LLC; OneWest Bank, FSB; and Wells Fargo Bank, N.A. (collectively, "Respondents") requiring each to show cause why the processing of pending uncontested residential mortgage foreclosure actions filed by them should not be suspended. While the Order to Show Cause did not order an immediate suspension of foreclosure processing for the Respondents, *de facto* there has been such a suspension, either because Respondents or some of them had earlier ceased processing foreclosures in New Jersey on their own while attempting to address the "robo-signing" issue or because the effect of the Rule Amendments, as worded in the December 20th emergency revisions, was to make it impractical or unfeasible for Respondents to pursue foreclosures.

The six Respondents were selected specifically for the Order to Show Cause for two reasons. First, the six Respondents account for a large majority of the foreclosure actions in the New Jersey courts. Any Judiciary-wide correction of the "robo-signing" issue in the State of New Jersey must logically begin with these six Respondents. Second, the six Respondents were selected for inclusion in the Order to Show Cause because there has been deposition testimony and/or other materials forming a public record in various jurisdictions across the United States indicating that each of the six Respondents has encountered "robo-signing" problems concerning their foreclosures in the past.

In response to the Order to Show Cause, Respondents and court appointed counsel entered into discussions resulting in a Consent Order. That Order appointed a Special Master

charged with responsibility to conduct a review to determine whether each of the respective service providers has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which are made in the regular course of business as part of the regular practice of that business to make them. The review also contemplated a process to verify that the respective servicers are, in fact, adhering to those processes and procedures following the resumption of residential mortgage foreclosure activities in New Jersey.

While there has also been much public discussion and litigation concerning complex issues relating to the standing of mortgagees and loan servicers to foreclose, including issues flowing from the securitization of mortgages, assignments of mortgages, and the utilization of Mortgage Electronic Registration Systems, Inc. ("MERS"), these broad issues of standing, assignments, and MERS, though important, are beyond the scope of the Special Master's charge. The focus of the Consent Order entered by Judge Jacobson is on Respondents' business practices and procedures that generate the sworn documents that are submitted to the Judiciary in support of final judgments and other relief requested in uncontested foreclosure cases. Nothing in this report is intended, nor should be construed in any way, to prejudge or comment on issues concerning a plaintiff's standing to foreclose in any individual case.

## THE REVIEW PROCESS

The review by the Special Master is systems oriented and not intended to deal with individual pending cases, although selected individual cases may be reviewed as part of the process. The first phase of the review process, involving an examination of the respondents' business practices, required that each respective servicer make a prima facie showing that it has processes and procedures in place which, if adhered to, will assure the Judiciary that it can rely on the veracity of representations contained in documents filed by the servicer. Upon a determination that such a showing had been made the Judiciary would resume processing uncontested foreclosure cases filed by the servicer. The second phase, to be commenced later, will involve a monitoring process to ensure that the servicers' processes and procedures are effective and, in fact, are being followed.

In determining whether a respondent had made the requisite prima facie showing the inquiry focused on three major areas:

1. Respondent's authority to pursue the foreclosure proceeding.
2. The admissibility in evidence of data from Respondent's records.
3. The reliability of Respondent's document preparation and execution process.

As part of the inquiry in the first phase of this work, each Respondent was directed to respond to the following requests for information about its business processes:

(a) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees;

(b) Does the Respondent have a record keeping system of Business Records that provides accurate up to date information on the payment history and status of the loan? If so, describe the system;

(c) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings;

(d) Has the Respondent established specific procedures for staff to ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is based on a personal review of Business Records? If so:

- (i) Describe the procedures;
- (ii) Produce all documents evidencing establishment of the procedures;
- (iii) Produce samples of all documents or screens reviewed by staff in the affidavit/certification of indebtedness process; and
- (iv) Provide the numerical range and average of how much time is spent per loan to review the Respondent's business records and complete an affidavit/certification of indebtedness.

(e) Has the Respondent implemented a training program for its staff to review relevant Business Records and source documents and complete foreclosure affidavits/certifications based on a personal review of such materials? If so:

- (i) Describe the program;
- (ii) Produce copies of all written materials used and screen samples from any powerpoint or other presentations; and
- (iii) Produce a statement that all staff who are preparing affidavits/certifications have received this training.

(f) Has the Respondent established quality assurance procedures to insure that the established procedures for review of relevant source documents and completion of foreclosure affidavits/ certifications based on a personal review of Business Records are followed in each case? If so:

- (i) Describe the procedures; and
- (ii) Produce copies of all documents evidencing establishment of quality assurance procedures.

(g) Does the Respondent have a process for insuring effective and timely communication with foreclosure counsel in connection with the completion and execution of foreclosure affidavits/certifications? If so:

- (i) Describe the process; and
- (ii) Describe the procedures that will enable foreclosure counsel to comply with their duties concerning the completion and execution of

foreclosure affidavits/certifications, under the Court Rules as they are finally adopted by the New Jersey Supreme Court.

After reviewing the documentation submitted, the Special Master and counsel to the Special Master conducted follow-up telephone conferences on a number of occasions with representatives of each respondent to obtain further explanation and clarification of the materials submitted and to request supplemental information. Each respondent provided the clarification, explanation, and supplemental information by way of at least one supplemental certification. If further clarification or supplemental information was required, this was communicated to the respondent through counsel and additional certifications were submitted.

#### FINDINGS

The initial Prima Facie submission<sup>1</sup> of Wells Fargo Bank, N.A. was accompanied by the certification of Timothy P. O'Brien, Senior Vice President, who is responsible for the foreclosure document process, including affidavits in support of foreclosure judgments. Mr. O'Brien's initial certification provided: descriptions of Wells Fargo Bank, N.A.'s several affiliates and their combined servicing portfolio; details concerning the arrangements and agreements with the various entities for which Wells Fargo Bank, N.A. services mortgage loans; a description of Wells Fargo Bank, N.A.'s system of record; details on Wells Fargo Bank, N.A.'s document execution training and procedures; a description of quality control and internal audit functions; and a discussion on how Wells Fargo Bank, N.A. communicates with New Jersey foreclosure counsel. The certification included nine

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<sup>1</sup> The entire Wells Fargo submission has been posted on the Judiciary website at <http://www.judiciary.state.nj.us/superior/f5955310.htm>.

exhibits with various sub-exhibits, which included sample pooling and servicing agreements, several documents from Respondent's employee training materials, checklists and other sample materials from the document execution process, and numerous job aids including quality control and internal audit materials.

Thereafter a supplemental certification from Mr. O'Brien was submitted. Mr. O'Brien's supplemental certification provided greater clarity on issues such as the servicing of loans owned by Wells' affiliated or related entities, the integrity and security of Respondent's business records, Wells Fargo Bank, N.A.'s internal audit procedures, and how Wells Fargo Bank, N.A. will ensure compliance with the recently amended Court Rules 4:64-1 and 4:64-2. Attached to Mr. O'Brien's supplemental certification was a sample servicing agreement between two Wells Fargo-related entities.

Finally, Respondent submitted a Second Supplemental Certification of Mr. O'Brien which provided additional detail concerning the processes by which Respondent vets, retains, and supervises its New Jersey foreclosure counsel.

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 majority of consumer real estate loans serviced by a Wells Fargo & Company affiliate are serviced by Wells Fargo Bank, N.A., either through its division, Wells Fargo Home Mortgage ("WFHM") or its trade name, America's Servicing Company ("ASC"). There are other Wells Fargo subsidiaries that may have filed foreclosure proceedings in New Jersey, which are 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 Corporation.<sup>2</sup> Upon its acquisition in December of 2008 Wachovia Bank became a wholly owned subsidiary of Wells Fargo & Company. On March 20, 2010, Wachovia Bank was merged into Wells Fargo Bank N.A., and Wachovia ceased to exist. While the name Wachovia may still appear in the caption of some cases, and while the name Wachovia is still used as a trade name in some areas of the country, there are no remaining legal Wachovia entities conducting residential mortgage foreclosures in New Jersey.

Wells Fargo Bank N.A. is the servicer on approximately 12,300 mortgage loans that are the subject of pending foreclosure proceedings in New Jersey. It has certified that all of the foreclosure proceedings listed in the Servicing Portfolio filed with the court have been and will be handled in accordance with the processes and procedures described in the certifications of Mr. O'Brien. In every case, even if a judgment certification was filed in the past, Wells Fargo will prepare a new certification in accordance with those procedures.

#### RESPONDENT'S AUTHORITY TO PURSUE FORECLOSURE PROCEEDINGS

The first element of proof in any type of case is to establish that the party initiating the proceeding has authority to ask the court for relief. Respondent is involved herein in its capacity as a mortgage loan servicer. In some foreclosure cases initiated by Respondent it may be servicing its own mortgage loan. But in other cases it may be servicing the mortgage loan of an independent party. For that reason the inquiry began with an examination of Respondent's authority to pursue foreclosure proceedings under the various circumstances in which it appears before the court.

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<sup>2</sup> Wells Fargo & Company acquired the Wachovia Corporation at the end of December 2008.

Wells Fargo Bank, N.A. (“Wells Fargo”) has identified three arrangements by which it services loans: (1) loans owned by Wells Fargo and its affiliates, (2) loans serviced for Government Sponsored Enterprises, such as Fannie Mae and Freddie Mac, and (3) loans serviced for private investors.

Approximately 30% of all loans serviced by Wells Fargo fall under the first category, *i.e.* are loans owned by Wells Fargo and its affiliates. In this category authority to service loans held by a Wells Fargo affiliate comes from inter-company agreements. Wells Fargo has provided a sample of such an agreement between America’s Servicing Company (ASC), a trade name for Wells Fargo Bank N.A. and Wells Fargo Financial Inc. one of the Wells Fargo affiliates. In relevant part the agreement provides:

ASC shall take such action as may be taken under the applicable Mortgage Loan Requirements appropriate for the protection and preservation of the property securing a Mortgage Loan and any income derived therefrom.

ASC shall, as defined in this Agreement and pursuant to Section 3, institute foreclosure proceedings or cause such proceedings to be instituted, or take any other steps to acquire the property securing a Mortgage Loan, in accordance with the applicable Mortgage Loan requirements.

With regard to the second category, loans serviced for Government Sponsored Enterprises, Wells Fargo submitted, as an example, a contract with Fannie Mae that provides:

The purpose of this Contract is...to establish the Lender as an approved servicer of mortgages we [Fannie Mae] have purchased or in which we have purchased a participation interest. *Id.*, Ex.1B, p. WF 288, § I(A).

The Lender will diligently perform all duties that are necessary or incident to the servicing of...all mortgages it is servicing for [Fannie Mae].... *Id.*, Ex.1B, p. WF 295, § V(A)(1).

The contract further provides:

Any mortgage serviced under this Contract...must be serviced by the Lender according to the provisions in our Guides that are in effect on the date of this Contract or as amended in the future.

Page 801-3 of the Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII, dated April 2010<sup>3</sup>, requires servicers generally to initiate “foreclosure proceedings for a first mortgage loan...30 to 34 days after an acceleration or breach letter is sent upon the completion of the pre-referral account review and after any applicable notice and waiting period under state law is met. A review of the Servicing Guide also reveals the following provision: “A servicer must process foreclosures, conveyances, and claims in accordance with the provisions of the mortgage loan; state law; the requirements of FHA, HUD, VA, RD, or the mortgage insurer; and any special requirements that Fannie Mae may have.” Freddie Mac’s Single-Family Seller/Servicer Guide at Section 66-1 provides that “the Servicer must initiate foreclosure in accordance with this chapter when there is no viable alternative to foreclosure.” The Guide also requires the Servicer to manage the foreclosure process to acquire title to the property in a cost-effective and efficient manner.

When servicing mortgage loans for a Government Sponsored Enterprise the GSE usually requires that the foreclosure proceeding be initiated in the name of the servicer. For this reason Wells Fargo will obtain possession of the note prior to initiating the proceeding. Thus its authority to prosecute the foreclosure action is also grounded in the fact that it is the holder of the note.

As an example of its authority to service loans for private investors, Wells Fargo provides, a Pooling and Service Agreement containing the following clauses:

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<sup>3</sup> The Fannie Mae 2010 Servicing Guide Update Part VII and Part VIII is available at <https://www.efanniemae.com/sf/guides/ssg/svcg/svc042810.pdf>.

...[In connection with the servicing of certain Non-Designated Mortgage Loans,] “the Master Servicer and each Servicer [SPS, JPMorgan, Ocwen, Wells Fargo and, to a limited extent, a Special Servicer shall have full power and authority...to do or cause to be done any and all things that it may deem necessary or desirable in connection with such servicing and administration, including but not limited to, the power and authority...to effectuate foreclosure....

For and on behalf of the Certificateholders, the Master Servicer [Wells Fargo] shall oversee and enforce the obligation of Wells Fargo, SPS, JPMorgan and Ocwen to service and administer the Wells Fargo Serviced Mortgage Loans, respectively, in accordance with the terms of this Agreement and shall have full power and authority to do any and all things which it may deem necessary or desirable in connection with such master servicing and administration.

Respondent has certified that the categories cited accurately describe the types of cases it has filed with the court in its capacity as a mortgage loan servicer. It has also certified that the examples submitted are representative of its source of authority to prosecute foreclosure proceedings in such cases. For the purposes of this review, Respondent’s submission meets the standard of a Prima Facie showing that it has authority to ask the court for relief in the foreclosure proceedings within its portfolio.

#### ADMISSIBILITY OF DATA FROM RESPONDENT’S RECORDS

An essential element of proof in a foreclosure case is the existence of a note and mortgage and a default on the part of the mortgagor. Most typically the claim of default is based on allegations of non-payment of amounts due on the note. To prove that fact the servicer of the mortgage will usually offer proof in the form of a statement of account produced from its records. Such evidence is classified as “hearsay” under our Rules of Evidence. “Hearsay” evidence is

considered inherently unreliable and is therefore generally inadmissible in court proceedings.

There are exceptions to this rule, however, where circumstances warrant considering “hearsay” evidence as reliable. Evidence Rule 803(c)(6) is one of those exceptions, providing for admissibility of data from business records under the following circumstances:

Records of regularly conducted activity. A statement contained in a writing or other record of acts, events, conditions, and, subject to Rule 808, opinions or diagnoses, made at or near the time of observation by a person with actual knowledge or from information supplied by such a person, if the writing or other record was made in the regular course of business and it was the regular practice of that business to make it, unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

This inquiry has therefore focused on how Respondent maintains the data that it offers as evidence to support its requests for judgments of foreclosure.

The loan balance information included in the judgment affidavits and certifications filed with the court comes from Wells Fargo’s mortgage servicing computer programs, which it refers to as “MSP” (Mortgage Servicing Platform). For WFHM, ASC and PaP<sup>4</sup> loans, MSP is known as the Fidelity Loan Processing System. For Wells Fargo Financial, MSP is known as Supreme. For Wells Fargo Home Equity, MSP is known as Shaw. All three systems operate similarly. While certain third party vendors used by Wells Fargo can access information regarding loans, they cannot modify, delete or manipulate in any way “Critical Loan Data.” That data includes borrowers’ identifying information, loan origination date, monthly payment amount, payment history, advances made, and any data field relating to the amount owed on a loan whether it is for principal, interest, escrow balance or any other charge as well as the interest rate or per diem interest charge. Access within Wells Fargo is restricted to employees who by virtue of their work

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<sup>4</sup> These are loans previously owned and serviced by Wachovia in its Pick-a-Pay (“PaP”) portfolio.

responsibilities must have access to do their job. When those employees make entries or changes in the system their actions are tracked in the system.

When a mortgage loan is originated by Wells Fargo, the information regarding the borrower, the property secured and the loan terms, including the original principal amount of the loan, interest rate and monthly payment amount, are automatically loaded onto MSP from the loan originating computer. When Wells Fargo acquires the servicing rights to a loan, Wells Fargo performs a due diligence check to insure the accuracy and validity of the seller's data, test scripting of the servicing data record data both before and after the loans are activated in MSP to conform proper conversion to MSP, and critical data fields are reviewed to reconcile case balance fields.

Information in the system is entered contemporaneously as it is received or as an event occurs. Monthly payments made towards the loan are recorded in MSP in the regular course of business by a combination of automation and manual processes. MSP also tracks the accrual of interest, late charges and any other charges to the loan. Transactions such as payments from and to escrow accounts for taxes and insurance and any actions taken with respect to the loan such as correspondence or conversations with borrowers are also contemporaneously entered.

In order for information contained in the electronic record keeping system to be admitted in evidence the record has to be made at or near the time of observation by a person with actual knowledge, or from information supplied by such a person, and must be made in the regular course of business as part of a regular practice of that business to make the record. The information in the electronic record keeping system will then be admissible unless the sources of information or the method, purpose or circumstances of preparation indicate that it is not trustworthy.

For the purposes of this review, Wells Fargo has met the standard of a Prima Facie showing that data in its record keeping system is entered at or near the time of the transaction recorded as a part of a regular practice to make such records and that there is nothing in the sources of information or the method, purposes or circumstances of preparation to indicate that the data is not trustworthy.

#### THE RELIABILITY OF RESPONDENT'S DOCUMENT PREPARATION AND EXECUTION PROCESS

Each person who will be authorized to sign a judgment certification is a Wells Fargo employee. Wells Fargo does not use third party vendors in this process.<sup>5</sup> At the time of filing the initial certification herein, Wells Fargo had 122 employees trained to sign foreclosure documents. Prior to being authorized to sign affidavits, each Wells Fargo employee must complete a two- day, six module training session, and score 100% on a test assessing comprehension and retention of the material. At the end of the course, each participant must sign an acknowledgement verifying that they have completed the course and that they understood all of the processes, procedures and materials presented in training. Each potential affiant is then interviewed by a more senior level manager to confirm that he or she understands the validation and execution process. After completing their training, and in the course of their duties, the employees involved in preparation, review, execution, and quality control review of certifications, have access to job aids that can assist them to continue following the processes taught in training. Persons

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<sup>5</sup> While Wells Fargo has certified that it does not use any third party vendors in this process, because of concerns previously raised in particular about Lender Processing Services, Inc. ("LPS"), Wells Fargo also particularly certified that LPS does not sign or prepare any foreclosure documents for Wells Fargo. Issues had been raised about the security and integrity of business records where LPS had an active role in the preparation and execution of foreclosure documents.

authorized to sign certifications or affidavits are given the title of Vice President of Loan Documentation or higher. Under the New Jersey Rules of Court, the Judiciary accepts unnotarized certifications in lieu of notarized affidavits and thus the vast majority of sworn documents submitted in New Jersey foreclosure cases are not notarized. However, Wells Fargo's employees are trained about the notarization process, the necessity for personal appearance before the notary, and the importance of notarization in states where the process is required and for those instances in which notarization may be needed in New Jersey as well.

When Wells Fargo determines to institute foreclosure proceedings it will notify local foreclosure counsel through an automated system known as Vendorscape. Through Vendorscape counsel will access copies of loan documents and necessary loan related information. Data from MSP is contained in Vendorscape but Vendorscape does not permit counsel to make any changes to the records contained in MSP regarding amounts owed on the loan or loan status.

Once a foreclosure action has been filed, Wells Fargo will no longer accept partial payments on a loan unless payments are made pursuant to a modification, forbearance, or similar agreement reached by Wells Fargo and the borrower. If such an agreement is reached, the foreclosure action will be terminated.

After the foreclosure action has been filed with the court, at such time as counsel are ready to submit a judgment certification (AOI), counsel will email Wells Fargo to request updated account balance information. Wells Fargo will provide the information through Vendorscape. In preparing draft certifications, counsel will use a template prepared by Wells Fargo that is State specific. The draft certification is then sent to Wells Fargo to a dedicated email address.

At Wells Fargo a document preparer creates a physical file containing the draft certification, a copy of the promissory note, mortgage and other loan documents and the MSP

screen prints that the signer will use to validate the information in the certification. After the physical file is prepared, the draft certification is then assigned to a person to validate the information in the certification and sign it. The signer uses the documents compiled by the document preparer, together with his or her access to MSP, to validate all the information contained in the certification. This process may involve over 40 data elements to be reviewed and verified. When questions or inconsistencies arise which cannot be resolved, the signer is trained to reject the draft certification. There is a "job aid" to assist the reviewers in determining whether they can correct any problems identified or whether the file should be turned over to a special team to resolve the matter. If the draft certification is approved by the signer, before turning in a signed certification to the team leader, the signer must complete a Foreclosure Affidavit Signer's Checklist.

After being signed, every certification is reviewed by quality control using a quality control checklist. Quality control verifies items including that the borrower/affidavit name on the affidavit matches the borrower/affidavit name on the backup documents, that all supporting documents are in the file, that the data in the fields in the system match the data marked on the label in the front of the file, that the allowable figures were included, and that all calculations are correct. The certification and its file are returned to the reviewer if any information or documentation is missing or incorrect.

In addition to the quality control process within the Default Documents team, Wells Fargo conducts a separate audit of certification accuracy. The audit is conducted by Group Compliance and Operational Risk ("GCOR"), an audit unit that operates independently of the Default Documents team. GCOR performs an audit review of 10%, up to a maximum of 35, of all judgment affidavits or certifications signed on a daily basis. The audit review includes a validation that the

loan was actively in foreclosure when the certification was signed, ensures the correct signing authority was in place, verifies that the signers completed and passed the required training, validates the accuracy of the required fields on the certification, ensures all figures were calculated accurately, validates all New Jersey specific checklists and forms were used, and ensures that all executed certifications and supporting material were imaged. GCOR uses the live system of record and not screen shots to confirm the accuracy of loan balance information. After the certification passes the quality control test and the audit function, the original signed certification is sent in hard copy to foreclosure counsel.

For the purposes of this review, the process described by Respondent's submissions meets the standard of a Prima Facie showing that each certification submitted to the court is reviewed and executed by an authorized person who has been trained in how to understand Respondent's business records and source documents and who has personal knowledge of the content of the relevant records and documents upon which the certification is based. Respondent has also shown, on a Prima Facie basis, that it has a training process and a post-certification review process to ensure that its established procedures are in fact followed. The process described in these submissions, if followed, could justify reliance by the court on the accuracy of the information contained in certifications submitted to the court by the Respondent. This conclusion should not be deemed as dispositive of issues in any individual foreclosure case, each of which must be determined upon its own facts and record.

#### RESPONDENT'S OVERSIGHT AND COMMUNICATION WITH COUNSEL

During the period of this review the New Jersey Supreme Court adopted further amendments to Rules 4:64-1 and 4:64-2. The pertinent part of revised Rule 4:61-4 provides;

In all residential foreclosure actions, plaintiff's attorney shall annex to the complaint a certification of diligent inquiry:

(A) confirming that the attorney has communicated with an employee or employees of the plaintiff or of the plaintiff's mortgage loan servicer (i) who personally reviewed the complaint and confirmed the accuracy of its content, as mandated by paragraphs (b)(1) through (b)(10) and (b)(12) through (b)(13) of this rule, based on business records kept in the regular course of business by the plaintiff or the plaintiff's mortgage loan servicer, and (ii) who, if employed by the plaintiff's mortgage loan servicer, (a) identified the relationship between the mortgage loan servicer and the plaintiff, and (b) confirmed the authority of the mortgage loan servicer to act on behalf of the plaintiff; and

(B) stating the date and mode of communication employed and the name(s), title(s) and responsibilities in those titles of the plaintiff's or plaintiff's mortgage loan servicer's employee(s) with whom the attorney communicated pursuant to paragraph (2)(A) of this rule.

The revised Rule 4:64-2 now provides in relevant part:

(c) Time: signatory. The affidavit prescribed by this rule shall be sworn to not more than 60 days prior to its presentation to the court or the Office of Foreclosure. The affidavit shall be made either by an employee of the plaintiff, if the plaintiff services the mortgage, on the affiant's knowledge of the plaintiff's business records kept in the regular course of business, or by an employee of the plaintiff's mortgage loan servicer, on the affiant's knowledge of the mortgage loan servicer's business records kept in the regular course of business. In the affidavit the affiant shall confirm:

(1) that he or she is authorized to make the affidavit on behalf of the plaintiff or the plaintiff's mortgage loan servicer;

(2) that the affidavit is made based on a personal review of business records of the plaintiff or the plaintiff's mortgage loan servicer, which records are maintained in the regular course of business;

(3) that the financial information contained in the affidavit is accurate; and

(4) that the default remains uncured.

The affidavit shall also include the name, title, and responsibilities of the individual, and the name of his or her employer. If the employer is not the named plaintiff in the action, the affidavit shall provide a description of the relationship between the plaintiff and the employer.

(d) Affidavit. Plaintiff's counsel shall annex to every motion to enter judgment in a residential mortgage foreclosure action an affidavit of diligent inquiry stating: (1) that the attorney has communicated with an employee or employees of the plaintiff or the plaintiff's mortgage loan servicer who (A) personally reviewed the affidavit of amount due and the

original or true copy of the note, mortgage and recorded assignments, if any, being submitted and (B) confirmed their accuracy; (2) the date and mode of communication employed; (3) the name(s), title(s) and responsibilities in those titles of the plaintiff's employee(s) or the employee(s) of the plaintiff's mortgage loan servicer with whom the attorney communicated pursuant to this rule; and (4) that the aforesaid documents comport with the requirements of R. 1:4-8(a).

The revisions to the Rules require an examination of Respondent's procedures for oversight and communication with foreclosure counsel. Wells Fargo will use telephone, email, and Vendorscape as its means for communication with foreclosure counsel.

In every pending case, even if a judgment certification (AOI) was filed in the past, Wells Fargo will prepare a new AOI. When the executed certification is complete and sent to foreclosure counsel, counsel will also receive contact information for the signer or another specifically identified Wells Fargo employee with the required knowledge, including a direct phone number and a direct email address. Once the executed certification has been received by foreclosure counsel, counsel will communicate with either the signer of the certification or another Wells Fargo employee who will confirm the information required by the Court Rule.

With regard to all cases in which judgment has been entered but no sale has occurred, Wells Fargo will review previously filed AOIs together with the original true copy of the note and mortgage and any recorded assignment submitted to the court, as well as any other pertinent business records and confirm the accuracy of the previously filed AOI. If the AOI was accurate as of its effective date the Wells Fargo employee will communicate with foreclosure counsel to confirm its accuracy.

With regard to foreclosure cases filed in the future, a Wells Fargo employee will review the complaint and all pertinent Wells Fargo business records necessary to confirm the accuracy of

the contents of the complaint and will confirm the accuracy of the complaint as well as the fact of the personal review to foreclosure counsel.

Wells Fargo has implemented new procedures for hiring foreclosure law firms. Once a new law firm is hired, the law firm will go through a 90 day assessment, which includes a review of audit checkpoints at days 30, 45, 60, and 90 to make sure all tasks were completed. These audit checkpoints include file review, possible on-site audit, and performance assessment of each firm. Once the assessment is complete, a meeting is scheduled with the firm to discuss findings and the remediation items from the audit. Upon completion, a decision is made as to whether the firm will be retained.

Wells Fargo has implemented extensive auditing of all foreclosure counsel through its Residential Foreclosure Attorney Firm Management Program ("RFAFMP"). The RFAFMP is a newly implemented program designed to develop quality assurance capabilities, including on-site auditing and desktop auditing, and develop policies, procedures, resources and capacity to be administered at and by foreclosure firms to identify quality issues that pose immediate risk to Wells Fargo.

Auditing of foreclosure counsel is performed by various Wells Fargo employees, including in-house counsel, audit, quality assurance, vendor relations, operational risk management and foreclosure management, as well as attorneys from a law firm with nationwide experience in foreclosure matters.

Desktop audits are performed at least on an annual basis for every foreclosure firm. Firms are chosen for on-site audits and additional desktop audits based on a three tier structure. Tier one and tier two firms have on-site audits performed annually. Tier one firms have desktop

audits performed quarterly; tier two firms have desktop audits performed semi-annually; and, tier three firms have desktop audits annually.

The tier structure is determined based on several risk-related factors, including the number of current cases being worked by each firm and the complexity of the foreclosure case in each State.

#### PROPOSED DETERMINATION

Based on the submissions discussed herein it is my proposed determination that Wells Fargo has shown, on a Prima Facie basis, that it has processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits or certifications submitted in foreclosure proceedings is provided by an affiant authorized to act on behalf of the plaintiff in the action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of relevant records which were made in the regular course of business as part of Wells Fargo's regular practice to make such records. Wells Fargo has filed the required Service Portfolio with the court and has certified that all uncontested mortgage foreclosure cases in that portfolio will be prosecuted under the processes outlined in its Prima Facie showing. Therefore it is my recommendation that Wells Fargo be permitted to resume prosecution of the uncontested residential mortgage foreclosure proceedings included in its Servicer Portfolio.

Consistent with paragraph 3 of the Court's March 29, 2011 Order Approving the Recommended Stipulation and Appointing Special Master in this case, nothing in this report and recommendation should be construed as altering or interfering with the right of any party to a foreclosure action to contest the foreclosure in any way that party sees fit, nor altering or

interfering with the discretion of any Superior Court Judge of the State of New Jersey to adjudicate all issues raised by the parties in contested foreclosure matters.

Respectfully submitted,

Richard J. Williams  
Special Master