

GRAHAM CURTIN  
A Professional Association  
4 Headquarters Plaza  
P.O. Box 1991  
Morristown, New Jersey 07962-1991  
(973)-292-1700  
Attorneys for BAC Home Loans Servicing, LP

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

In the Matter of Residential Mortgage  
Foreclosure Pleadings and Document  
Irregularities

DOCKET NO. F-59553-10

CIVIL ACTION

**BANK OF AMERICA d/b/a BAC HOME  
LOANS SERVICING, LP's PRIMA FACIE  
SUBMISSION PURSUANT TO THE  
MARCH 29, 2011 STIPULATION**

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**I. Introduction**

Pursuant to the Stipulation entered on March 29, 2011 (“Stipulation”), BAC Home Loans Servicing, LP (“BAC Servicing”), an operating subsidiary of Bank of America, N.A. (“BANA”), hereby submits its “prima facie showing” on the reliability of its foreclosure documentation processes. This showing focuses on the specific issues delineated in the Stipulation. As such, this submission, while complete in and of itself, updates and augments the record and brief filed by BAC Servicing in response to the Order to Show Cause, which are hereby incorporated by reference.<sup>1</sup>

BAC Servicing shares the Court’s and the public’s interest in ensuring that evidence introduced in uncontested judicial foreclosures is accurate and based on a careful personal

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<sup>1</sup> See Bank of America d/b/a BAC Home Loans Servicing, LP’s Response to Order to Show Cause, filed January 5, 2011.

review of applicable business records, and that Affidavits of Indebtedness (“AOIs”)<sup>2</sup> are prepared, signed, and notarized according to all applicable rules. Indeed, shortly after media reports of procedurally flawed foreclosure AOIs circulated last fall, BAC Servicing voluntarily suspended the process of taking foreclosures to judgment and sale in New Jersey and elsewhere in order to conduct a comprehensive internal review of its foreclosure processes. As a result of this comprehensive review, BAC Servicing announced that it would enhance its procedures for preparing, reviewing, signing, and (as necessary) notarizing AOIs, and would be systematically replacing AOIs in pending proceedings so that there would be no doubt of their reliability in any and all cases, and especially uncontested cases. Accordingly, well before the Court entered the December 20, 2010 Order to Show Cause, BAC Servicing took extensive actions designed to restore the confidence of courts, borrowers, and the general public in the integrity of its factual averments in foreclosure proceedings. BAC Servicing, using its enhanced policies and procedures, has restarted foreclosure proceedings in states other than New Jersey.

In the sections that follow, BAC Servicing explains how the policies, procedures, practices, and systems in place at the company today assure that, upon restart, foreclosure AOIs will be accurate, and properly attested by a well-trained BAC Servicing employee based on the employee’s personal review of pertinent business records. Thus, addressing the issues framed in the Stipulation, BAC Servicing’s submission covers its procedures for marshaling the full range of factual information that must be included in AOIs under New Jersey law, including: the identification of the obligors on the note as proper defendants; identification of the foreclosure plaintiff and verification of BAC Servicing’s entitlement as servicer to pursue the foreclosure; and confirmation of the borrower’s default and amounts in arrears. In addition, BAC Servicing’s submission details the procedures that guide servicing employees in personally verifying factual

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<sup>2</sup> As used in this Submission, AOIs are equivalent to Certificates of Amount Due.

information against the relevant business records, and that control BAC Servicing's quality assurance process with respect to executed AOIs. Training materials used to educate all participants in this process are supplied. Finally, BAC Servicing's submission reviews the data integrity of the information technology systems of business records that servicing employees consult in preparing and verifying AOIs.

BAC Servicing understands that the New Jersey Supreme Court is currently reviewing the December 20, 2010 proposed emergency rules governing certifications in light of comments it has received. BAC Servicing, along with other servicers, has recommended a series of changes to the rules to facilitate their operation, and to provide alternative means of client compliance to the "attorney certifications" that the rules now require. When the Supreme Court finalizes the rules, BAC Servicing's enhanced procedures for marshaling and verifying the factual information included in AOIs will provide a solid foundation for compliance.

BAC Servicing looks forward to discussing its submission with the Special Master, and to establishing to the Master's satisfaction that foreclosures can proceed in New Jersey with full confidence in the process and the quality control of all evidentiary filings.

## **II. BAC Has Demonstrable Authority to Foreclose on Behalf of Mortgagees**

As a loan servicer, BAC Servicing acts on behalf of a mortgagee, but is not the mortgagee itself. (Certification of Bridget Lett ("Lett Cert."), ¶ 1.) The source of BAC Servicing's authority to act on behalf of a mortgagee is contractual in nature and is set forth in the agreements documenting the various arrangements by which mortgage loans are held and serviced.<sup>3</sup> These include private-label residential mortgage-backed securitizations ("RMBSs"), under which pools of mortgages originated or purchased by BAC affiliates are pooled in a trust,

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<sup>3</sup> BAC Servicing entered into some of these agreements at a time when its name was Countrywide Home Loans Servicing LP. (Lett Cert, ¶ 1, Exh 1)

securities are issued to investors assigning the cash flows into the trust, and BAC Servicing services the pooled loans pursuant to a Pooling and Servicing Agreement (“PSA”). (*Id.*, ¶ 2, Exh. 2.) Generally, private-label RMBSs do not include any guarantees by any government entity. BAC Servicing draws authority from Government Sponsored Enterprise (“GSE”) securitization arrangements as well. In these arrangements, BAC Servicing services mortgages sold by an affiliate or other lender to a GSE, such as Fannie Mae, Freddie Mac, or Ginnie Mae, which has in turn sold securities backed by the mortgage loans, with associated financial guarantees by the GSE. (*Id.*, ¶ 3, Exh. 4.) BAC Servicing also services mortgages pooled in securities that have been created by financial institutions other than BAC Servicing affiliates. (*Id.*, ¶ 4, Exh. 6.) A fourth source of servicing authority comes from servicing agreements with investors in portfolios of “whole loans”; in these agreements, BAC Servicing contracts directly with a private party that owns the entirety of a group of loans, rather than having purchased securities backed by a pool of loans as in the securitization scenarios discussed above. (*Id.*, ¶ 5, Exh. 7.)

BAC Servicing also services mortgages that are “held for investment” (“HFI”) by BAC Servicing affiliates—*i e*, where BAC Servicing affiliates actually own the mortgage note. BAC Servicing has entered into agreements with those affiliates defining its servicing obligations. (*Id.*, ¶ 6, Exh. 8.). Finally, BAC Servicing also is engaged as a “sub-servicer” in some instances; in that role, it services mortgage loans for another servicer pursuant to an agreement. (*Id.*, ¶ 7, Exh. 9.)

Each agreement generally empowers BAC Servicing to act as servicer on the mortgage loans and to do all acts necessary to transfer the loans, execute consents and waivers with respect to the loans and to effectuate foreclosure of the mortgage in the event of a borrower default. (*See*

*id*, Exh. 2 at 64 (§ 3.01); Exh. 4 at 17 (§ 3.6); Exh. 5 at 801-3; Exh. 6 at 69-70 (§ 3.01); Exh. 7 at 17 (§ 4.01), 18 (§ 4.03); Exh. 8 at 15 (§ 4.1(a)), 18 (§ 4.5); Exh. 9 at 7 (§ 2.1(a)), 10 (§ 2.6).)

Each loan in BAC Servicing's Servicer Portfolio, which is submitted herewith, is serviced pursuant to an agreement falling within one of the aforementioned categories. (*Id.* ¶ 8.) Thus, in each case, BAC Servicing has been appointed an agent for purposes of pursuing all lawful remedies under the mortgage loans in the event of a borrower default, including foreclosure, consistent with the examples cited above. Thus, BAC Servicing has documented servicer authority to act on behalf of mortgagees in all foreclosure cases that it files in New Jersey.

**III. BAC Servicing's Information Technology Systems Maintain Business Records That Provide Accurate, Up-to-Date Information On Borrower Payment History and Loan Status**

BAC Servicing currently relies on two information technology systems in support of its foreclosure documentation processes. (Certification of Bruce E. Barron ("Barron Cert."), ¶ 1.) The systems include, most importantly, iSeries (also known as IBM AS/400), an IBM enterprise-class database and data warehouse server solution. (*Id.*) The other system, LPS Desktop, is a desktop manager solution used to exchange information and documents within BAC Servicing and with foreclosure counsel. (*Id.*)

**A. The IBM iSeries Database System Provides Accurate, Up-to-Date Account Information**

The IBM iSeries is BAC Servicing's primary information system in support of its loan servicing operations. (*Id.*, ¶ 2.) This system supports high performance, large volume transactions and is the single largest integrated loan servicing application in the world. (*Id.*, ¶ 3.) It contains borrower account information, including: contact information; original loan information (including principal, loan term, interest rate, and property sale price); payment

history; occupancy status; attempted workout programs; current account status; identity of note holder; foreclosure fees; and property inspection information. (*Id.*)

The iSeries database provides accurate, up-to-date account information on borrower payment history and loan status and is maintained in the regular course of business. (*Id.*, ¶ 4.) The process, of course, begins with the initial data entries, which are rigorously controlled for accuracy. (*Id.*, ¶ 5.) Thereafter, BAC Servicing employees use non-graphical user interface based applications (generally called “green screens”) and graphical user interface based applications to enter information that comes from discussions with customers or specific business process workflows. (*Id.*, ¶ 6.) When employees access the “Account Status Inquiry” screen, the iSeries database displays all current loan information, including current balance, interest, current payment information, and the status of the loan. (*Id.*, ¶ 7.) The status field classifies loans according to whether they are currently in “normal servicing,” “bankruptcy,” “foreclosure,” or “workout” (a “workout” refers to any sort of pending loss mitigation activity). (*Id.*) A separate screen contains information about payment history. (*Id.*, ¶ 8.) BAC Servicing employees rely on the iSeries database whenever they need current borrower account information. (*Id.*, ¶ 9.)

The payment history and loan status fields are updated as a BAC Servicing employee processes incoming information. (*Id.*, ¶ 10.) The same employee who processes that information attends to inputting the data into the system. (*Id.*) For example, when checks are mailed to BAC Servicing, the check is sent to the Payment Processing Department for check imaging, and then the check image is forwarded to Electronic Payment Workflow employees, who upload the imaged check into the system. (*Id.*) Then, an employee in the Cash Management System function applies the funds to the loan while contemporaneously updating

the iSeries database. (*Id.*)<sup>4</sup> Similarly, as necessary, employees in the various functions (e.g., foreclosure, loss mitigation, and bankruptcy) update a customer's account status by updating the loan status in iSeries at or near the time the employee processes the information. (*Id.*, ¶ 11.) When applicable, an employee can enter additional narrative information into the system, often referred to as "case notes." (*Id.*, ¶ 12.) These notes can never be deleted in the iSeries database; rather, a BAC Servicing employee who wishes to update or edit a case note must create an entirely new note. (*Id.*)

System controls protect the integrity of borrower account information. (*Id.*, ¶ 13.) Password access, for example, ensures that only employees qualified to access borrower account information can do so. (*Id.*) In addition, depending on the employee's responsibilities, sections of borrower account screens are locked to prevent changes to borrower data by an employee without the authority to make changes to those sections. (*Id.*, ¶ 14.) For example, borrower payment data cannot be changed by an employee in the foreclosure function who is viewing the screen for purposes of updating foreclosure events. (*Id.*) Moreover, foreclosure counsel do not possess the authority or ability to alter borrower account information in the iSeries database. (*Id.*, ¶ 15.) Nor do they have access to iSeries. (*Id.*, ¶ 16.) Additionally, no third party vendor involved in the foreclosure process has the ability to access and make edits to iSeries. (*Id.*, ¶ 17.)

Quality assurance procedures are also employed to ensure the accuracy and integrity of borrower payment information and loan status. (*Id.*, ¶ 18 ) Depending on the payment channel used by the customer (e.g., web-based payments vs. mailed-in checks), verifications are performed to ensure the payment is accurately entered into BAC Servicing's automated system for posting. (*Id.*) When a customer mails a check, a BAC Servicing employee correlates the

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<sup>4</sup> Much of this is done in an automated fashion, particularly when the check amount matches the required monthly payment (*Id.*)

check with an account number before posting it to the account. (*Id.*)<sup>5</sup> Similarly, if a customer uses the pay-by-phone channel, an employee operator (or, if used by the customer, the automated system) verifies the borrower's identification number, account number, and other identifying information before accepting payment. (*Id.*, ¶ 19.) These procedures are designed to ensure that mortgage payments are validated against BAC Servicing's stored data and applied to the correct borrower account before being entered into the automated posting system. (*Id.*, ¶ 20.) Additionally, BAC Servicing conducts retrospective quality assurance reviews to validate the accuracy of information entered into the iSeries database. (*Id.*, ¶ 21.)

The iSeries database is at the heart of the servicer business, and therefore the integrity of the data input into the system is rigorously controlled, validated, and audited by BAC Servicing internal auditors (as well as its independent auditors) for compliance with Statement on Auditing Standards No. ("SAS") 70. SAS 70 requires BAC Servicing to demonstrate that it has adequate controls and safeguards with respect to borrower data. (*Id.*, ¶ 22.) The iSeries is a paradigm example of a business record database

**B. LPS Desktop Is a Robust and Secure Document and Information Management System**

Lender Processing Services ("LPS"), a vendor, is the technology solution supplier for BAC Servicing's foreclosure workflow system, known as LPS Desktop. (Barron Cert., ¶ 23.) BAC Servicing uses LPS Desktop to ensure the confidentiality and integrity of the documents and information exchanged between BAC Servicing and foreclosure counsel with respect to foreclosure proceedings. (*Id.*, ¶ 24.) In October 2010, BAC Servicing integrated all active foreclosures into the LPS Desktop system, thereby permitting foreclosures to be centrally tracked and monitored through and beyond a foreclosure sale. (*Id.*, ¶ 25.) As an initial matter, BAC

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<sup>5</sup> Again, this process is largely automated when the check matches the required payment amount (*Id.*)

Servicing uploads into LPS Desktop all of the documents required by foreclosure counsel to prepare foreclosure complaints and AOIs. (*Id.*, ¶ 26.) Thereafter, foreclosure counsel are required to submit and upload into LPS Desktop all documents substantiating the steps of the foreclosure process, including notices of default, complaints, and AOIs where they can be accessed and reviewed by BAC Servicing personnel. (*Id.*)

The LPS Desktop workflow application has a number of tracking functions, including foreclosure postponement, foreclosure rescission, workflow timelines, and secure communications. (*Id.*, ¶ 27.) There is an “Intercom” function – essentially, a messaging system within LPS Desktop – that permits foreclosure counsel and BAC Servicing employees to communicate about case management matters and status. (*Id.*) Foreclosure counsel cannot alter borrower financial data resident in BAC Servicing’s information systems via LPS Desktop. (*Id.*, ¶ 28.)

*Other than the provision of LPS Desktop, BAC Servicing does not rely on LPS for any foreclosure-related services. (Id., ¶ 29.) Nor does BAC Servicing use DOCX for any foreclosure-related services, specifically including mortgage assignments. (Id., ¶ 30.)* The contentions made by would-be intervenor Seton Hall Center for Social Justice (“Seton Hall”) – to the effect that AOIs prepared under contract with LPS are untrustworthy – have no application to BAC Servicing. (*See* Brief of Applicants-Intervenors Center for Social Justice, filed on March 24, 2011.) First, BAC Servicing does not rely on third-party default servicers, including LPS, to prosecute foreclosures in New Jersey on its behalf or to oversee the foreclosure process. (*Id.*, ¶ 31.) Instead, as discussed below, BAC’s Foreclosure Review Committee and Pre-Sale Group are responsible for vetting loan data to determine if loans are in default, referring loans to BAC Servicing’s network of foreclosure counsel, and monitoring their progress. Second, the loan data

on which BAC Servicing relies in making decisions regarding foreclosures is recorded and maintained by BAC Servicing in iSeries, not by a third-party service provider. (*Id.*, ¶ 33.) BAC Servicing's use of LPS products or services in connection with the foreclosure process is, instead, limited to LPS Desktop, and that product is used only to exchange documents and facilitate communications with foreclosure counsel relating to the commencement and prosecution of foreclosures. (*Id.*, ¶ 32.)

**IV. BAC Servicing's Foreclosure Referral Processes Are Designed to Ensure Proper Foreclosures**

Longstanding BAC Servicing policies and procedures are designed to prevent foreclosures on borrowers who are not in default. (Barron Cert., ¶ 34.) Under such policies and procedures, a loan cannot be referred to BAC Servicing's foreclosure counsel for the commencement of a foreclosure proceeding unless it has first been vetted by the Foreclosure Review Committee ("FRC"), a function comprised of BAC Servicing personnel. (*Id.*) As part of the FRC process, FRC personnel review each loan against specified criteria, including (1) whether the loan is in active workout or there are workout efforts in progress; (2) whether the borrower is being evaluated for a loan modification program, such as the federal government's Home Affordable Modification Program ("HAMP") or the Bank's proprietary modification programs; (3) whether applicable state-law requirements for foreclosures have been met, (4) whether borrower payments have been properly applied to the loan obligation, and (5) whether any required investor approvals have been obtained (*Id.*, ¶ 35.)

If the FRC determines that a loan should proceed to foreclosure, it refers the loan to BAC Servicing's Pre-Sale Group, which manages and tracks the foreclosure process from referral to foreclosure counsel to sale. (*Id.*, ¶ 36.) The Pre-Sale Group directly refers loans to foreclosure counsel that are part of BAC Servicing's attorney network. (*Id.*, ¶ 37.) In connection with such

referrals, BAC Servicing uses LPS Desktop to provide foreclosure counsel with copies of the mortgage, the note, the assignment(s) (if applicable), and other information relevant to the preparation of a foreclosure complaint. (*Id.*) Based on such information, counsel prepares the complaint. (*Id.*) Throughout the process, the Pre-Sale Group conducts certain processes to consider whether the preconditions to a foreclosure sale have occurred, including checks seven days before the foreclosure sale date, and again the day before the sale date. (*Id.*, ¶ 38.) In addition, the Pre-Sale Group confirms whether the loan has been appropriately considered for modification. (*Id.*)

The FRC and Pre-Sale Group are part of BAC Servicing's Foreclosure and Bankruptcy Servicing Group (formerly Foreclosure, Bankruptcy, and Risk Management). (*Id.*, ¶ 39.)

V. **BAC Servicing's AOI Execution Policies, Processes, and Procedures Are Designed to Ensure AOIs Are Accurate and Executed Based on the Affiant's Personal Review of Business Records**

As discussed more fully in BAC Servicing's January 5, 2011 Response to Order to Show Cause, prior to its voluntary suspension of foreclosure judgments and sales in October 2010, BAC Servicing had in place procedures that provided reliable assurance that AOIs included accurate information concerning the borrower's default, and the amounts due and owing. In particular, foreclosure counsel prepared AOIs using data obtained directly from BAC Servicing's business records. Thereafter, a BAC Servicing document preparation team reviewed the substance of the AOIs against BAC Servicing's business records. This review confirmed the amounts past due, as well as verified the proper foreclosure plaintiff based on the underlying note and any assignments. Under BAC Servicing's practices, the document preparation team was required to reject any AOIs that included substantive facts that were inconsistent with BAC Servicing's business records, and rejected AOIs would be notified to foreclosure counsel for correction.

Responding to concerns that AOIs were not properly prepared and executed, BAC Servicing recently implemented several enhancements to its processes related to review and execution of AOIs. Among other things:

- BAC Servicing created standardized AOI forms and attorney checklists tailored to the specific legal requirements in each state;
- BAC Servicing prepared and distributed revised policies and procedures regarding the preparation, review, signing, and notarization of AOIs, including documentation of compliance requirements;
- BAC Servicing implemented steps to enhance documentation of the AOI signing process by, among other things, requiring document preparers, affiants, and quality control employees to complete written checklists confirming their review of details and appropriate checks against other information sources;
- BAC Servicing instituted an enhanced training program for all employees involved in the AOI process, including affiants and notaries, on the revised process and their specific responsibilities; and
- BAC Servicing enhanced its oversight of its network of foreclosure law firms, including establishing a mandatory Code of Conduct, conducting onsite law firm assessments, conducting foreclosure file reviews, and conducting mandatory attorney training with respect to attorney obligations under BAC Servicing's policies and procedures and in connection with the preparation of AOIs.

Enhancements relating to the accuracy and proper attestation of AOIs are described in further detail below.

**A. BAC Servicing's Standardized AOI Form and Attorney Checklist for New Jersey Are Designed to Ensure Accurate AOIs**

When BAC Servicing refers a defaulted loan to foreclosure counsel, it transmits via LPS Desktop the note, the mortgage, and other information necessary for opening the file and preparing and filing a complaint. (Barron Cert., ¶ 40.) When foreclosure counsel requests judgment figures for purposes of preparing an AOI, if the account has no "exceptions" (e.g., miscellaneous, unidentified charges), an Account Information Statement ("AIS") (also known as "Judgment Figures") is generated by a BAC Servicing employee using the FOCUS application to

extract the borrower account information maintained in the ordinary course of business in the iSeries database.<sup>6</sup> (*Id.*, ¶ 41, Exh. 1.) The AIS contains all of the applicable financial data, including the unpaid principal and interest balances, escrow balances, advances and corporate fees, and suspense<sup>7</sup> and credits. (*Id.*, ¶ 43.) When completed, the AIS is uploaded to LPS Desktop as a PDF and cannot be manipulated or revised in any manner. (*Id.*, ¶ 44.) Foreclosure counsel are required to review the AIS and prepare the AOI based on the figures reflected in it. (*Id.*, ¶ 45.) If counsel has questions regarding the AIS figures, she is required to notify BAC Servicing personnel. (*Id.*) If, however, the AIS figures comport with counsel's understanding, counsel uploads the draft AOI, together with the complaint, the note, the mortgage, and, if applicable, the assignment, into LPS Desktop for review and execution by BAC Servicing. (*Id.*)

Under BAC Servicing's enhanced procedures, counsel must prepare the draft AOI using BAC Servicing-prepared standardized AOI forms. (*Id.*, ¶ 46.) These forms have been tailored to the specific legal requirements in each state, including New Jersey.<sup>8</sup> (*Id.*, Exhs. 2-3.) In addition to the New Jersey-specific AOI, BAC Servicing has provided New Jersey foreclosure counsel with a state-specific attorney review checklist, which is designed to ensure that AOIs are accurate and pass BAC Servicing's quality assurance reviews. (*Id.*, ¶ 47, Exh. 4.) The checklist directs counsel to (1) upload to LPS Desktop the relevant complaint, mortgage, and note; (2) review the AIS/Judgment Figures provided by BAC Servicing; (3) ensure that the total amount due is included in the AOI and that the amounts and dates listed in "Schedule A - Amount Due Schedule" ("Schedule A") attached to the AOI are populated in the correct spaces; and (4) ensure that page breaks do not separate the affiant's and the notary's signatures. (*Id.*, ¶ 48.)

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<sup>6</sup> Currently, FOCUS, a legacy Countrywide proprietary foreclosure tracking system, links LPS Desktop to iSeries. This functionality will soon be integrated directly into LPS Desktop. (*Id.*, ¶ 42.)

<sup>7</sup> Referring to credit or debit balances not in borrowers' names but relating to borrowers' funds. (*Id.*, ¶ 43.)

<sup>8</sup> The standard AOI forms will be revised as necessary to comply with changing requirements and best practices (*Id.*, ¶ 46.)

**B. All New Jersey Foreclosure Counsel Currently Used by BAC Servicing Have Been Trained in Preparation for the Resumption of Foreclosures in the State**

All New Jersey foreclosure attorney firms in BAC Servicing's attorney network have attended mandatory training on BAC Servicing's enhanced document execution processes, including on the use of the standardized AOI and attorney checklist. (Barron Cert., ¶ 49.) Moreover, before New Jersey counsel are permitted to file any cases, the firm must first participate in a testing phase to demonstrate its ability to produce New Jersey AOIs that are accurate and comply with BAC Servicing standards. (*Id.*, ¶ 50.) To do so, firms are required to process and produce during the testing phase five accurate AOIs. (*Id.*) The test AOIs are processed by BAC Servicing as if in the ordinary course of business, and must pass the same quality assurance criteria. (*Id.*)

**C. BAC Servicing's Enhanced Processes Are Designed to Ensure That Affiants Attest to Facts Based on a Personal Review of BAC Servicing's Business Records**

Upon receipt of a draft AOI from foreclosure counsel, the AOI is sent to a "Prep Team," which is responsible for the initial validation of facts in the AOI and printing the relevant supporting business records and documents from iSeries and LPS Desktop. (Barron Cert., ¶ 51.) As part of the process, the Prep Team verifies that the information contained in the AOI and Schedule A is consistent with the information contained in BAC Servicing's business records, including the AIS (*Id.*, ¶ 52.) In addition to conducting the initial validation of facts contained in the AOI and Schedule A, the Prep Team also prints the business records and documents required to validate those facts. (*Id.*, ¶ 53.) The printed business records from iSeries (in the form of "screen prints"), along with the other printed documents (complaint, note, mortgage, and assignments(s), when necessary), become part of the AOI package that is provided to the affiant for review and validation, and subsequently forwarded to the quality assurance team. (*Id.*)

To ensure that relevant facts are validated and the required business records and documents are printed, Prep Team members are required to use a checklist that is tailored to the requirements for AOIs in New Jersey. (*Id.*, ¶ 54, Exh. 5.) The checklist identifies approximately 40 tasks that must be performed by the assigned Prep Team member in connection with each AOI. (*Id.*) If the Prep Team identifies any facts that are inconsistent with BAC Servicing's business records, the AOI is rejected and foreclosure counsel is notified. (*Id.*, ¶ 55.) A corrected AOI must then be prepared by foreclosure counsel and resubmitted. (*Id.*)

Once the Prep Team has completed its tasks, the AOI, supporting business records and documents, and checklist are sent as a file to the "File Custodian," who maintains approved files in a secure location. (*Id.*, ¶ 56.) The File Custodian physically hands the approved files on a first in, first out basis to trained affiants for their independent review. (*Id.*) Affiants must be duly appointed BAC Servicing officers and have a working knowledge of BAC Servicing's foreclosure information systems, mortgage documents, and foreclosure documents. (*Id.*, ¶ 57.) The business records and documents provided to the affiant to support his or her review of the AOI include: (a) the AIS; (b) the complaint; (c) Foreclosure Account Follow-Up Screen Print from iSeries; (d) Investor Information Maintenance Screen Print from iSeries, (e) Account Status Inquiry Screen Print from iSeries; (f) the note; (g) the mortgage, and (h) any applicable assignments. (*Id.*, ¶ 58.) These business records and documents set forth the loan's delinquency and other relevant loan information. (*Id.*)

Upon receipt of the AOI package, BAC Servicing's procedures require the affiant to review the AOI, the complaint, and the supporting business records and documents. (*Id.*, ¶ 59.) The affiant is required to validate for himself or herself all of the facts in the AOI and Schedule A by reviewing all of the records accompanying the AOI. (*Id.*) For instance, the affiant must

verify that the information required in Schedule A, such as the unpaid principal and interest balances, is identical to the data in BAC Servicing's business records. (*Id.*) Once again, if any data are incorrect, the affiant must reject the AOI, whereupon foreclosure counsel is directed to correct it. (*Id.*) Once the AOI has been corrected by foreclosure counsel, counsel must resubmit the AOI through LPS Desktop, restarting the process from the beginning. (*Id.*)

Affiants are also required to follow and document their compliance with a New Jersey-specific checklist as they complete their functions, step by step. (*Id.*, ¶ 60, Exh. 6.) The checklist requires the affiant to confirm receipt of all relevant business records and documents and guides the affiant as he or she verifies each fact set forth in the AOI and Schedule A. (*Id.*, ¶ 61.) If the affiant determines that the AOI is consistent with the business records and documents, the checklist then directs the affiant to sign it in the presence of a notary. (*Id.*) The notary administers the oath to the affiant in each and every AOI signature instance. (*Id.*)

The New Jersey standardized AOI certifies that the information in it and the accompanying Schedule A is compiled from data in BAC Servicing's business records. (*Id.*, ¶ 62, Exhs 2-3.) It avers:

The information in this certification [AOI] and the following Schedule "A" is compiled from data in BAC's business records. As part of my job responsibilities for BAC, I have personal knowledge of BAC's procedures for creating these records. These records are. (a) made at or near the time of the occurrence of the matters recorded by persons with personal knowledge of the information in the business record, or from information transmitted by persons with personal knowledge; (b) kept in the course of BAC's regularly conducted business activities; and (c) it is the regular practice of BAC to make such records. I have reviewed the attached business records, and I have personal knowledge of the facts set forth herein based upon a review of the attached business records.

*Id.* As stated in the AOI, the relevant business records are attached to the AOI as filed with the court. (*Id.*, ¶ 63.)

**D. Data Regarding Amount of Time Required to Review and Sign AOIs**

BAC Servicing has not yet resumed the advancement of foreclosure proceedings in New Jersey, pending the outcome of this proceeding. (Barron Cert., ¶ 64.) In particular, it has not recommenced the preparation of AOIs for New Jersey foreclosure proceedings. (*Id.*) Therefore, data regarding the average amount of time an affiant takes to review and attest to information in a New Jersey AOI, and the range of time taken by different affiants to complete this undertaking, are not yet available. (*Id.*)

BAC Servicing has recommenced the preparation of AOIs in other states, however, and its experience in those states may be predictive as to the New Jersey timetable. (*Id.*, ¶ 65.) For instance, BAC Servicing calculated that the average time it takes an affiant to review and execute an AOI for use in Florida foreclosure proceedings is about 15 minutes, or four per hour. (*Id.*) The average time to process an AOI from end-to-end, including Prep Team and QA Team review, is forty-five to fifty minutes. (*Id.*) Data concerning preparation and review times are derived from the Daily Manifest (“Manifest”), a record which provides start to finish tracking of each processing step taken with respect to an AOI. (*Id.*, ¶ 66.) The Manifest tracks the identity of each employee who performs a task and when the task was completed. (*Id.*)

BAC Servicing expects that it will take somewhat longer for an affiant to review and execute a New Jersey AOI since it contains more data elements than AOIs required by Florida law. (*Id.*, ¶ 67.) BAC Servicing’s current expectation is that, with the required training, an affiant will be able to review and execute two New Jersey AOIs per hour. (*Id.*, ¶ 68.)

**E. Affiants and Other BAC Servicing Personnel Involved in the Preparation, Review, and Execution of AOIs Have Been Trained on BAC Servicing’s Enhanced AOI Processes**

BAC Servicing has implemented a mandatory training program designed ensure that affiants and other employees involved in the AOI preparation process are familiar with BAC

Servicing's enhanced processes and the obligation to attest to facts set forth in AOIs based on personal review of BAC Servicing's business records and documents. (Barron Cert., ¶ 69.) BAC Servicing's mandatory training program commenced in November 2010, and has been provided to affiants, members of the Prep Team and QC Team, notaries, and their supervisors. (*Id.*, ¶ 70.) In-person training for employees at BAC Servicing's Pittsburgh facility, which is the site that processes New Jersey AOIs, was conducted on November 22-23, 2010. (*Id.*, ¶ 71.) One-on-one training sessions were subsequently held for employees who were not available during that period. (*Id.*) Training will be repeated at regular intervals and for all new hires, and updated as necessary. (*Id.*, ¶ 72.) No employee is permitted to execute or notarize an AOI unless he or she has satisfactorily completed BAC Servicing's new training program. (*Id.*, ¶ 73.)

As part of the training program, employees who are responsible for reviewing, validating, and executing AOIs are walked through the specific tasks necessary to validate and execute AOIs. (*Id.*, ¶ 74.) This is accomplished, in part, by reviewing in detail the checklist affiants are required to use and complete as they carry out their tasks. (*Id.*, Exh. 7.) Samples of the business records and documents necessary to validate facts set out in the AOIs are discussed and key data points in those business records and documents are highlighted during the training program. (*Id.*) Moreover, in connection with the anticipated resumption of the foreclosure process in New Jersey, BAC Servicing will provide employees with any updated information regarding specific AOI requirements in the state not available at the time of the initial training sessions. (*Id.*, ¶ 75, Exh. 8.)

To ensure that employees comprehended the information outlined during the training session, BAC Servicing administers to employees a practice test during the training session. (*Id.*, ¶ 76, Exhs. 9-10.) Before employees are permitted to work on AOIs following the training

sessions, they have to pass two tests. (*Id.*, ¶ 77.) One test is administered during the training sessions, while the second test is administered following the training sessions in an on-line format. (*Id.*, Exhs. 11-12.) In order to pass the tests, employees are required to earn a score of 90% or higher. (*Id.*) If an employee fails either test, he or she is given additional training or coaching before being permitted to re-take the tests. (*Id.*)

Additional training materials used in connection with the training program on the enhanced AOI processes are attached as Exhibits 13-14, and 16-22 to the Barron Certification. In addition to familiarizing employees with the training materials, BAC Servicing directs employees to BAC Servicing's policies and procedures regarding the enhanced AOI preparation process. (*Id.*, ¶ 79, Exh. 15.) These policies and procedures are made available to employees via intranet. (*Id.*) To stress the importance of properly reviewing the AOI, the complaint, and related business records, BAC Servicing has emphasized to affiants and other responsible employees involved in the process that AOIs are formal sworn statements of fact that are submitted to the courts. (*Id.*, ¶ 81.)

In addition to ensuring that employees participate in the required formal training programs, supervisors are responsible for providing continual coaching and counseling to employees relating to the preparation, review, and execution of AOIs. (*Id.*, ¶ 82.) Such coaching is expected to take place throughout the day (*Id.*) "Team Huddles" and daily "Team Meetings" have been instituted to update all relevant employees about issues and any procedural changes. (*Id.*, ¶ 83.) During these meetings, employees involved in the AOI process can discuss any matters relating to the process. (*Id.*) The meetings provide a forum for targeted and continued on-the-job training. (*Id.*)

**F. BAC Servicing Has Strengthened Its Quality Assurance To Ensure AOIs Are Accurate and Properly Executed**

As a further check to ensure that all AOIs are properly validated and executed, each executed AOI is reviewed by a Quality Assurance Team (“QA Team”). (Barron Cert., ¶ 89.) The QA Team is responsible for ensuring that each AOI has been validated against supporting business records and signed by the affiant. (*Id.*, ¶ 90.) Among other things, the QA Team verifies that the Prep Team and affiant checklists have been completed and that the affiant has the proper authority to sign AOIs. (*Id.*) Only after an AOI has been reviewed by the QA Team will it be sent to foreclosure counsel with approval for filing with the court. (*Id.*, ¶ 91 )

Like the Prep Team and affiants, QA Team employees also must complete a checklist documenting the steps taken to verify that each AOI has been prepared in accordance with BAC Servicing procedures. (*Id.*, ¶ 92, Exh. 23 ) QA Team employees must document the loan number, their employee number, and the date of review on each checklist. (*Id.*, ¶ 93.) This process is designed to confirm that the responsible employees are performing the tasks necessary to produce accurate and properly attested AOIs, and to facilitate subsequent traceability and accountability. (*Id.*)

As a further means of ensuring that AOIs are properly reviewed, executed, and notarized, supervisors are required to devote significant time each day to observing Prep Team members, affiants, notaries, and QA Team employees carrying out their AOI-related functions. (*Id.*, ¶ 94.) Among other things, they are required to monitor whether affiants are accurately completing the checklist and whether the QA Team is reviewing the completed AOIs for accuracy. (*Id.*) As part of this function, supervisors are charged with monitoring that affiants check the facts contained in the AOIs and that screen prints of relevant business records and documents are included in the AOI package (*Id.*)

Additionally, BAC Servicing performs and will continue to perform sample testing of completed AOIs to confirm compliance with all policies and procedures relating to their generation, review, and execution. (*Id.*, ¶ 95.)

**VI. Sample New Jersey AOIs Prepared Using BAC Servicing’s Enhanced Processes**

Pursuant to paragraph 4 of the Stipulation, 13 sample New Jersey AOIs, along with copies of the business records and documents used to prepare and validate them, are attached to the Barron Certification as Exhibits 24-36. (Barron Cert., ¶ 96.) The attached AOIs, which have been redacted by counsel to protect the privacy rights of third parties, are “test” AOIs that have been prepared using BAC Servicing’s revised New Jersey-specific procedures. (*Id.*, ¶ 97.)<sup>9</sup> A Testing Manifest, which mirrors the Daily Manifest discussed above, was used to track each test AOI during each stage of its preparation and review. (*Id.*, ¶ 98.) Each AOI was prepared by counsel from BAC Servicing’s New Jersey attorney network, uploaded into LPS Desktop, and thereafter processed by BAC Servicing as in the ordinary course of business. (*Id.*, ¶ 99.) Each AOI package contains the same business records, documents, and checklists that will be reviewed by affiants as part of BAC Servicing’s enhanced processes. (*Id.*, ¶ 100.)

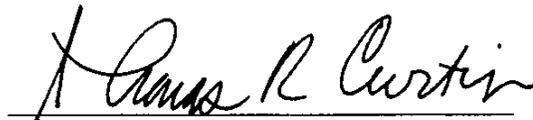
**VII. BAC Servicing’s Process for Ensuring Effective and Timely Communication with Foreclosure Counsel in Connection with Completion and Execution of AOIs**

In connection with the amendments to N J Court Rule 4:64-1 regarding attorney certifications, whatever its final form, BAC Servicing will be in a position to comply. (Barron Cert., ¶ 102.) Processes are already in place that can be immediately operationalized or revised to conform with the Rule as finally adopted. (*Id.*, ¶ 103.)

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<sup>9</sup> Although these test AOIs have been signed and notarized as part of the testing process, they will not be filed with the New Jersey courts. When BAC Servicing recommences foreclosures in New Jersey, counsel will re-submit updated AOIs and those AOIs will be processed by BAC Servicing using the same procedures. (*Id.*, ¶ 101.)

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Thomas R. Curtin  
George C. Jones  
Kathleen N. Fennelly  
GRAHAM CURTIN  
A Professional Association  
4 Headquarters Plaza, P.O. Box 1991  
Morristown, New Jersey 07962-1991  
Tel: (973) 292-1700  
Fax: (973) 292-1767

Richard Cullen  
J. William Boland  
John D. Adams  
Jeffrey D. McMahan, Jr.  
MCGUIREWOODS LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
Tel: (804) 775-1000  
Fax: (804) 775-1061

Tom McCoy  
Brian Boyle  
O'MELVENY & MYERS LLP  
1625 Eye Street, NW  
Washington, DC 20006  
Tel: (202) 383-5300  
Fax: (202) 383-5414

Daniel H. Shallman  
Sandra Sepulveda  
Tamar Braz  
O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, California 90071  
Tel: (213) 430-6000  
Fax: (213) 430-6407

Attorneys for Bank of America, d/b/a  
BAC Home Loans Servicing, LP