

MEMORANDUM ON THE EFFECT OF THE CONSENT ORDER EXERCISING JURISDICTION OVER US BANK BY THE OFFICE OF THE CONTROLLER

- 1. On April 7, 2011, the Office of the Controller of the Currency, concluding an investigation in which it issued its administrative findings issued a “consent Order” # AA-EC-11-18 (attached hereto).**

1.1. FINDING OF DEFICIENCIES: “The Comptroller of the Currency of the United States of America ("Comptroller"), through his national bank examiners and other staff of the Office of the Comptroller of the Currency ("OCC"), as part of an interagency horizontal review of major residential mortgage services, has conducted an **examination of the residential real estate mortgage foreclosure processes of U.S. Bank National Association, Cincinnati, Ohio and U.S. Bank National Association ND, Fargo, North Dakota (collectively, "Bank").** The OCC has identified certain **deficiencies and unsafe or unsound practices** in residential mortgage servicing and in the Bank’s initiation and handling of foreclosure proceedings. The OCC has informed the Bank of the findings resulting from the examination.” (E.S.)

1.1.1. PETITIONER’S ARGUMENT:

1.1.1.1. These administrative findings are presumptively correct, and clearly relate to the time period in which US Bank was seeking to assert itself as a creditor, or holder for a creditor, and therefore a real party in interest with a colorable right to claim an interest in the Gila County property and/or the obligation owed to the source of funding (the real creditor) or to First Magnus (the named creditor).

1.1.1.2. US Bank has neither objected to nor appealed from the consent order.

1.1.1.3. This order creates a presumption that an inquiry into the facts by which US Bank based its claims is proper, including standard civil discovery in accordance with applicable rules of civil procedure.

1.2. AGREEMENT BY US BANK: “the Bank has consented to the issuance of this Consent Cease and Desist Order ("Order") by the Comptroller. The Bank has committed to taking all necessary and appropriate steps to remedy the deficiencies and unsafe or unsound practices identified by the OCC, and to enhance the Bank’s residential mortgage servicing and foreclosure processes. The Bank has begun implementing procedures to remediate the practices addressed in this Order.”

1.3. EFFECT ON PRIOR PROCEEDINGS: The discharge and injunction was issued in Petitioner’s Chapter 7 case predicated upon disposition of matters raised in favor of US Bank in which the credibility of US Bank was presumably held to be superior to that of the Petitioner in the many matters and methods by which Petitioner objected to and contested the claims by US Bank and Cal Western (the putative substitute trustee”) whom she said was improperly substituted --- a fact that should be considered corroborated by the OCC investigation and consent order.

- 2. SPECIFIC FINDINGS OF FACT BY FEDERAL AGENCY (OCC): PARAGRAPH 2 OF CONSENT ORDER, PAGE 1. (DETAILS OF THESE FINDINGS ARE FOUND BELOW, ALONG WITH THE REQUIREMENTS FOR CORRECTION)**
- 2.1. “THE BANK filed or caused to be filed in state and federal courts affidavits executed by its employees making various assertions, such as the amount of the principal and interest due or the fees and expenses chargeable to the borrower, in which the *affiant represented that the assertions in the affidavit were made based on personal knowledge* or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records; (e.s.) Paragraph 2 (a)**
- 2.2. “THE BANK filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits that were not properly notarized, including those not signed or affirmed in the presence of a notary; Paragraph 2 (b)**
- 2.3. “THE BANK failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training; and (paragraph 2 (c)**
- 2.4. “THE BANK failed to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.”**
- 2.5. PETITIONER’S ARGUMENT:**
- 2.5.1.** The OCC findings are precisely the assertions made by Petitioner in prior proceedings that are now determined to be true by virtue of investigation by a Federal agency and factual conclusions by said agency.
- 2.5.2.** In both the Gilbert and Gila property cases, Petitioner insisted that the would-be foreclosers were impostors without any right, justification or excuse to initiate foreclosure, without any right or authority to execute documents on behalf of the real creditor, that they had failed or refused to identify the real creditor and relied instead upon fabricated, forged document conceived strictly for the purposes of litigation and further relied upon their apparent credibility as a bank as opposed to a homeowner who appeared to be raising technical issues to escape the inevitable.”
- 2.5.3.** Had US Bank complied with law it would not have caused Cal Western to be substituted as a trustee because Cal Western was, in essence US Bank, thus obviating the entire purpose of having a trustee.
- 2.5.4.** A US Bank that was complying with existing law and rules would also have not allowed, much less promoted the use of signatures that were forged on behalf of people who had neither authority nor knowledge of the Petitioner’s transaction.
- 2.5.5.** US Bank was abusing the rules and laws for non-judicial foreclosure and basing its actions on the improper actions of a dead bank, Chevy Chase, in order to escape the proof requirements of a judicial foreclosure in which it could not possibly have prevailed, assuming the rules of evidence were employed in a hearing in which the facts were tried and a judgment entered.
- 2.6. OCC ORDERS THAT PRESENT EASY ISSUES FOR DISCOVERY TO DETERMINE WHAT CORRECTIVE ACTIONS, IF ANY, US BANK EMPLOYED THAT MIGHT EFFECT THE CASE AT BAR.**
- 2.6.1. ARTICLE II CREATION AND IDENTITY OF MEMBERS ON THE COMPLIANCE COMMITTEE: (1) The Board shall maintain a Compliance Committee of at least three (3) Bank or Holding Company**

directors, of which at least two (2) may not be employees or officers of the Bank or any of its subsidiaries or affiliates. In the event of a change of the membership, the name of any new member shall be submitted to the Examiner-in-Charge for Large Bank Supervision at the Bank (“Examiner-in-Charge”). The Compliance Committee shall be responsible for monitoring and coordinating the Bank’s compliance with the provisions of this Order. The Compliance Committee shall meet at least monthly and maintain minutes of its meetings.

2.6.1.1. PETITIONER’S ARGUMENT:

- 2.6.1.1.1.** Based upon information gleaned from both the Petitioner’s case and hundreds of other cases reported, there appears to be a complete lack of action in even creating the compliance committee much less naming its members.
- 2.6.1.1.2.** Petitioner is entitled to know whether the committee was formed and who was appointed. It is only through inquiry of those in charge of correcting the abuses found by the OCC and the Order entered by the OCC, under authority of the FDIC (12 U.S.C. Sec. 1818(b) whether any remedial action was taken by U.S. Bank in terms of determining the effect of the OCC order on the case at bar and what methods were used to make such determination, as well as disclosing the results of such internal investigation.
- 2.6.1.1.3.** Petitioner has conducted her own investigation with the assistance of experts and has determined that the signature of Pamela Campbell on the substitution of trustee was (a) a forgery and (b) even if it had not been a forgery it would have been a nullity because Pamela Campbell had no personal knowledge of the Petitioner’s transaction, nor any third parties (see below) that participated and were not previously disclosed, nor did she ever review any business records that would call under the appropriate exceptions to hearsay rules.

2.6.2. ARTICLE II (2) Within ninety (90) days of this Order, and within thirty (30) days after the end of each quarter thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail actions taken to comply with each Article of this order, and the results and status of those actions. (3) The Board shall forward a copy of the Compliance Committee’s report, with any additional comments by the Board, to the Deputy Comptroller for Large Bank Supervision (“Deputy Comptroller”) and the Examiner-in-Charge within ten (10) days of receiving such report.

2.6.2.1. PETITIONER’S ARGUMENT:

- 2.6.2.1.1.** Petitioner’s investigators have not revealed any such filings.
- 2.6.2.1.2.** If they were filed, Petitioner should be allowed to review them to determine the effect of any action taken on the case at Bar.

2.7. ARTICLE III PAGE 4, COMPREHENSIVE ACTION PLAN REQUIRED TO BE SUBMITTED BY US BANK: (1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through XII of this Order (“Action Plan”). In the event the Deputy Comptroller asks the Bank to revise the

Action Plan, the Bank shall promptly make the requested revisions and resubmit the Action Plan to the Deputy Comptroller and the Examiner-in-Charge. Following acceptance of the Action Plan by the Deputy Comptroller, the Bank shall not take any action that would constitute a significant deviation from, or material change to, the requirements of the Action Plan or this Order, unless and until the Bank has received a prior written determination of no supervisory objection from the Deputy Comptroller.

2.7.1. PETITIONER'S ARGUMENT:

2.7.1.1. Petitioner's investigators have not revealed any such filings.

2.7.1.2. If they were filed, Petitioner should be allowed to review them to determine the effect of any action taken on the case at Bar.

2.8. ARTICLE III, PARAGRAPH 3, PAGE 5 OCC ORDER: COMPONENTS OF ACTION PLAN:

2.8.1. (a) financial resources to develop and implement an adequate infrastructure to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;

(b) organizational structure, managerial resources, and staffing to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;

(c) metrics to measure and ensure the adequacy of staffing levels relative to existing and/or future Loss Mitigation and foreclosure activities, such as limits for the number of loans assigned to a Loss Mitigation employee, **including the single point of contact as hereinafter defined, and deadlines to review loan modification documentation, make loan modification decisions, and provide responses to borrowers;**

- **PETITIONER'S ARGUMENT:**
- **No such single point of contact exists within US Bank.**
- **No authority to execute a satisfaction or modification exists in US Bank as it relates to Petitioner's transaction with First Magnus.**
- **No such filing has been made and it is clear that US Bank will resist providing any such information inasmuch as it would be admitting that there are third parties with actual authority and ownership over the loans, obligations, notes and mortgages (assuming the mortgages were perfected), the determination of which could not only impact the validity of the foreclosure process improperly invoked by US Bank but might reveal, and in Petitioner's case is asserted to eviscerate any claim that the mortgage lien was in fact perfected and establishes that the defect is incurable.**

5(d) governance and controls to ensure compliance with all applicable federal and state laws (including the U.S. Bankruptcy Code and the Service members Civil Relief Act ("SCRA")), rules, regulations, and court orders and requirements, as well as the Membership Rules of MERSCORP, servicing guides of the Government Sponsored Enterprises ("GSEs") or investors, including those with the Federal Housing Administration and those required by the Home Affordable Modification Program ("HAMP"), and loss share agreements with the Federal Deposit Insurance Corporation (collectively "Legal Requirements"), and the requirements of this Order.

(4) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through XII of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order.

4. **ARTICLE IV COMPLIANCE PROGRAM, PAGE 6 OCC ORDER:**(a) appropriate written policies and procedures to conduct, oversee, and monitor mortgage servicing, Loss Mitigation, and foreclosure operations;
- (b) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of the Bank are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of the Bank's books and records when the affidavit or declaration so states;

• **PETITIONER'S ARGUMENT:**

- The factual assertions made by US Bank are false in the case at Bar. US Bank asserts itself as "Trustee, relating to" an asset backed pool that is poorly identified and undocumented.
- US Bank fails to allege or establish that it is actually the trustee of an existing trust that constituted a Special Purpose vehicle (REMIC) whose assets consisted of loans, obligations, notes or mortgages including but not limited to the Petitioner's loan.
- To the contrary, the record shows that US Bank alleges and asserts rights acquired without proof of being a trustee, and without documentation in compliance with the pooling and servicing agreement that would apply to the alleged asset-backed pool if it existed.
- Specifically, the documents relied upon by US Bank are clearly outside the 90 day cutoff period contained in the pooling and servicing agreement and purport to transfer a non-complying, non-performing loan to investors whose investment was explicitly stated to be in reliance on the ownership of performing loans.
- The notary stamp was affixed by persons other than the person licensed to use the stamp, and the signature of the notary was forged. US Bank, despite being made aware of these deficiencies has failed and refused to offer any correction or cure, probably because the defects are incurable.

- (c) processes to ensure that affidavits filed in foreclosure proceedings are executed and notarized in accordance with state legal requirements and applicable guidelines, including jurat requirements;

• **PETITIONER'S ARGUMENT:**

- The documentation and affidavits offered by US Bank and which are attached to various pleadings in the record are forged, fabricated and created for the sole purpose of gaining an advantage in litigation.
- They were offered as though they were ordinary business records when in fact they did not exist during the on-going business relationship between Petitioner and the servicer, whose authority is also undocumented.
- The notary stamp was affixed by persons other than the person licensed to use the stamp, and the signature of the notary was forged. US Bank, despite being made aware of these deficiencies has failed and refused to offer any correction or cure, probably because the defects are incurable.

- (d) processes to review and approve standardized affidavits and declarations for each jurisdiction in which the Bank files foreclosure actions to ensure compliance with applicable laws, rules and court procedures; PETITIONER'S ARGUMENT: The notary stamp was affixed by persons other than the person licensed to use the stamp, and the signature of the notary was forged. US Bank, despite being made aware of these deficiencies has failed and refused to offer any correction or cure, probably because the defects are incurable.

- (e) processes to ensure that the Bank has properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at

all stages of foreclosure and bankruptcy litigation, including appropriate transfer and delivery of endorsed notes and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security, and lawful and verifiable endorsement and successive assignment of the note and mortgage or deed of trust to reflect all changes of ownership;

• **___ PETITIONER'S ARGUMENT:**

- US BANK was neither the lender, the beneficiary nor the designated servicer by any party during the on-going relationship between the Petitioner and the intermediaries posing as agents for the real lender (investor/lender).
- US BANK does not refute this assertion, but rather relies upon a layer of forged, fabricated documents created for the sole purpose of litigation under the process now known as robo-signing or "surrogate signing."
- First Magnus was the named "lender" in the transactions when in fact it was acting as a straw-man posing as a non-bank lender and at times even posing as a bank.
- First Magnus did not name US Bank in any document nor did anyone with First Magnus authority execute any document that would give US Bank even color of authority to act as, or on behalf of the the undisclosed creditor.
- Instead, US Bank hired CalWestern who caused bogus documents to be created in which Cal Western was appointed as substitute trustee without the knowledge or consent of either the trustor (Petitioner) or the Trustee.
- No attempt was made to cover the fact that the beneficiary on the deeds of trust was a nominee with no interest in the loan.
- Both the "lender" and the Beneficiary" were straw-men for undisclosed principles.
- US Bank claims authority by virtue of the securitization of the loan. But no chain of "title" exists as to the loan in which US Bank "relating to" a non-existent trust was named either lender or beneficiary under the original deed of trust or any successor instrument to the deed of trust.

(f) **processes to ensure that a clear and auditable trail exists for all factual information contained in each affidavit or declaration, in support of each of the charges that are listed, including whether the amount is chargeable to the borrower and/or claimable by the investor;**

• **PETITIONER'S ARGUMENT:**

- if an auditable trail exists, US Bank has failed and refused to provide it, offer it or even explain its absence despite numerous demands from Petitioner and the terms of the OCC order.
- US Bank like any other putative lender attempting to collect a debt or foreclose on personal or real property, would be required to produce such a trail in order to prove its case.
- According to Petitioner's experts, the reason for the absence of these key documents and the audit trail is that it does not exist.
- There is a divergence between the paper trail, recently created out of thin air, and the money trail in which the loan was treated as though it was securitized but was not documented as such.
- A proper audit trail would obviously produce an accounting from the creditor --- not an intermediary with only partial knowledge of all the transactions that occur in the securitization of a loan.
- An actual audit trail would enable the Court to determine easily the amount advanced by the creditor, the amounts received by the creditor under the provisions of the underlying documents (pooling and servicing agreement, prospectus etc.) and the balance due, if any.
- It would also show whether the creditor was receiving payments and receiving reports that the Petitioner's loan was performing at the same time the putative servicer was declaring the Petitioner in default.
- The pooling and servicing agreement provides for payment by the servicer regardless of whether the Petitioner makes a payment or the reasons that the Petitioner has withheld a payment. It

provides for extraordinary principal and interest payments through insurance,, credit default swaps and other credit enhancements.

- The audit trail would also provide direct information as to the accounting for federal bailouts in which federal agencies, including the Federal Reserve now claim to own such obligations, since the bailouts occurred in late 2008 and early 2009.
 - Hence the basic requirement for any creditor to recover from a borrower has not been met; this has been accomplished by abuse of the non-judicial system in which the intermediaries in the money trail of defectively securitized loan products were able to create, at will, documents purporting to give themselves ownership or authority over the loans.
- (g) processes to ensure that foreclosure sales (including the calculation of the default period, the amounts due, and compliance with notice requirements) and post-sale confirmations are in accordance with the terms of the mortgage loan and applicable state and federal law requirements;
- **PETITIONER’S ARGUMENT:**
 - US Bank did not have any actual knowledge or contact with Cal Western, the alleged substitute trustee.
 - This scheme is spelled out in the prospectus where the procedure is built in to create layers of “bankruptcy remote vehicles while at the same time transferring, at will, the alleged ownership of the loan.
 - The actual foreclosure sale was conducted by US Bank, effectively “looking the other way,” while its agent and affiliate CalWestern, conducted an auction posing as the trustee on the deed of trust and at the same time acting as the bidder, US BANK.
 - No cash offer was made or paid.
 - No tender of debt was tendered or made.
 - NO creditor was present in person or by proxy --- all in violation of Arizona laws. Cal Western, nonetheless issued a deed in exchange for a naked bid of \$91,000 with US Bank as grantee.
 - US Bank then asserted ownership of the property and evicted the Petitioner and seized her property, all based upon false representations to the state court and false documents as set forth above.
 - As such US Bank has imposed fees, expenses and hardship on the Petitioner with callous disregard for her rights or the rules of court.
- (h) processes to ensure that all fees, expenses, and other charges imposed on the borrower are assessed in accordance with the terms of the underlying mortgage note, mortgage, or other customer authorization with respect to the imposition of fees, charges, and expenses, and in compliance with all applicable Legal Requirements and OCC supervisory guidance;
- **PETITIONER’S ARGUMENT:**
 - The actual foreclosure sale was conducted by US Bank, effectively “looking the other way,” while its agent and affiliate CalWestern, conducted an auction posing as the trustee on the deed of trust and at the same time acting as the bidder, US BANK.
 - No cash offer was made or paid.
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 - NO creditor was present in person or by proxy --- all in violation of Arizona laws. Cal Western, nonetheless issued a deed in exchange for a naked bid of \$91,000 with US Bank as grantee.
 - US Bank then asserted ownership of the property and evicted the Petitioner and seized her property, all based upon false representations to the state court and false documents as set forth above.
 - As such US Bank has imposed fees, expenses and hardship on the Petitioner with callous disregard for her rights or the rules of court.

- US BANK, through its attorney now demands fees for moving and storage as well as legal fees for enforcing its false title and and false claim for eviction.
- (i) processes to ensure that the Bank has the ability to locate and secure all documents, including the original promissory notes if required, necessary to perform mortgage servicing, foreclosure and Loss Mitigation, or loan modification functions;
- **PETITIONER'S ARGUMENT:**
- US BANK has not been required to produce nor has it offered original documentation and based upon representations of counsel in court, US BANK neither posses them nor does it possess knowledge of them.
- (j) ongoing testing for compliance with applicable Legal Requirements and OCC supervisory guidance that is completed by qualified persons with requisite knowledge and ability (which may include internal audit) who are independent of the Bank's business lines;
- **PETITIONER'S ARGUMENT:** If such testing for compliance exists, it has not been reported to OCC nor anyone else. Petitioner is entitled, through discovery to know what procedures were used and whether US Bank has complied with his portion of the order as it would lead to the discovery of admissible evidence against US Bank and Cal Western.
- (k) measures to ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate any changes in applicable Legal Requirements and OCC supervisory guidance;
- **PETITIONER'S ARGUMENT:** This provision is only a restatement of existing law.
- **It is important only because it underscores the requirement that US Bank is subject to a continuing responsibility to comply with applicable law and to discover and correct deficiencies.**
- (l) processes to ensure the qualifications of current management and supervisory personnel responsible for mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation and loan modification, are appropriate and a determination of whether any staffing changes or additions are needed;
- (m) processes to ensure that staffing levels devoted to mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, are adequate to meet current and expected workload demands;
- (n) processes to ensure that workloads of mortgage servicing, foreclosure and Loss Mitigation, and loan modification personnel, including single point of contact personnel as hereinafter defined, are reviewed and managed. Such processes, at a minimum, shall assess whether the workload levels are appropriate to ensure compliance with the requirements of Article IX of this Order, and necessary adjustments to workloads shall promptly follow the completion of the reviews. An initial review shall be completed within ninety (90) days of this Order, and subsequent reviews shall be conducted semi-annually;
- (o) processes to ensure that the risk management, quality control, audit, and compliance programs have the requisite authority and status within the organization so that appropriate reviews of the Bank's mortgage servicing, Loss Mitigation, and foreclosure activities and operations may occur and deficiencies are identified and promptly remedied;
- (p) appropriate training programs for personnel involved in mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, to ensure compliance with applicable Legal Requirements and supervisory guidance; and

(q) appropriate procedures for customers in bankruptcy, including a prohibition on collection of fees in violation of bankruptcy's automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), or any applicable court order.

**UNITED STATES OF AMERICA DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY**

) **In the Matter of:**) U.S. Bank National Association) Cincinnati, Ohio) and) U.S.
Bank National Association ND) Fargo, North Dakota))

CONSENT ORDER

AA-EC-11-18

The Comptroller of the Currency of the United States of America ("Comptroller"), through his national bank examiners and other staff of the Office of the Comptroller of the Currency ("OCC"), as part of an interagency horizontal review of major residential mortgage servicers, has conducted an examination of the residential real estate mortgage foreclosure processes of U.S. Bank National Association, Cincinnati, Ohio and U.S. Bank National Association ND, Fargo, North Dakota (collectively, "Bank"). The OCC has identified certain deficiencies and unsafe or unsound practices in residential mortgage servicing and in the Bank's initiation and handling of foreclosure proceedings. The OCC has informed the Bank of the findings resulting from the examination.

The Bank, by and through its duly elected and acting Board of Directors ("Board"), has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated April 13, 2011 ("Stipulation and Consent"), that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order ("Order") by the Comptroller. The Bank has committed to taking all necessary and appropriate steps to remedy the deficiencies and unsafe or unsound practices identified by the OCC, and to enhance the Bank's residential mortgage servicing and foreclosure processes. The Bank has begun implementing procedures to remediate the practices addressed in this Order.

ARTICLE I COMPTROLLER'S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

(1) The Bank is among the largest servicers of residential mortgages in the United States and services a portfolio of 1,400,000 residential mortgage loans. During the recent housing crisis, a large number of residential mortgage loans serviced by the Bank became delinquent and resulted in foreclosure actions. The Bank's foreclosure inventory grew substantially from 2008 through 2010.

(2) In connection with certain foreclosures of loans in its residential mortgage servicing portfolio, the Bank:

(a) filed or caused to be filed in state and federal courts affidavits executed by its employees making various assertions, such as the amount of the principal and interest due or the fees and expenses chargeable to the borrower, in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

(b) filed or caused to be filed in state and federal courts, or in local land records offices, numerous affidavits that were not properly notarized, including those not signed or affirmed in the presence of a notary;

(c) failed to devote to its foreclosure processes adequate oversight, internal controls, policies, and procedures, compliance risk management, internal audit, third party management, and training; and

(d) failed to sufficiently oversee outside counsel and other third-party providers handling foreclosure-related services.

(3) By reason of the conduct set forth above, the Bank engaged in unsafe or unsound banking practices.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the Comptroller hereby ORDERS that:

ARTICLE II COMPLIANCE COMMITTEE

(1) The Board shall maintain a Compliance Committee of at least three (3) Bank or Holding Company directors, of which at least two (2) may not be employees or officers of the Bank or any of its subsidiaries or affiliates. In the event of a change of the membership, the name of any new member shall be submitted to the Examiner-in-Charge for Large Bank Supervision at the Bank (“Examiner-in-Charge”). The Compliance Committee shall be responsible for monitoring and coordinating the Bank’s compliance with the provisions of this Order. The Compliance Committee shall meet at least monthly and maintain minutes of its meetings.

(2) Within ninety (90) days of this Order, and within thirty (30) days after the end of each quarter thereafter, the Compliance Committee shall submit a written progress report to the

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Board setting forth in detail actions taken to comply with each Article of this order, and the results and status of those actions.

(3) The Board shall forward a copy of the Compliance Committee’s report, with any additional comments by the Board, to the Deputy Comptroller for Large Bank Supervision (“Deputy Comptroller”) and the Examiner-in-Charge within ten (10) days of receiving such report.

ARTICLE III COMPREHENSIVE ACTION PLAN

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through XII of this Order (“Action Plan”). In the event the Deputy Comptroller asks the Bank to revise the Action Plan, the Bank shall promptly make the requested revisions and resubmit the Action Plan to the Deputy Comptroller and the Examiner-in-Charge. Following acceptance of the Action Plan by the Deputy Comptroller, the Bank shall not take any action that would constitute a significant deviation from, or material change to, the requirements of the Action Plan or this Order, unless and until the Bank has received a prior written determination of no supervisory objection from the Deputy Comptroller.

(2) The Board shall ensure that the Bank achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan. The Board shall further ensure that, upon implementation of the Action Plan, the Bank achieves and maintains effective mortgage servicing, foreclosure, and loss mitigation activities (as used

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herein, the phrase “loss mitigation” shall include, but not be limited to, activities related to special forbearances, modifications, short refinances, short sales, cash-for-keys, and deeds-in-

lieu of foreclosure and be referred to as either “Loss Mitigation” or “Loss Mitigation Activities”), as well as associated risk management, compliance, quality control, audit, training, staffing, and related functions. In order to comply with these requirements, the Board shall:

- (a) require the timely reporting by Bank management of such actions directed by the Board to be taken under this Order;
- (b) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (c) require corrective action be taken in a timely manner for any non-compliance with such actions.

(3) The Action Plan shall address, at a minimum: (a) financial resources to develop and implement an adequate infrastructure to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;

(b) organizational structure, managerial resources, and staffing to support existing and/or future Loss Mitigation and foreclosure activities and ensure compliance with this Order;

(c) metrics to measure and ensure the adequacy of staffing levels relative to existing and/or future Loss Mitigation and foreclosure activities, such as limits for the number of loans assigned to a Loss Mitigation employee, including the single point of contact as hereinafter defined, and deadlines to review loan modification documentation, make loan modification decisions, and provide responses to borrowers;

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(d) governance and controls to ensure compliance with all applicable federal and state laws (including the U.S. Bankruptcy Code and the Servicemembers Civil Relief Act (“SCRA”)), rules, regulations, and court orders and requirements, as well as the Membership Rules of MERSCORP, servicing guides of the Government Sponsored Enterprises (“GSEs”) or investors, including those with the Federal Housing Administration and those required by the Home Affordable Modification Program (“HAMP”), and loss share agreements with the Federal Deposit Insurance Corporation (collectively “Legal Requirements”), and the requirements of this Order.

(4) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through XII of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order.

ARTICLE IV COMPLIANCE PROGRAM

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable compliance program to ensure that the mortgage servicing and foreclosure operations, including Loss Mitigation and loan modification, comply with all applicable Legal Requirements, OCC supervisory guidance, and the requirements of this Order and are conducted in a safe and sound manner (“Compliance Program”). The Compliance Program shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe in the Compliance Program that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The Compliance Program shall include, at a minimum:

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- (a) appropriate written policies and procedures to conduct, oversee, and monitor mortgage servicing, Loss Mitigation, and foreclosure operations;
 - (b) processes to ensure that all factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of the Bank are accurate, complete, and reliable; and that affidavits and declarations are based on personal knowledge or a review of the Bank's books and records when the affidavit or declaration so states;
 - (c) processes to ensure that affidavits filed in foreclosure proceedings are executed and notarized in accordance with state legal requirements and applicable guidelines, including jurat requirements;
 - (d) processes to review and approve standardized affidavits and declarations for each jurisdiction in which the Bank files foreclosure actions to ensure compliance with applicable laws, rules and court procedures;
 - (e) processes to ensure that the Bank has properly documented ownership of the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the action (as a result of agency or other similar status) at all stages of foreclosure and bankruptcy litigation, including appropriate transfer and delivery of endorsed notes and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security, and lawful and verifiable endorsement and successive assignment of the note and mortgage or deed of trust to reflect all changes of ownership;
 - (f) processes to ensure that a clear and auditable trail exists for all factual information contained in each affidavit or declaration, in support of each of the charges that are listed, including whether the amount is chargeable to the borrower and/or claimable by the investor;
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- (g) processes to ensure that foreclosure sales (including the calculation of the default period, the amounts due, and compliance with notice requirements) and post-sale confirmations are in accordance with the terms of the mortgage loan and applicable state and federal law requirements;
 - (h) processes to ensure that all fees, expenses, and other charges imposed on the borrower are assessed in accordance with the terms of the underlying mortgage note, mortgage, or other customer authorization with respect to the imposition of fees, charges, and expenses, and in compliance with all applicable Legal Requirements and OCC supervisory guidance;
 - (i) processes to ensure that the Bank has the ability to locate and secure all documents, including the original promissory notes if required, necessary to perform mortgage servicing, foreclosure and Loss Mitigation, or loan modification functions;
 - (j) ongoing testing for compliance with applicable Legal Requirements and OCC supervisory guidance that is completed by qualified persons with requisite knowledge and ability (which may include internal audit) who are independent of the Bank's business lines;
 - (k) measures to ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate any changes in applicable Legal Requirements and OCC supervisory guidance;
 - (l) processes to ensure the qualifications of current management and supervisory personnel responsible for mortgage servicing and foreclosure processes and operations, including

collections, Loss Mitigation and loan modification, are appropriate and a determination of whether any staffing changes or additions are needed;

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(m) processes to ensure that staffing levels devoted to mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, are adequate to meet current and expected workload demands;

(n) processes to ensure that workloads of mortgage servicing, foreclosure and Loss Mitigation, and loan modification personnel, including single point of contact personnel as hereinafter defined, are reviewed and managed. Such processes, at a minimum, shall assess whether the workload levels are appropriate to ensure compliance with the requirements of Article IX of this Order, and necessary adjustments to workloads shall promptly follow the completion of the reviews. An initial review shall be completed within ninety (90) days of this Order, and subsequent reviews shall be conducted semi-annually;

(o) processes to ensure that the risk management, quality control, audit, and compliance programs have the requisite authority and status within the organization so that appropriate reviews of the Bank's mortgage servicing, Loss Mitigation, and foreclosure activities and operations may occur and deficiencies are identified and promptly remedied;

(p) appropriate training programs for personnel involved in mortgage servicing and foreclosure processes and operations, including collections, Loss Mitigation, and loan modification, to ensure compliance with applicable Legal Requirements and supervisory guidance; and

(q) appropriate procedures for customers in bankruptcy, including a prohibition on collection of fees in violation of bankruptcy's automatic stay (11 U.S.C. § 362), the discharge injunction (11 U.S.C. § 524), or any applicable court order.

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ARTICLE V THIRD PARTY MANAGEMENT

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge acceptable policies and procedures for outsourcing foreclosure or related functions, including Loss Mitigation and loan modification, and property management functions for residential real estate acquired through or in lieu of foreclosure, to any agent, independent contractor, consulting firm, law firm (including local counsel in foreclosure or bankruptcy proceedings retained to represent the interests of the owners of mortgages), property management firm, or other third-party (including any affiliate of the Bank) ("Third-Party Providers"). Third-party management policies and procedures shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The policies and procedures shall include, at a minimum:

(a) appropriate oversight to ensure that Third-Party Providers comply with all applicable Legal Requirements, OCC supervisory guidance (including applicable portions of OCC Bulletin 2001-47), and the Bank's policies and procedures;

(b) measures to ensure that all original records transferred from the Bank to Third-Party Providers (including the originals of promissory notes and mortgage documents) remain within the custody and control of the Third-Party Provider (unless filed with the appropriate court or the loan is otherwise transferred to another party), and are returned to the Bank or designated

custodians at the conclusion of the performed service, along with all other documents necessary for the Bank's files, and that the Bank retains imaged copies of significant documents sent to Third-Party Providers;

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(c) measures to ensure the accuracy of all documents filed or otherwise utilized on behalf of the Bank or the owners of mortgages in any judicial or non-judicial foreclosure proceeding, related bankruptcy proceeding, or in other foreclosure-related litigation, including, but not limited to, documentation sufficient to establish ownership of the promissory note and/or right to foreclose at the time the foreclosure action is commenced;

(d) processes to perform appropriate due diligence on potential and current Third- Party Provider qualifications, expertise, capacity, reputation, complaints, information security, document custody practices, business continuity, and financial viability, and to ensure adequacy of Third-Party Provider staffing levels, training, work quality, and workload balance;

(e) processes to ensure that contracts provide for adequate oversight, including requiring Third-Party Provider adherence to Bank foreclosure processing standards, measures to enforce Third-Party Provider contractual obligations, and processes to ensure timely action with respect to Third-Party Provider performance failures;

(f) processes to ensure periodic reviews of Third-Party Provider work for timeliness, competence, completeness, and compliance with all applicable Legal Requirements and supervisory guidance, and to ensure that foreclosures are conducted in a safe and sound manner;

(g) processes to review customer complaints about Third-Party Provider services;

(h) processes to prepare contingency and business continuity plans that ensure the continuing availability of critical third-party services and business continuity of the Bank, consistent with federal banking agency guidance, both to address short-term and long-term service disruptions and to ensure an orderly transition to new service providers should that become necessary;

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(i) a review of fee structures for Third-Party Providers to ensure that the method of compensation considers the accuracy, completeness, and legal compliance of foreclosure filings and is not based solely on increased foreclosure volume and/or meeting processing timelines; and

(j) a certification process for law firms (and recertification of existing law firm providers) that provide residential mortgage foreclosure and bankruptcy services for the Bank, on a periodic basis, as qualified to serve as Third-Party Providers to the Bank including that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested.

ARTICLE VI MORTGAGE ELECTRONIC REGISTRATION SYSTEM

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan to ensure appropriate controls and oversight of the Bank's activities with respect to the Mortgage Electronic Registration System ("MERS") and compliance with MERSCORP's membership rules, terms, and conditions ("MERS Requirements") ("MERS Plan"). The MERS Plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timetable that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The MERS Plan shall include, at a minimum:

(a) processes to ensure that all mortgage assignments and endorsements with respect to mortgage loans serviced or owned by the Bank out of MERS' name are executed only by a certifying officer authorized by MERS and approved by the Bank;

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(b) processes to ensure that all other actions that may be taken by MERS certifying officers (with respect to mortgage loans serviced or owned by the Bank) are executed by a certifying officer authorized by MERS and approved by the Bank;

(c) processes to ensure that the Bank maintains up-to-date corporate resolutions from MERS for all Bank employees and third-parties who are certifying officers authorized by MERS, and up-to-date lists of MERS certifying officers;

(d) processes to ensure compliance with all MERS Requirements and with the requirements of the MERS Corporate Resolution Management System ("CRMS");

(e) processes to ensure the accuracy and reliability of data reported to MERSCORP and MERS, including monthly system-to-system reconciliations for all MERS mandatory reporting fields, and daily capture of all rejects/warnings reports associated with registrations, transfers, and status updates on open-item aging reports. Unresolved items must be maintained on open-item aging reports and tracked until resolution. The Bank shall determine and report whether the foreclosures for loans serviced by the Bank that are currently pending in MERS' name are accurate and how many are listed in error, and describe how and by when the data on the MERSCORP system will be corrected; and

(f) an appropriate MERS quality assurance workplan, which clearly describes all tests, test frequency, sampling methods, responsible parties, and the expected process for open-item follow-up, and includes an annual independent test of the control structure of the system-to-system reconciliation process, the reject/warning error correction process, and adherence to the Bank's MERS Plan.

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(2) The Bank shall include MERS and MERSCORP in its third-party vendor management process, which shall include a detailed analysis of potential vulnerabilities, including information security, business continuity, and vendor viability assessments.

ARTICLE VII FORECLOSURE REVIEW (1) Within forty-five (45) days of this Order, the Bank shall retain an independent

consultant acceptable to the Deputy Comptroller and the Examiner-in-Charge to conduct an independent review of certain residential foreclosure actions regarding individual borrowers with respect to the Bank's mortgage servicing portfolio. The review shall include residential foreclosure actions or proceedings (including foreclosures that were in process or completed) for loans serviced by the Bank, whether brought in the name of the Bank, the investor, the mortgage note holder, or any agent for the mortgage note holder (including MERS), that have been pending at any time from January 1, 2009 to December 31, 2010, as well as residential foreclosure sales that occurred during this time period ("Foreclosure Review").

(2) Within fifteen (15) days of the engagement of the independent consultant described in this Article, but prior to the commencement of the Foreclosure Review, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge for approval an engagement letter that sets forth:

(a) the methodology for conducting the Foreclosure Review, including: (i) a description of the information systems and documents to be reviewed, including the selection of criteria for cases to be reviewed; (ii) the criteria for evaluating the reasonableness of fees and penalties; (iii) other procedures necessary to make the required determinations (such as through

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interviews of employees and third parties and a process for submission and review of borrower claims and complaints); and (iv) any proposed sampling techniques. In setting the scope and review methodology under clause (i) of this sub-paragraph, the independent consultant may consider any work already done by the Bank or other third-parties on behalf of the Bank. The engagement letter shall contain a full description of the statistical basis for the sampling methods chosen, as well as procedures to increase the size of the sample depending on results of the initial sampling;

(b) expertise and resources to be dedicated to the Foreclosure Review;

(c) completion of the Foreclosure Review within one hundred twenty (120) days from approval of the engagement letter; and

(d) a written commitment that any workpapers associated with the Foreclosure Review shall be made available to the OCC immediately upon request.

(3) The purpose of the Foreclosure Review shall be to determine, at a minimum: (a) whether at the time the foreclosure action was initiated or the pleading or affidavit filed (including in bankruptcy proceedings and in defending suits brought by borrowers), the foreclosing party or agent of the party had properly documented ownership of the promissory note and mortgage (or deed of trust) under relevant state law, or was otherwise a proper party to the action as a result of agency or similar status;

(b) whether the foreclosure was in accordance with applicable state and federal law, including but not limited to the SCRA and the U.S. Bankruptcy Code;

(c) whether a foreclosure sale occurred when an application for a loan modification or other Loss Mitigation was under consideration; when the loan was performing in accordance with a trial or permanent loan modification; or when the loan had not been in default

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for a sufficient period of time to authorize foreclosure pursuant to the terms of the mortgage loan documents and related agreements;

(d) whether, with respect to non-judicial foreclosures, the procedures followed with respect to the foreclosure sale (including the calculation of the default period, the amounts due, and compliance with notice periods) and post-sale confirmations were in accordance with the terms of the mortgage loan and state law requirements;

(e) whether a delinquent borrower's account was only charged fees and/or penalties that were permissible under the terms of the borrower's loan documents, applicable state and federal law, and were reasonable and customary;

(f) whether the frequency that fees were assessed to any delinquent borrower's account (including broker price opinions) was excessive under the terms of the borrower's loan documents, and applicable state and federal law;

(g) whether Loss Mitigation Activities with respect to foreclosed loans were handled in accordance with the requirements of the HAMP, and consistent with the policies and procedures

applicable to the Bank's proprietary loan modifications or other loss mitigation programs, such that each borrower had an adequate opportunity to apply for a Loss Mitigation option or program, any such application was handled properly, a final decision was made on a reasonable basis, and was communicated to the borrower before the foreclosure sale; and

(h) whether any errors, misrepresentations, or other deficiencies identified in the Foreclosure Review resulted in financial injury to the borrower or the mortgagee.

(4) The independent consultant shall prepare a written report detailing the findings of the Foreclosure Review ("Foreclosure Report"), which shall be completed within thirty (30) days of
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completion of the Foreclosure Review. Immediately upon completion, the Foreclosure Report shall be submitted to the Deputy Comptroller, Examiner-in-Charge, and the Board.

(5) Within forty-five (45) days of submission of the Foreclosure Report to the Deputy Comptroller, Examiner-in-Charge, and the Board, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge a plan, acceptable to the OCC, to remediate all financial injury to borrowers caused by any errors, misrepresentations, or other deficiencies identified in the Foreclosure Report, by:

(a) reimbursing or otherwise appropriately remediating borrowers for impermissible or excessive penalties, fees, or expenses, or for other financial injury identified in accordance with this Article; and

(b) taking appropriate steps to remediate any foreclosure sale where the foreclosure was not authorized as described in this Article.

(6) Within sixty (60) days after the OCC provides supervisory non-objection to the plan set forth in paragraph (5) above, the Bank shall make all reimbursement and remediation payments and provide all credits required by such plan, and provide the OCC with a report detailing such payments and credits.

ARTICLE VIII MANAGEMENT INFORMATION SYSTEMS

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan for operation of its management information systems ("MIS") for foreclosure and Loss Mitigation or loan modification activities to ensure the timely delivery of complete and accurate information to permit effective decision-

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making. The MIS plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The plan shall include, at a minimum:

(a) a description of the various components of MIS used by the Bank for foreclosure and Loss Mitigation or loan modification activities;

(b) a description of and timetable for any needed changes or upgrades to: (i) monitor compliance with all applicable Legal Requirements and supervisory guidance, and the requirements of this Order; (ii) ensure the ongoing accuracy of records for all serviced mortgages, including, but not limited to, records necessary to establish ownership and the right to foreclose by the appropriate party for all serviced mortgages, outstanding balances, and fees assessed to the borrower; and

(iii) measures to ensure that Loss Mitigation, loan foreclosure, and modification staffs have sufficient and timely access to information provided by the borrower regarding loan foreclosure and modification activities;

(c) testing the integrity and accuracy of the new or enhanced MIS to ensure that reports generated by the system provide necessary information for adequate monitoring and quality controls.

ARTICLE IX MORTGAGE SERVICING

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller and the Examiner-in-Charge an acceptable plan, along with a timeline for ensuring

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effective coordination of communications with borrowers, both oral and written, related to Loss Mitigation or loan modification and foreclosure activities: (i) to ensure that communications are timely and effective and are designed to avoid confusion to borrowers; (ii) to ensure continuity in the handling of borrowers' loan files during the Loss Mitigation, loan modification, and foreclosure process by personnel knowledgeable about a specific borrower's situation; (iii) to ensure reasonable and good faith efforts, consistent with applicable Legal Requirements, are engaged in Loss Mitigation and foreclosure prevention for delinquent loans, where appropriate; and (iv) to ensure that decisions concerning Loss Mitigation or loan modifications continue to be made and communicated in a timely fashion. Prior to submitting the plan, the Bank shall conduct a review to determine whether processes involving past due mortgage loans or foreclosures overlap in such a way that they may impair or impede a borrower's efforts to effectively pursue a loan modification, and whether Bank employee compensation practices discourage Loss Mitigation or loan modifications. The plan shall be implemented within one hundred twenty (120) days of this Order. Any corrective action timeframe that is in excess of one hundred twenty (120) days must be approved by the Examiner-in-Charge. The plan shall include, at a minimum:

(a) measures to ensure that staff handling Loss Mitigation and loan modification requests routinely communicate and coordinate with staff processing the foreclosure on the borrower's property;

(b) appropriate deadlines for responses to borrower communications and requests for consideration of Loss Mitigation, including deadlines for decision-making on Loss Mitigation Activities, with the metrics established not being less responsive than the timelines in the HAMP program;

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(c) establishment of an easily accessible and reliable single point of contact for each borrower so that the borrower has access to an employee of the Bank to obtain information throughout the Loss Mitigation, loan modification, and foreclosure processes;

(d) a requirement that written communications with the borrower identify such single point of contact along with one or more direct means of communication with the contact;

(e) measures to ensure that the single point of contact has access to current information and personnel (in-house or third-party) sufficient to timely, accurately, and adequately inform the borrower of the current status of the Loss Mitigation, loan modification, and foreclosure activities;

(f) measures to ensure that staff are trained specifically in handling mortgage delinquencies, Loss Mitigation, and loan modifications;

(g) procedures and controls to ensure that a final decision regarding a borrower's loan modification request (whether on a trial or permanent basis) is made and communicated to the borrower in writing, including the reason(s) why the borrower did not qualify for the trial or permanent modification (including the net present value calculations utilized by the Bank, if applicable) by the single point of contact within a reasonable period of time before any foreclosure sale occurs;

(h) procedures and controls to ensure that when the borrower's loan has been approved for modification on a trial or permanent basis that: (i) no foreclosure or further legal action predicate to foreclosure occurs, unless the borrower is deemed in default on the terms of the trial or permanent modification; and (ii) the single point of contact remains available to the borrower and continues to be referenced on all written communications with the borrower;

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(i) policies and procedures to enable borrowers to make complaints regarding the Loss Mitigation or modification process, denial of modification requests, the foreclosure process, or foreclosure activities which prevent a borrower from pursuing Loss Mitigation or modification options, and a process for making borrowers aware of the complaint procedures;

(j) procedures for the prompt review, escalation, and resolution of borrower complaints, including a process to communicate the results of the review to the borrower on a timely basis;

(k) policies and procedures to ensure that payments are credited in a prompt and timely manner; that payments, including partial payments to the extent permissible under the terms of applicable legal instruments, are applied to scheduled principal, interest, and/or escrow before fees, and that any misapplication of borrower funds is corrected in a prompt and timely manner;

(l) policies and procedures to ensure that timely information about Loss Mitigation options is sent to the borrower in the event of a delinquency or default, including plain language notices about loan modification and the pendency of foreclosure proceedings;

(m) policies and procedures to ensure that foreclosure, Loss Mitigation, and loan modification documents provided to borrowers and third parties are appropriately maintained and tracked, and that borrowers generally will not be required to resubmit the same documented information that has already been provided, and that borrowers are notified promptly of the need for additional information; and

(n) policies and procedures to consider loan modifications or other Loss Mitigation Activities with respect to junior lien loans owned by the Bank, and to factor the risks associated with such junior lien loans into loan loss reserving practices, where the Bank services

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the associated first lien mortgage and becomes aware that such first lien mortgage is delinquent or has been modified. Such policies and procedures shall require the ongoing maintenance of appropriate loss reserves for junior lien mortgages owned by the Bank and the charge-off of such junior lien loans in accordance with FFIEC retail credit classification guidelines.

ARTICLE X RISK ASSESSMENT AND RISK MANAGEMENT PLAN

(1) Within ninety (90) days of this Order, the Bank shall conduct a written, comprehensive assessment of the Bank's risks in mortgage servicing operations, particularly in the areas of Loss

Mitigation, foreclosure, and the administration and disposition of other real estate owned, including, but not limited to, operational, compliance, transaction, legal, and reputational risks.

(2) The Bank shall develop an acceptable plan to effectively manage or mitigate identified risks on an ongoing basis, with oversight by the Bank's senior risk managers, senior management, and the Board. The assessment and plan shall be provided to the Deputy Comptroller and the Examiner-in-Charge within one hundred twenty (120) days of this Order.

ARTICLE XI APPROVAL, IMPLEMENTATION AND REPORTS

(1) The Bank shall submit the written plans, programs, policies, and procedures required by this Order for review and determination of no supervisory objection to the Deputy Comptroller and the Examiner-in-Charge within the applicable time periods set forth in Articles II through X. The Bank shall adopt the plans, programs, policies, and procedures required by

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this Order upon submission to the OCC, and shall immediately make any revisions requested by the Deputy Comptroller or the Examiner-in-Charge. Upon adoption, the Bank shall immediately implement the plans, programs, policies, and procedures required by this Order and thereafter fully comply with them.

(2) During the term of this Order, the required plans, programs, policies, and procedures shall not be amended or rescinded in any material respect without the prior written approval of the Deputy Comptroller or the Examiner-in-Charge (except as otherwise provided in this Order).

(3) During the term of this Order, the Bank shall revise the required plans, programs, policies, and procedures as necessary to incorporate new or changes to applicable Legal Requirements and supervisory guidelines.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the plans, programs, policies, and procedures required by this Order.

(5) Within thirty (30) days after the end of each calendar quarter following the date of this Order, the Bank shall submit to the OCC a written progress report detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The progress report shall include information sufficient to validate compliance with this Order, based on a testing program acceptable to the OCC that includes, if required by the OCC, validation by third-party independent consultants acceptable to the OCC. The OCC may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

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(6) All communication regarding this Order shall be sent to:

(a) Sally G. Belshaw Deputy Comptroller for Large Bank Supervision Office of the Comptroller of the Currency 250 E Street SW Washington, DC 20219

(b) Grace E. Dailey Examiner-in-Charge National Bank Examiners 800 Nicollet Mall, BC-MN-H170 Minneapolis, MN 55402

ARTICLE XII COMPLIANCE AND EXTENSIONS OF TIME

(1) If the Bank contends that compliance with any provision of this Order would not be feasible or legally permissible for the Bank, or requires an extension of any timeframe within this Order, the Board shall submit a written request to the Deputy Comptroller asking for relief. Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special

circumstances that prevent the Bank from complying with a provision, that require the Deputy Comptroller to exempt the Bank from a provision, or that require an extension of a timeframe within this Order.

(2) All such requests shall be accompanied by relevant supporting documentation, and to the extent requested by the Deputy Comptroller, a sworn affidavit or affidavits setting forth any other facts upon which the Bank relies. The Deputy Comptroller's decision concerning a request is final and not subject to further review.

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ARTICLE XIII OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, programs, policies, and procedures for the review or prior written determination of no supervisory objection by the Deputy Comptroller or the Examiner-in-Charge, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

(a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;

(b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;

(c) follow-up on any material non-compliance with such actions in a timely and appropriate manner; and

(d) require corrective action be taken in a timely manner of any material non-compliance with such actions.

(3) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(4) This Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the unsafe or unsound practices described in

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the Comptroller's Findings set forth in Article I of this Order. Provided, however, that nothing in this Order shall prevent the Comptroller from instituting other enforcement actions against the Bank or any of its institution-affiliated parties, including, without limitation, assessment of civil money penalties, based on the findings set forth in this Order, or any other findings.

(5) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller.

(6) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise.

(7) The terms and provisions of this Order apply to the Bank and its subsidiaries, even though those subsidiaries are not named as parties to this Order. The Bank shall integrate any foreclosure or mortgage servicing activities done by a subsidiary into its plans, policies, programs, and

processes required by this Order. The Bank shall ensure that its subsidiaries comply with all terms and provisions of this Order.

(8) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Nothing in this Order shall affect any action against the Bank or its institution-affiliated parties by a bank regulatory agency, the United States Department of Justice, or any other law enforcement agency, to the extent permitted under applicable law.

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(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(10) Nothing in the Stipulation and Consent or this Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under the Stipulation and Consent or this Order.

(11) The Bank consents to the issuance of this Order before the filing of any notices, or taking of any testimony or adjudication, and solely for the purpose of settling this matter without a formal proceeding being filed.

IT IS SO ORDERED, this 13th day of April, 2011.

_____/s/ _____ Sally G. Belshaw Deputy Comptroller Large Bank Supervision
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**UNITED STATES OF AMERICA DEPARTMENT OF THE TREASURY
COMPTROLLER OF THE CURRENCY**

) **In the Matter of:**) U.S. Bank National Association)
Cincinnati, Ohio and) U.S. Bank National Association ND) Fargo, North Dakota)
) AA-EC-11-18
)

STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to impose a cease and desist order on U.S. Bank National Association, Cincinnati, Ohio and U.S. Bank National Association ND, Fargo, North Dakota (collectively, “Bank”) pursuant to 12 U.S.C. § 1818(b), for unsafe or unsound banking practices relating to mortgage servicing and the initiation and handling of foreclosure proceedings.

The Bank, in the interest of compliance and cooperation, enters into this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”) and consents to the issuance of a Consent Order, dated April 13, 2011 (“Consent Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, stipulate and agree to the following:

ARTICLE I JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(4) For the purposes of, and within the meaning of 12 C.F.R. §§ 5.3(g)(4), 5.51(c)(6), and 24.2(e)(4), this Consent Order shall not be construed to be a “cease and desist order” or “consent order”, unless the OCC informs the Bank otherwise.

ARTICLE II AGREEMENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the Consent Order by the Comptroller.

(2) The Bank consents and agrees that the Consent Order shall (a) be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), (b) become effective upon its execution by the Comptroller through his authorized representative, and (c) be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or

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obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute the Consent Order.

(5) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities.

(6) The OCC releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the banking practices described in the Comptroller’s Findings set forth in Article I of the Consent Order, to the extent known to the OCC as of the effective date of the Consent Order. However, the banking practices alleged in Article I of the Consent Order may be utilized by the OCC in other future enforcement actions against the Bank or its institution-affiliated parties, including, without limitation, to assess civil money penalties or to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the OCC to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

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(7) The terms and provisions of the Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than

the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Stipulation or the Consent Order.

ARTICLE III WAIVERS

- (1) The Bank, by consenting to this Stipulation, waives: (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b); (b) any and all procedural rights available in connection with the issuance of the Consent Order; (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (h), 12 C.F.R. Part 19; (d) all rights to seek any type of administrative or judicial review of the Consent Order; (e) any and all claims for fees, costs, or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and (f) any and all rights to challenge or contest the validity of the Consent Order.

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ARTICLE IV OTHER PROVISIONS

- (1) The provisions of this Stipulation shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.
- (2) Nothing in this Stipulation shall preclude any proceedings brought by the Comptroller to enforce the terms of this Consent Order, and nothing in this Stipulation constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice, to bring other actions deemed appropriate.
- (3) The terms of the Stipulation and the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set her hand on behalf of the Comptroller.

/s/

Sally G. Belshaw Deputy Comptroller Large Bank Supervision

April 13, 2011

Date

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IN TESTIMONY Board of Directors of the

_____/s/_____
Richard K. Davis

_____/s/_____
Andrew Cecere

_____/s/_____
Terrance R. Dolan

_____/s/_____
Richard C. Hartnack

_____/s/_____
Joseph C. Hoesley

_____/s/_____
Pamela A. Joseph

____/s/_____ Richard B. Payne, Jr.

____/s/_____ Jeffry H. von Gillern

WHEREOF, the undersigned, as the duly elected and acting Bank, have hereunto set their hands on behalf of the Bank.

____3/31/11_____ Date

____3/30/11_____ Date

____3/30/11_____ Date

____3/31/2011_____ Date

____3/31/11_____ Date

____March 30, 2011_____ Date

____3/30/11_____ Date

____3/30/11_____ Date

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