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March 5, 2014

Joint Standing Committee on the Judiciary

Re: LD 1389 and Proposed Amendment of Attorney General Mills

Dear Committee Members:

Attorney General Mill has reached out to stakeholders in the foreclosure process, conducted public hearings, rendered a comprehensive report on the Maine residential foreclosure process, and provided you with a proposed Committee Amendment to LD 1389. While I have some disagreement around the edges of what the Attorney General has proposed, I suggest that her proposal is balanced and appropriate. I urge the Committee to adopt it as written.

Now, after fully participating in this process the Maine Bankers Association has come forward with its own proposed amendment to weaken or eliminate the foreclosure mediation program. Attorney General Mills' proposal would strengthen that program. The MBA did not bring its proposal to Attorney General Mills during here study of the foreclosure process. The CFPB Regulations upon which the MBA relies for its proposed amendment were out in proposed form for a year before their January 10, 1014 implementation date.

Maine's mediation program works in holding the national mortgage servicers accountable. Despite their consent judgments as part of the National Mortgage Settlement, they constantly violate those servicing standards. They will constantly violate the new CFPB standards. Maine's foreclosure mediation program is the only effective tool that Maine homeowners have to even the playing field with the national servicers. The MBA claims that the Maine program is in conflict with the CFPB Regulations is just plain wrong. The CFPB has been explicit in its statements that its Regulations do not preempt state mediation programs.

I urge you to protect Maine homeowners by preserving and strengthening the Maine foreclosure mediation program and by rejecting the proposed amendment of the MBA.

Very truly yours,



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**SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO. CUM-13-472**

U.S. BANK NATIONAL ASSOCIATION

Appellant

v.

DAVID SAWYER, et al.

Appellees

**ON APPEAL FROM JUDGMENT ENTERED BY THE SUPERIOR COURT
CUMBERLAND COUNTY
DOCKET NO.: RE-12-248**

APPELLEES' BRIEF

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February 26, 2014

C. The Maine Foreclosure Diversion Program.

Shortly after the MHA program was established in February 2009 at the national level, the Maine Legislature and the Judicial Branch established Maine's foreclosure mediation program through P.L. 2009, Ch. 402, and the addition of Rule 93 to the Maine Rules of Civil procedure. This mediation program was created out of the recognition that homeowners and their advocates were having substantial difficulty in communicating and negotiating with mortgage loan servicers about loan modification programs.¹ Three years later, the Maine foreclosure diversion program is viewed as a success.² Homeowners are able to obtain loan modifications or reach agreement on other foreclosure alternatives in a significant number of cases going into the program.

Notwithstanding the success of the Maine foreclosure mediation program, there remain significant issues with servicer failures to participate in good faith in the Maine foreclosure mediation program. No official statistics are kept as to the number of mediation matters, in which findings are being made of servicer failures to participate in good faith, but the number of such cases is substantial and the range of sanctions is wide.

¹ *Report of the Judicial Branch Commission on Foreclosure Diversion.*, June 8, 2009 at p. 17 ("...it is often difficult for homeowners seeking to avoid foreclosure to access decision makers at national lenders or servicers of securitized loans, who file the majority of foreclosure cases in Maine.") http://www.courts.state.me.us/reports_pubs/reports/pdf/fdc_report0609.pdf (Last visited February 22, 2014.)

² State of Maine Judicial Branch, Foreclosure Diversion Program Report to the Joint Standing Committee on Insurance and Financial Affairs and the Joint Standing Committee on the Judiciary, 126th Legislature. February 13, 2014 at p. 6. (The FDP continues to provide a valuable and productive opportunity for parties in eligible foreclosure actions across Maine to resolve their cases through mediation. Many Maine homeowners have reached agreements with their lenders to retain their homes, and lenders have retained performing mortgages and avoided adding inventory to their foreclosure properties.) http://www.courts.state.me.us/maine_courts/fdp/pdfs/FDP_Annual_Report_2013.pdf (Last visited February 25, 2014.)

The undersigned counsel has collected over 60 such sanctions orders,³ but it is certain that this list is incomplete as its creation has been dependent upon the voluntary reporting

³ *Chase Home Finance, LLC v. Greer*, RE-10-08 (Me. Super. Ct., Oxford, Nov. 26, 2010) (Laurence, J.), *Deutsche Bank v. Hughes*, RE-10-96 (Me. Dist. Ct., Lewiston, Jan. 21, 2011) (Laurence, J.), *HSBC v. Bowie*, RE-09-080 (Me. Dist. Ct., Yor. Cty., Feb. 10, 2011) (Douglas, J.), *Deutsche Bank v. Hughes*, RE-10-96 (Me. Dist. Ct., Lewiston, Mar. 16, 2011) (Laurence, J.), *Bank of New York Mellon v. Barden* RE-10-384 (Me. Dist. Ct., Portland, Mar. 31, 2011) (_____, J.), *Chase Home Finance v. Sargent*, RE-09-79 (Me. Super. Ct., Yor. Cty., May 5, 2011) (Cantara, J.), *CitiMortgage v. Dente*, BIDDC Re-10-215 (Me. Dist. Ct., Springvale, May 19, 2011) (Cantera, J.), *Bank of New York Mellon v. Richardson*, RE-09-248 (Me. Dist. Ct., Springvale, May 20, 2011) (Jannelle, J.), *BAC Home Loans Servicing v. Kenney*, RE-10-358 (Me. Super. Ct. Cum. Cty., May 27, 2011) (Warren, J.), *BAC Home Loans v. Stafford*, RE-10-483 (Me. Super. Ct., Cum. Cty., May 27, 2011) (Warren, J.), *Bank of America v. Hudson*, YORDC-RE-10-109 (Me. Dist. Ct., Springvale, June 7, 2011) (Cantara, J.), *BAC Home Loans v. Wildes*, RE-10-529 (Me. Super. Ct., Cum. Cty., July 21, 2011) (_____, J.), *Wells Fargo v. Clark*, RE-10-134 (Me. Dist. Ct., Springvale, Aug. 31, 2011) (Cantara, J.), *Bank of New York Mellon v. Barden*, RE-10-384 (Me. Sup. Ct., Cum. Cty., Aug. 30, 2011) (Mills, J.), *BAC Home Loans Servicing v. Rowe*, RE-09-316 (Me. Dist. Ct., Lewiston, Sept. 7, 2011) (Laurence, J.), *Wells Fargo Bank v. Kelly*, RE-10-205 (Me. Dist. Ct., Springvale, Aug. 2, 2011) (Cantera, J.), *First Franklin v. Gardner*, RE-10-122 (Me. Dist. Ct., Springvale, 9/6/11) (Cantara, J.), *affirmed at* 2013 ME 3, 60 A.3d 1262, *BAC Home Loans Servicing v. Foley*, RE-10-277 (Me. Dist. Ct., Springvale, Oct. 4, 2011) (Cantara, J.), *BON v. Napolitano*, RE-11-04 (Me. Sup. Ct., Cum. Cty., Oct. 14, 2011) (Mills, J.), *BAC Home Loans Servicing v. Rosenberg*, RE-10-041 (Me. Dist. Ct., Lewiston., Oct. 18, 2011) (Lawrence, J.), *Wells Fargo Bank v. Whitten*, RE-10-328 (Me. Dist. Ct., Springvale, Oct. 21, 2011) (Cantara, J.), *JPMorgan Chase v. Bouchles* RE-11-031 (Me. Dist. Ct., Lewiston., Oct. 26, 2011) (Laurence, J.), *Bank of New York Mellon v. Barden*, RE-10-384 (Me. Sup. Ct., Cum. Cty., Feb. 8, 2012) (Mills, J.), *Suntrust Mortgage v. Wheeler*, RE-11-18 (Me. Dist. Ct., West Bath, Feb. 29, 2012) (Tucker, J.), *Suntrust Mortgage v. Pickett*, SPRDC-RE-10-282 (Me. Dist. Ct. Springvale, Mar. 16, 2012) (Cantara, J.), *Wells Fargo v. Pierce*, SPRDC-RE-11-18 (Me. Dist. Ct., Springvale, Mar. 20, 2012) (Douglas, J.), *BAC Home Loans Servicing v. Rowe*, LEW-RE-09-316 (Me. Dist. Ct., Lewiston, Mar. 23, 2012) (Lawrence, J.), *Ocwen v. McCoy*, RE-10-392 (Me. Dist. Ct., Springvale, March 30, 2012) (Douglas, J.), *BAC Home Loans Servicing, LP v. Stewart*, RE-10-429 (Me. Super., Cum. Cty., Apr. 17, 2012) (Warren, J.), *BAC Home Loans v. Packard*, LEW-RE-10-079 (Me. Dist. Ct., So. Paris, May 3, 2012) (Laurence, J.), *Wells Fargo v. Bayer*, RE-10-579 (Me. Super. Ct., Cum. Cty., May 4, 2012) (Mills, J.), *Wells Fargo Bank v. Kelley*, SPRDC-RE-11-157 (Me. Dist. Ct., Springvale, May 22, 2012) (Cantara, J.), *RBS Citizens v. Miller*, RE-11-375 (Me. Super. Ct., Cum. Cty., June 7, 2012) (Warren, J.), *Wells Fargo Bank, N.A. v. Addis*, BIDDC-RE-2011-53 (Me. Dist. Ct., Springvale, Feb. 12, 2012) (Driscoll, J.), *Wells Fargo Bank, N.A. v. Addis*, BIDDC-RE-2011-53 (Me. Dist. Ct. Springvale, Aug. 2, 2012) (Driscoll, J.), *BAC Home Loans Servicing v. Rowe*, RE-09-316 (Me. Dist. Ct. Lewiston, May 23, 2012) (Laurence, J.), *BAC Home Loans Servicing, LP v. Stewart*, RE-10-429 (Me. Super. Cum. Cty., April 17, 2012) (Warren, J.), *BAC Home Loans v. Packard*, LEW-RE-10-079 (Me. Dist. Ct., So. Paris, May 3, 2012) (Laurence, J.), *Wells Fargo v. Bayer*, RE-10-579 (Me. Super. Ct., Cum. Cty., May 4, 2012) (Mills, J.), *Wells Fargo Bank v. Kelley*, SPRDC-RE-11-157 (Me. Dist. Ct., Springvale, May 22, 2012) (Cantara, J.), *RBS Citizens v. Miller*, RE-11-375 (Me. Super. Ct., Cum. Cty., Junw 7, 2012) (Warren, J.), *BAC Home Loans Sevicng v. Brown*, RE-10-247 (Me. Dist. Ct., Springvale, Oct. 5, 2012) (Cantara, J.), *Wells Fargo v. Kelley*,

of such decisions by lawyers and housing counselors. The sanctions orders range from mild attorney fee awards and fines, *GMAC Mortgage, LLC v. Gerrier*, RE-11-13, (Me. Super. Ct. Piscataquis, 1/7/14) (Lucy, J.), to substantial attorney fee awards, *BAC Home Loans v. Coll*, RE-342 (Me. Dist. Ct. Springvale, 2/1/13) (Douglas, J.) to roll backs of interest and fees, *Wells Fargo Bank v. Khath et al.*, SPR-RE-10-0183 (Me. Dist. Ct. Springvale 11/6/13) (Janelle, J.) dismissals without prejudice *Wells Fargo Bank, N.A. v. Addis*, BIDDC-RE-2011-53 (Me. Dist. Ct. Springvale, 8/2/12) (Driscoll, J.), and to dismissals with prejudice, *BAC Home Loans Servicing, LP v. Stewart*, RE-10-429 (Me. Super. Cumberland, 4/17/12) (Warren, J.), (the bank failed over four mediation sessions to provide a promised HAMP modification, failed to review borrower submitted documents, made repeated demands for updated documents and ignored a court warning about the potential for dismissal with prejudice.) The lower court order is not outside the range of orders in similar cases.

The collected sanctions orders are not even fully reflective of the problems in the FDP being caused by the national mortgage servicers. Numerous mediation proceedings

RE-11-157 (Me. Dist. Ct., Springvale, Oct. 22, 2012) (Canterra, J.), *US Bank v. Tessier*, SPRDC-RE-11-223 (Me. Dist. Ct., Springvale, Dec. 28, 2012) (Canterra, J.), *BAC Home Loans v. Coll*, RE-342 (Me. Dist. Ct., Springvale, Feb 1, 2013) (Douglas, J.), *Meilife Home Loans v. Goodwin*, RE-10-325 (Me. Dist. Ct., Springvale, Feb. 1, 2013) (Douglas, J.), *Bank of New York Mellon v. Hill*, RE-12-45 (Me. Super. Ct., Yor. Cty., Feb. 1, 2013) (Douglas, J.), *U.S. Bank Nat'l Assn. v. Bartlett*, RE-09-159 (Me. Dist. Ct., York, April 2, 2013) (Canterra, J.), *Deutsche Bank v. Richardson*, BIDDC-RE-11-33 (Me. Dist. Ct., Springvale, April 11, 2013) (Douglas, J.), *Bank of America v. Wade*, WISDC-RE-11-92 (Me. Dist. Ct., Wiscasset, 4/12/13) (Billings, J.), *Bank of America v. Holland*, RE-10-45 (Me. Dist. Ct., Springvale, April 23, 2013) (Douglas, J.), *Wells Fargo Bank v. McLain*, RE-12-112 (Me. Dist. Ct., Bangor, June 7, 2013) (Lucy, J.), *Bank of America v. Drew*, SPRDC-RE-11-157 (Me. Dist. Ct., Springvale, June 13, 2013) (Driscoll, J.), *U.S. Bank v. Sawyer*, RE-12-248 (Me. Super. Ct., Cum. Cty., Sept. 24 2013) (Mills, J.), *Wells Fargo Bank v. Khath et al.*, SPR-RE-10-0183 (Me. Dist. Ct., Springvale, Nov. 6, 2013) (Janelle, J.), *GMAC Mortgage, LLC v. Gerrier*, RE-11-13, (Me. Super. Ct., Piscataquis, Jan. 7, 2014) (Lucy, J.), *Bank of America v. Wormell*, RE-12-304 (Me. Super. Ct., Cum. Cty., Feb. 19, 2014) (Warren, J.).

turn out to be protracted, and some have required as many as seven mediation sessions before the servicer finally reviews homeowner submissions and makes a decision. *See Bank of America v. Holland*, RE-10-45 (Me. Dist. Ct. Springvale, 4/23/13)(Douglas, J.) Others require multiple sanction orders to try to induce the servicers to act in good faith. *Wells Fargo Bank, N.A. v. Addis*, BIDDC-RE-2011-53 (Me. Dist. Ct. Springvale, 8/2/12) (Driscoll, J.) (six mediation sessions, and three sanctions orders.) Even when a decision is finally made, mediations drag on because the servicers refuse to timely convert trial payment plans to permanent modifications, and then when they do, they delay in sending the finally executed modification agreements to homeowners. *Bank of America v. Wormell*, RE-12-304 (Me. Super. Ct., Cum. Cty., Feb. 19, 2014) (Warren, J.) (sanctioning Bank of America and Green Tree Servicing for violating the National Mortgage Settlement in the transfer of servicing and subsequent failure to issue a permanent modification agreement.)