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August 3, 2023

Senator Anne Carney, Chair  
Representative Mathew Moonan, Chair  
Members of the Joint Committee on Judiciary

Re: LD 1015--Resolve, Establishing the Commission to Study the Foreclosure Process

Dear Senator Carney, Representative Moonan and Members of the Committee:

I offer this testimony in opposition to LD 1015.

I am a private attorney who represented financial institutions for over 30 years before devoting the last 15 years of my legal work primarily to providing free legal representation to low-income Maine homeowners facing foreclosure. I have handled many hundreds of Maine foreclosure cases over the past 45 years, both for banks and for homeowners. My foreclosure defense work in 2010 exposed the national Robo-Signing Scandal which led in 2012 to the \$25 billion National Mortgage Settlement between state and federal agencies and the nation's national banks and mortgage servicers intended to halt their fraudulent and deceptive foreclosure practices. I have provided legal education in foreclosure work to thousands of lawyers across the country in seminars promoted by the National Consumer Law Center, the Practicing Law Institute, the American Bar Association, and others. I have participated in over 25 appeals of foreclosure cases in the Maine Supreme Court and the First Circuit Court of Appeals. My work in representing homeowners in foreclosure cases has resulted in my receiving awards from the Maine Bar Foundation, Boston University School of Law, the State Bar of New York, and the \$100,000 Purpose Prize from Encore.org.

My extensive experience in working in the Maine foreclosure process tells me that there is no need for the appointment of a new commission to study the Maine foreclosure process for the reasons discussed below.

**I. The Maine Foreclosure Process is Working Appropriately and Provides Critical Protections to Maine Homeowners.**

In the fourteen years since the 2008 financial crisis, the Legislature and the Judicial Branch have made multiple changes to the Maine foreclosure process. In 2009, they started the foreclosure mediation program highly successful in helping to save hundreds of Maine home from foreclosure. The program became a model for similar programs in other states.

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In 2013, when there were multiple foreclosure bills pending before this committee, then Attorney General Janet Mills conducted a thorough study of Maine's foreclosure laws which resulted in the production of the Attorney General Janet Mills' Foreclosure Report. That report clarified the need to preserve existing laws which protect Maine homeowners from rushed or flawed foreclosure actions. She did not find any need for a wholesale revision of the Maine foreclosure process. Nothing in that report suggested that acceleration of the Maine foreclosure process would result in the production of more affordable housing in Maine. The report had several recommendations for the Office of the Attorney General, the Judiciary, the Lenders and Servicers, and the Legislature. A number of them have been implemented. Possibly further action could be taken on those which have not been implemented, but nothing has happened since the issuance of the Mills report to suggest there is now a need for a new commission to study the Maine foreclosure process

## **II. Alleged Delays in Completions of Maine Foreclosures are Caused by the National Mortgage Servicers.**

### **A. The National Mortgage Servicers Do Not Sufficiently Incentivize Their Lawyers to Expedite the Completions of Foreclosure.**

There are two distinct approaches to handling Maine foreclosures. The approach followed by the Maine based banks and credit unions produces quicker foreclosures with far fewer delays and errors. The approach followed by the national mortgage servicers and their lawyers produces constant and substantial delays in completions of foreclosure cases and many court decisions resulting in judgments against the foreclosure plaintiffs.

The Maine based banks and credit unions account for less than 20% of the foreclosure volume in Maine. They hire good quality Maine lawyers and pay them fairly and reasonably for their work. Their cases progress without delays and rarely do courts find fault with them.

The national mortgage servicers, accounting for over 80% of Maine foreclosure cases, rely primarily upon law firms based outside of the State of Maine whose only work is handling foreclosures on a volume basis across multiple states. In uncontested cases, the servicers pay those law firms a flat fee sum for each case. That incentivizes those law firms to hire few lawyers and many non-lawyer assistants to process the cases to reduce the lawyer time involved and to maximize the profit earned on each flat-fee case. For example, one of the most active out-of-state foreclosure firms operating in Maine has a ratio of over eight employees to one lawyer. The lawyer is stretched thin by having to handle a high volume of court activity, thus resulting in little supervision of the paperwork being created by the non-lawyers back in the office and constant needs to seek court delays of pending cases. Another result is frequent errors in these cases resulting in court denials or delayed processing of foreclosure claims, and delays resulting from re-filings of those claims.

**B. The National Servicers and Their Lawyers Fail to Use Available Civil Rules to Prosecute their Foreclosures More Quickly.**

The great majority of foreclosure cases are not contested, meaning there will be no homeowner dispute of the facts which must be proved. Those are ideal cases for filing motions for summary judgment early and the avoidance of trials. The lawyers for Maine based banks and credit unions recognize that and routinely file motions for summary judgment. The lawyers for the national servicers never file motions for summary judgment because (a) preparing such motions requires care and diligence which cannot be provided by the non-lawyer employees, (b) such motions take longer to prepare than does the lawyer's attendance at an uncontested 20-minute trial, meaning there is less profit for that flat-fee law firm if it moves for summary judgment. The result here is that the Maine based bank or credit union can move a foreclosure case through a Maine court on a motion for summary judgment in probably half the time that the lawyers for a national servicer will take to process a case where they must await an assignment on a trial list.

**C. The National Mortgage Servicers and Their Lawyers Carelessly Cause Delays in Foreclosures.**

**1. The Foreclosure Plaintiffs Do Not Diligently Prosecute Their Cases.**

The foreclosure mill law firms hired by the national servicers operate on a volume basis, handling as many cases as possible with the least possible amount of lawyer time devoted to each case. The few lawyers hired by the foreclosure mill firm must cover many cases across multiple courts and often face conflicting hearings and the need for motions to continue cases or seek orders allowing them to seek extensions of court deadlines. A perfect example of this came just ten days ago in the order attached as Exhibit A,<sup>1</sup> where the court severely admonished that foreclosure mill lawyer and her firm, stating that she "and her firm have a long and troubled history of failing to comply with Court deadlines and have been admonished repeatedly" and were engaged in "dilatory conduct." The 20% of Maine foreclosures handled by the lawyers for the Maine based banks and credit unions do not engage in this conduct, but it is not at all unusual in the cases handled by the lawyers for the national mortgage servicers.

**2. The Foreclosure Plaintiffs Do Not Utilize Statutes Allowing them to Expedite Foreclosure Cases.**

In 2013, the bankers asked the Legislature to amend the foreclosure laws to allow an expedited foreclosure process for properties abandoned by homeowners. The law they asked for was enacted as Ch. 521 in the 2013 Legislature and became 14 M.R.S. 6326 entitled "Order of abandonment for residential properties in foreclosure." While I have seen occasional use of this statute by Maine based financial institutions, I have never seen

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<sup>1</sup> *DLJ Mortgage Capital, Inc. v. Holland*, Case No. 1:22-cv-00376-NT (U.S. Dist. Ct. Me, Mar. 24, 2023)

the statute used by the lawyers for the national servicers to expedite foreclosures of vacant properties.

Two years later, in 2015, the Maine financial institutions asked this Committee to implement a recommendation in the 2014 Attorney General Janet Mills' Foreclosure Report by enacting Ch. 243 of the 2015 Legislature entitled "An Act to Expedite Final Hearings in Certain Foreclosure Cases." That statute, now appearing at 14 M.R.S. § 6321-B was used in a few cases after 2015, but I have seen no use of it at all by the lawyers for the national mortgage servicers for the past 5 years.

### **3. The Foreclosure Plaintiffs File Motions Which Delay Cases.**

Over the years, the banking community has regularly complained that the Maine foreclosure process is being unduly prolonged by the courts. By 2015, the Judicial Branch responded to those charges by showing it was the foreclosing banks and servicers who were delaying cases. In connection with what was then LD 846, and which became enacted as 14 M.R.S. 6321-B, the Judicial Branch submitted to this Committee the data shown on Exhibit B. That data showed that, on average, foreclosure cases in which neither party filed a delay motion, such as a motion stay a case or to continue a trial or hearing, were being completed in 264 days. However, in cases where delay motions were filed, the average completion time was 474 days--an increase of over 200 days per case often resulting from multiple delay motions being filed.

The Judicial Branch then determined which parties were responsible for these delay motions. Its data showed that it was the foreclosure plaintiffs who were filing these motions in 81.5% of the cases, and the defendants were filing them in only 11.7% of the cases. The court decision attached as Exhibit A and discussed in the Subsection 1 above illustrates this delay activity.

Our experience in the foreclosure process since the Judicial Branch produced this revealing data, leads us to believe that the situation remains about the same. By refusing to use the summary judgment process, the lawyers for the national servicers face constant logistical challenges in getting witnesses to trials, thus often requiring filing motions for continuances. In many foreclosure cases managed by the national mortgage servicers, cases do not even get put on trial list for years due to their lawyers filing repeated motions to stay those cases. As an example, recently I was asked to handle a foreclosure case filed in the York District Court in 2018 which has lingered there for four years while the foreclosure plaintiff has repeatedly filed motions to stay the case and has done nothing to move it to conclusion.<sup>2</sup>

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<sup>2</sup> *Deutsche Bank National Trust Company v. O'Brien*, YORDC-RE-18-41 (York District Court)

#### 4. The Lawyers for the National Servicers File Cases Which are Flawed.

Exhibit C to this letter has a description of a pending foreclosure case arising out of a default that occurred 14 years ago.<sup>3</sup> In the Raymond case, the homeowner lost his job in the summer of 2009 and had to vacate the house and move out of state to find other employment. Bank of America, as servicer for Fannie Mae took possession of the house in 2009, but over the following 13 years, this house sat empty and deteriorating while the servicers brought one flawed foreclosure action after another--four in all, and even the fourth case is fatally flawed. In May of 2022, the property had deteriorated to the point where the City of Sanford declared the building to be unsafe and dangerous and caused it to be demolished. There is no excuse for the failure of the lawyers, hired by Bank of America back in 2010, to have properly completed a foreclosure back then, or for the repeated failures of the lawyers for the national services to have completed the foreclosure process in the following 13 years. The loss of this house was not due to any flaw in the Maine foreclosure process but was entirely the result of egregious failures of the lawyers hired by the national services to competently and diligently handle the foreclosures.

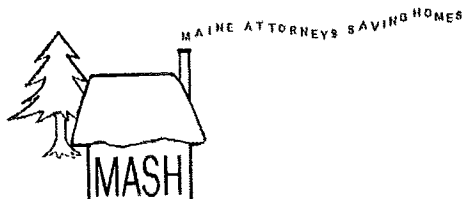
### III. Conclusion.

The foreclosure process in Maine was thoroughly studied by than Attorney General Janet Mills who involved all stakeholders in her review process. Detailed recommendations were made, and many were implemented. The COVID-19 pandemic greatly disrupted the entire Maine judicial process, and the Judicial Branch is working hard to return to normal. That unfortunate event, which has affected all types of litigation in Maine, not just foreclosures, does not justify the appointment now of a new commission to study the Maine foreclosure process. If they chose to do so, the national mortgage servicers can (and indeed should) review their own practices in the Maine foreclosure process to bring to an end their systematic failures to conduct their foreclosures competently and diligently.

Respectfully submitted,



Thomas A. Cox



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<sup>3</sup> *Federal National Mortgage Association v. Raymond*, SPRDC-RE-19-72 (Springvale District Court)

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

DLJ MORTGAGE CAPITAL, INC.,	)	
	)	
Plaintiff	)	
	)	
v.	)	No. 1:22-cv-00376-NT
	)	
JASON A. M. HOLLAND,	)	
	)	
Defendant	)	

ORDER

The deadline for DLJ Mortgage Capital, Inc., to serve its complaint on Jason A. M. Holland was March 6, 2023, which was ninety days after DLJ initiated this foreclosure action. *See* ECF No. 1; Fed. R. Civ. P. 4(m). That deadline came and went without DLJ filing any proof of service on Holland or even requesting an extension of time to do so, which prompted this Court to issue an order to show cause. *See* ECF No. 6. In response to the order to show cause, DLJ filed a motion claiming that Holland is evading service and seeking an additional forty-five days to serve him. *See* ECF No. 7.

DLJ is represented by Attorney Reneau J. Longoria of the law firm of Doonan, Graves & Longoria, LLC. Attorney Longoria and her firm have a long and troubled history of failing to comply with this Court's deadlines and have been admonished repeatedly. *See, e.g., U.S Bank Tr., N.A. v. Cousins*, No. 2:22-cv-00323-JAW, 2023 WL 2561579, at \*1-2 (D. Me. Mar. 17, 2023) (rec. dec.) (recommending dismissal after Attorney Longoria failed to respond to an order to show cause and noting that

her “complete indifference to this Court’s deadlines and orders” is “frustrating” because, among other things, “it creates a great deal of unnecessary work for the Court”); *Fed. Nat’l Mortg. Ass’n v. Butler*, No. 1:19-cv-00218-JAW, ECF No. 73 (D. Me. Jan. 3, 2023) (“The Court hereby issues its eighth and final Order to Show Cause. Once again, [the plaintiff] has failed to file proof of service of the Amended Complaint on [the defendant]. . . . The Court will issue no further Orders to Show Cause in this case. As the Court has stated multiple times in this matter, the Clerk’s Office is not responsible for [the plaintiff’s] compliance with Court deadlines and will not act as her administrative assistants.” (cleaned up)); *Bank of N.Y. Mellon v. Yardley*, No. 1:19-cv-00187-LEW, ECF No. 54 (D. Me. June 28, 2021) (“In this case, the Clerk[’]s Office has issued four Orders to Show Cause. Plaintiff has serially failed to file a motion for entry of default judgment . . . . Counsel has been admonished repeatedly that if no motion were timely filed, the Court would dismiss Plaintiff[’]s case for lack of prosecution. The Court, remarkably, has granted 11 motions to extend time to file a motion for default judgment . . . . To date, the Court has not received a Motion for Default Judgment. Counsel is reminded that the Court[’]s staff does not exist to provide auxiliary support to his own staff to remind him of his filing obligations, to call to remind him when he has failed to meet his filing obligations, which result in a cascade of Orders to Show Cause and motions to extend time. The Court will not manage this or any other case by a series of Orders to Show Cause, and the ensuing carousel of motions for mercy and more time.” (cleaned up)). According to data compiled by the Clerk’s Office, from January 1, 2019, to the present,

this Court has issued approximately 160 orders to show cause in foreclosure cases where Doonan, Graves & Longoria, LLC, represented the plaintiff.

Enough is enough. Part of this "Court's responsibility is to see that" its limited "resources are allocated in a way that promotes the interests of justice." *In re McDonald*, 489 U.S. 180, 184 (1989). Having to continually issue orders to show cause and act on never-ending motions to extend time in cases involving Attorney Longoria and her firm most decidedly does not promote the interests of justice. Rather it is a tremendous waste of time that distracts this Court and its staff from important substantive work.

So, here is what I am going to do. I will reluctantly **GRANT** DLJ's motion (ECF No. 7), **EXTEND** the deadline for serving Holland to May 5, 2023, and **TERMINATE** the order to show cause (ECF No. 6). But I will not extend the deadline for service any further in this case, and Attorney Longoria and her firm are hereby placed on notice that, going forward, I will not grant any motion for extension of time filed by them in this or any other case after the deadline has already passed absent truly extraordinary circumstances. *See Gelin v. Shuman*, 35 F.4th 212, 218 (4th Cir. 2022) (noting that good cause for failing to serve a defendant within the ninety-day time period prescribed by Fed. R. Civ. P. 4(m) requires a showing of diligence and that a failure to seek an extension of time before the deadline has lapsed tends to undercut any claim of good cause); Fed. R. Civ. P. 6(b) ("When an act may or must be done within a specified time, the court may, for good cause, extend the time . . . on motion made after the time has expired



if the party failed to act because of excusable neglect.”); *Rivera-Almodóvar v. Instituto Socioeconómico Comunitario, Inc.*, 730 F.3d 23, 27 (1st Cir. 2013) (“[A] lawyer’s inattention or carelessness, without more, normally does not constitute excusable neglect.” (cleaned up)).

Finally, to the extent that Attorney Longoria and her firm continue to engage in this sort of dilatory conduct, they should know that I may consider harsher penalties such as the imposition of monetary sanctions or the initiation of disciplinary proceedings.

**NOTICE**

***In accordance with Federal Rule of Civil Procedure 72(a), a party may serve and file an objection to this order within fourteen (14) days after being served with a copy thereof.***

***Failure to file a timely objection shall constitute a waiver of the right to review by the District Court and to any further appeal of this order.***

Dated: March 24, 2023

/s/ Karen Frink Wolf  
United States Magistrate Judge

W 735  
Judicial  
Branch  
4-22-15

# 2014 Foreclosure Statistics - With Motions<sup>1</sup>

Cases	Bankruptcy	Filings	Dispositions	Clearance Rate	Average Days	Median Days
ALL						
Statewide	NO	960	2,093	218.0%	548.5	474.0
UNCONTESTED						
Statewide	NO	507	1,055	208.1%	516.8	442.0
CONTESTED						
Statewide	NO	453	1,038	229.1%	580.8	510.0

<sup>1</sup>With Motions defined as the granting one of the following: Motion to Continue, Motion for Enlargement of Time, or Motion Stay of Proceedings

# 2014 Foreclosure Statistics - Without Motions<sup>1</sup>

Cases	Bankruptcy	Filings	Dispositions	Clearance Rate	Average Days	Median Days
ALL						
Statewide	NO	2,073	2,423	117.2%	317.5	254.0
UNCONTESTED						
Statewide	NO	1,355	1,617	119.3%	303.0	236.0
CONTESTED						
Statewide	NO	718	812	113.1%	346.2	311.5

<sup>1</sup>Without Motions defined as the absence of granting one of the following: Motion to Continue, Motion for Enlargement of Time, or Motion Stay of Proceedings

# 2014 Foreclosure Statistics - With Motions<sup>1</sup> filed by Party

Region	Bankruptcy	Filings	Total Motions	Plaintiff Motions	Defendant Motions	Other Party Motions	No Party Motions	Average Days to Disposition <sup>2</sup>	Median Days to Disposition <sup>2</sup>
ALL									
Statewide	NO	960	1,326	81.5%	11.7%	0.8%	6.0%	508.5	474.0
UNCONTESTED									
Statewide	NO	507	570	88.7%	3.0%	0.9%	7.5%	516.8	442.0
CONTESTED									
Statewide	NO	453	656	74.2%	20.6%	0.8%	4.4%	580.8	510.0

<sup>1</sup>With Motions defined as the granting one of the following: Motion to Continue, Motion for Enlargement of Time, or Motion Stay of Proceedings

<sup>2</sup>Days to disposition are for cases, not for motions

***Federal National Mortgage Association v. Raymond,***  
**SPRDC-RE-19-72 (Springvale District Court)**

**SUMMARY OF DELAY EVENTS**

- Raymond loses his job in summer 2009, vacates house in Sanford, notifies servicer, Bank of America, that he is out of work and can no longer pay the mortgage. Bank of America takes control of the property.
- First Foreclosure Case is filed in July 2010, Raymond does nothing to oppose it. Bank of America fails to prosecute the case for 1 ½ years and dismisses it in February 2012 due to bank's failure to obtain necessary assignment of mortgage.
- Second Foreclosure case commenced over a year later, in April 2013. Raymond does nothing to oppose it. The bank does nothing to prosecute it for almost 1 ½ years and dismisses the case in July 2015 due to its failure to obtain necessary assignment.
- Fannie Mae delays for 15 months, then commences the Declaratory Judgment Suit in November 2016. Raymond does nothing to oppose it. Fannie Mae's servicer fails to prosecute the case for over 3 years and dismisses it in December 2019.
- Third Foreclosure case is commenced by new Fannie Mae servicer in late 2019. Because Fannie Mae's servicers have delayed for so long, causing the mortgage debt to climb from \$175,000 in 2009 to over \$380,000, Raymond opposes this foreclosure action.
  - The servicer for Fannie Mae repeatedly delays and stonewalls Raymond's discovery efforts and takes no steps to advance the case.
  - In May 2022, the City of Sanford demolishes the house due to its becoming an unsafe and dangerous building due to the neglect of Fannie Mae's servicers.
  - In March 2023, Fannie Mae and the servicer agree to a settlement involving a consent to foreclosure by Raymond and a waiver by Fannie Mae of any remaining liability on the debt.

**Significant issues:**

**13 ½ years from date of default to completion of settlement and consent foreclosure judgment**

**Four lawsuits by the servicers, each of which is fundamentally flawed**

**Failures by servicer's lawyers in each of four cases to prosecute the cases competently and diligently.**

**EXHIBIT C**