Timothy M. Hayes
Executive Vice President & General Counsel

March 22, 2015

Via Federal Express

The Bank of New York Mellon
101 Barclay Street
New York, New York 10286
Attention: Structured Finance
Corporate Trust Administration

Corporate Trust Office
Citibank, N.A.
111 Wall Street, 14th Floor/Zone 3
New York, New York 10005
Attention: Structured Finance Services

Corporate Trust Office (RMBS)
HSBC Bank USA, N.A.
452 Fifth Avenue
New York, New York 10018
Attention: Corporate Trust (RMBS)

U.S. Bank National Association
One Federal Street, Third Floor
Boston, Massachusetts 02110
Attention: Corporate Trust (SFS)

U.S. Bank National Association
One Wall Street, Suite 1600
New York, New York 10005
Attention: Structured Finance
Department

Corporate Trust Office
U.S. Bank National Association
60 Livingston Avenue
St. Paul, Minnesota 55107
Attention: Corporate Trust (RMBS)

Wells Fargo Bank, N.A.
9062 Old Annapolis Road
Columbia, Maryland 21045
Attention: RMBS Corporate Trust

Corporate Trust Office
Citibank, N.A.
388 Greenwich Street, 14th Floor
New York, New York 10013
Attention: Structured Finance Agency &
Trust

Deutsche Bank National Trust Company
1761 East St. Andrew Place
Santa Ana, California 92705
Attention: RMBS Trust Administration

Deutsche Bank Trust Co. Americas
60 Wall Street
New York, New York 10005
Attention: RMBS Trust Administration

U.S. Bank National Association
209 South LaSalle Street, Suite 300
Chicago, Illinois 60604
Attention: Corporate Trust (RMBS)

U.S. Bank National Association
100 Wall Street, 16th Floor
New York, New York 10005
Attention: Corporate Trust (RMBS)

U.S. Bank National Association
One Federal Street, Third Floor
Boston, Massachusetts 02110
Attention: Corporate Trust (RMBS)

OCWEN

Timothy M. Hayes
Executive Vice President & General Counsel

Re: OCWEN RESPONSE TO JANUARY 23, 2015 NOTICE PERTAINING TO 119 RESIDENTIAL MORTGAGE BACKED SECURITIES TRUSTS

Dear Sir or Madam:

On January 23, 2015, a minority faction of Certificateholders, including BlackRock Financial Management Inc., Pacific Investment Management Company LLC, Kore Advisors, L.P., Metropolitan Life Insurance Company, and Neuberger Berman Europe Limited (together, the "Holders"), purporting to represent "at least 25%" of the Voting Rights in 119 certain RMBS Trusts (the "Trusts"),[1] issued a Notice of Non-Performance (the "Notice") to the investors, trustees, servicers, master servicer, securities administrator, and other relevant parties. The Notice alleges that Ocwen Financial Corp ("Ocwen") breached certain of its obligations under the relevant servicing agreements for those Trusts (the "Servicing Agreements," or "Agreements"),[2] resulting in continuing Events of Default.[3] Ocwen responded to the Notice on January 26, 2015. Ocwen hereby responds in more detail, and reiterates that the Holders have not demonstrated an Event of Default on any of the Trusts.

Ocwen twice requested that the Holders supply it with the underlying data they used, assumptions they employed, and processes they undertook in arriving at their conclusions. Both times the Holders insisted on a confidentiality agreement that effectively would have prohibited Ocwen from using the data. Ocwen declined. By all indications, the Holders employed unsupportable assumptions and manipulated their analysis to advance their agenda. Despite the Holders' intransigence, in the 60 days since receipt Ocwen has explored and identified untenable legal arguments and factual misapprehensions underlying the Notice. It now responds.

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[1] The Notice purports to pertain to 119 Trusts. Following issuance of the Notice, mortgage servicing rights ("MSRs") for two of these Trusts were transferred to another Servicer. In addition, after a review of Ocwen's files, Bloomberg Information, Intex, and other sources, Ocwen could locate no record of ever having serviced an additional five of the enumerated Trusts: (i) GSAMP 2007-HS1; (ii) HVMLT 2005-16; (iii) HVMLT 2006-3; (iv) MABS 2006-FRE2; and (v) TMST 2007-3. To the extent they have any, the Holders should provide evidence indicating that Ocwen serviced these deals.

[2] Unless otherwise indicated, all capitalized terms used in this letter have the meaning ascribed to them in the applicable Pooling and Servicing Agreements ("PSAs") or other Servicing Agreements governing the 119 Residential Mortgage-Backed Securities ("RMBS") trusts.

[3] The alleged Events of Default are subject to varying cure or remedy periods under the relevant servicing agreements. Ostensibly for the sake of consistency, the Holders chose a cure period of sixty days as the time in which Ocwen should respond to the Notice.

A. BACKGROUND AND CONTEXT

I. The Holders' Long-Time Opposition to HAMP

The Holders, a minority of Certificateholders in the relevant Trusts, are bent on forcing changes to servicing practices that will benefit their specific tranche-level holdings through increased foreclosures, at the expense of long-term gains to the Trusts as a whole through loan modifications. The Notice represents only the latest effort in a long campaign by certain of the Holders to change standard servicing practices across the industry.

For years, Holder BlackRock Financial Management Inc. ("BlackRock") and its affiliates have openly dissented against federal loan modification programs, like the Home Affordable Modification Program ("HAMP"). HAMP, promulgated and overseen by the United States Department of the Treasury, furthers the Administration's strong policy aim of helping struggling borrowers remain in their homes through profitable loan modifications, rather than rushing to foreclosure. BlackRock voiced its opposition to this policy in a June 22, 2012 letter to the Department of Housing and Urban Development: "Holders' concerns have not adequately been addressed in the HAMP process or in recent settlements . . . we believe that . . . the net present value ("NPV") methodology used to assess eligibility for HAMP should be revised."[4] While these same Holders failed to stop HAMP, they have managed to score a few victories against homeowners through legal proceedings, including when they extracted a settlement concession from JPMorgan that prohibited any principal write-down modification that would result in an LTV below 115%.[5] The Holders' goal is clear: keep underwater borrowers underwater.

The Holders now seek to achieve their goal of more foreclosures by directly targeting Ocwen—though not for the first time. The claims asserted in the Notice are substantially the same claims that certain of the Holders pressed to no avail in 2013, in a failed effort to prevent the transfer of MSRs from OneWest F.S.B. ("OneWest") to Ocwen. The RMBS Trustees referred those allegations to Weston Portfolio Group, an independent expert tasked to advise them on whether Ocwen was compliant with best practices in the servicing industry and represented a viable option to take over OneWest's servicing portfolio. After receiving the expert's comprehensive review of Ocwen's servicing practices, the Trustees uniformly consented to the MSR transfer.

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[4] See Letter from BlackRock to Hon. Shaun Donovan, Sec'y of the Dep't of Hous. and Urban Dev. (June 22, 2012) available at http://www.blackrock.com/corporate/en-sg/literature/whitepaper/investor-perspectives-on-housing-programs-hud.pdf (hereinafter "BlackRock Letter").

[5] See JPMorgan Settlement, Ex. B, Subservicing Protocol, Section 8(a).

The Holders' claims are as unfounded now as they were then. The Holders have even conceded in the past that the practices they now rail against are beneficial to RMBS investors as a whole. In fact, the loss mitigation practices the Holders condemn in the Notice are the same ones that, in candor to the court in In re Bank of NY Mellon, they applauded:

> Many borrowers could and would benefit from loan modifications. It is widely recognized that principal reductions are one largely unused tool that could help troubled borrowers pay their loans. A positively performing loan, even at a reduced rate, is vastly preferable to having one more property in foreclosure.[6]

Here, by contrast, the Holders take the opposite pro-foreclosure position in an attempt to achieve priority over other Certificateholders in the Trusts. Ocwen may not tailor its practices to serve the special interests of the Holders. Rather, it must service the Trusts for the benefit of all Certificateholders, and it does, servicing the Trusts consistently with prudent servicing standards in a manner that complies with regulations, while achieving positive outcomes for all investors. Morgan Stanley offered its take on what the best possible outcome from the Holders' attack would be in a February 25, 2015 report, determining that, "[i]t doesn't appear in investors' best interest to replace Ocwen as servicer."[7]

Because the Holders have not gotten their way thus far, they now target Ocwen based on trumped up arguments that continuing Events of Default have been triggered under the Servicing Agreements. But by virtue of the Holders' failure to establish a single continuing Event of Default, they have not met their burden to show a valid basis for Ocwen's termination.

II. Ocwen's Record of Strong Performance

Contrary to the Holders' mischaracterizations in the Notice, Ocwen is an industry leader in loss mitigation techniques that benefit the Trusts as a whole. Ocwen's commitment to NPV-positive solutions has been lauded by investors, regulators, market analysts, and homeowners alike.[8] As Morgan Stanley analysts stated on February 25, 2015:

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[6] Institutional Investors' Statement in Support of Settlement and Consolidated Response to Settlement Objections, In re Bank of NY Mellon, No. 1:11-cv-05988-WHP, at ¶ 49 (S.D.N.Y. Oct. 31, 2011) (emphasis added).

[7] Understanding Ocwen Servicing, Morgan Stanley Research: Resi Credit Insights at 6 (Feb. 25, 2015) (hereinafter "Morgan Stanley Report").

[8] See E-mail from John Devaney, CEO, United Capital Markets, United Real Estate Ventures, and UAH (Mar. 3, 2015, 11:17 PM); Making Home Affordable: Program Performance Report through the Fourth Quarter of 2014 (2015); David Pendered, Martin Luther King III's renewed focus on role of big lenders in foreclosure crisis could impact governor's race, SAPORTA REPORT, Sept. 21, 2014; Jason Oliva, Ocwen Earns Top Marks for HAMP Compliance in New Treasury Report, REVERSE MORTGAGE DAILY, Sept. 10, 2014.

> Not only does Ocwen have a higher success rate on mortgages that went delinquent when it held the servicing rights, but it also seems to succeed at keeping borrowers in their homes when it takes on a delinquent or modified mortgage from another servicer.[9]

Echoing those sentiments, Nomura commented that it benchmarks "the effectiveness of servicer modifications by calculating the rate at which delinquent loans are modified and remain current after a 12 month period," and that "Ocwen has the highest success rate across all servicers."[10] As the Holders themselves have acknowledged, a successful modification is highly preferable to investors (and borrowers), relative to foreclosure.[11]

With over 20 years of expertise and innovation in loss mitigation, and through the utilization of proprietary technology and over 10,000 employees, Ocwen consistently outperforms other subprime servicers in maximizing returns to investors and curing borrower default. A rigorous statistical analysis performed by the Fisher Center for Real Estate and Urban Economics at University of California, Berkeley (the "Berkeley Report") found that there is a strong correlation between loan cure and the execution of a loan modification, highlighting that NPV-positive modifications that couple interest rate decreases with principal reductions are especially effective at preventing re-default.[12] The Berkeley Report added that "loan cure rates are significantly higher among non-bank servicers, even after controlling for the fact that they are more likely to service a more distressed loan pool."[13] As a "non-bank servicer" who is especially adept at these types of modifications,[14] Ocwen leads the market.

Ocwen is also a market-leader when it comes to Shared Appreciation Modifications ("SAM") which was designed and implemented (at substantial cost to Ocwen) for the specific

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[9] Morgan Stanley Report at 5.

[10] Agency MBS: Market Overview and Relative Value, Nomura: Securitized Products Weekly at 26 (Oct. 24, 2014).

[11] See Institutional Investors' Statement in Support of Settlement and Consolidated Response to Settlement Objections, In re Bank of NY Mellon, No. 1:11-cv-05988-WHP, at ¶ 49 (S.D.N.Y. Oct. 31, 2011) (emphasis added).

[12] See Carolina K. Reid et al., Servicer Heterogeneity: Does Servicing Matter of Loan Cure Rates? Fisher Center for Real Estate and Urban Economics, UC Berkeley at 4-5, 28 (Oct. 20, 2014) (hereinafter "Servicer Heterogeneity"). While the report does not expressly identify 20 servicers whose practices it analyzes by name, it is clear that Ocwen is "Servicer 20," the servicer that modifies delinquent loans at the highest rate and with the highest cure rate among all Servicers, despite servicing loans with the lowest FICO scores. See id. at 36.

[13] Servicer Heterogeneity, at 4-5.

[14] See Morgan Stanley Report at 1, 4: "Ocwen is more likely to do principal modifications along with interest payment decreases and cut the borrower's overall monthly payment."

purpose of benefitting loan investors who have argued that investors should not bear all of the loss associated with declines in property values. Its proprietary SAM program generates real-time cash flows from re-performing loans and provides potential additional future recoveries for investors as home prices continue to rise. "[E]legant solution[s]"[15] to underwater mortgages that "align the interests of borrowers, servicers and investors, mak[e] the program a win-win for all involved."[16]

Finally, the Holders misstate how much Ocwen differs from its competitors. Two recent analyst reports noted that Ocwen's 35% advance rate on subprime collateral is squarely in the middle among its competitors and substantially higher than that of Nationstar.[17] In addition, the rate that Ocwen modifies loans is on par with the modification rate of other non-bank subprime loan servicers.[18]

III. The Holders' "Expert" Analyses

The Holders purport to have undertaken "robust" analyses that show Ocwen's servicing practices harm the Trusts. Instead, the Holders have analyzed only a small piece of a much larger picture to ensure that the results support their pro-foreclosure agenda.

The Holders engaged a "servicing expert" and an "economic expert" who they asked to analyze historic cash flow and loss data across two and five year periods, respectively.[19] The aim of these analyses was to show that Ocwen's loss mitigation practices yielded lower cash flows over the recent past. The Holders did not engage these experts to provide any analysis on the cash flows that the Trusts are expected to receive through their full maturity—no doubt because such analyses would have shown that Ocwen's practices are expected to generate more overall cash (on a net present value basis) for the Trusts over the long-term.

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[15] Amherst Mortgage Insight, MBS Strategy Group, June 19, 2012, at 14.

[16] John Taylor, President and CEO of National Community Reinvestment Coalition, quoted in Ocwen Press Release, Ocwen Offering Mortgage Modifications that Restore Equity for Underwater Borrowers but Let Loan Holders Share in Appreciation When Market Recovers (July 26, 2011).

[17] See Morgan Stanley Report at 2: "Since the beginning of 2014, Ocwen's advance rate on its delinquent mortgages has been close to market average. Pre-2014 Ocwen's advance rate fell well short of that of bank servicers, but never deviated too far from that of other non-bank servicers." (emphasis added); see also JPMorgan Securities, Securitized Products Weekly, at 12 (Mar. 6, 2015) (hereinafter "JPMorgan Report").

[18] See Morgan Stanley Report at 4.

[19] One of these analyses focused on the 119 Trusts the Holders' identify in the Notice while the other purported to analyze cash flow information on 2,000 RMBS Trusts, at least 1,881 of which the Holders' have not identified as having experienced Defaults.

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In fact, without conceding that any of the Holders' results are accurate (we believe they are not), it would be unsurprising to find that certain Ocwen-serviced Trusts collected less money during an arbitrary time period thus far in the life of a Trust, than did Trusts serviced by more foreclosure-inclined Servicers who prioritize small short term gains at the expense of larger profits for the Trusts over the long-term. Judging "Trust Performance" by collections to date is short-sighted, illogical, and misleading. The Holders opted for the trees over the forest because doing otherwise would have highlighted the ultimate benefits of Ocwen's servicing for all investors.

Even if one ignores that the analyses do not logically measure a Servicer's value, their conclusions also appear untenable. The Holders' alleged re-default rate data is likely inaccurate if their principal write down data is accurate, and vice versa.[20] It is counterintuitive that any Servicer could both write down more principal *and* suffer worse re-default rates, as there is an inverse relationship between write down and re-default.[21] The Holders provide no explanation for how they reconcile these two data points which would be expected to move in opposite directions. We suspect a review of their work would show a significant flaw in the methodology or data.

One of the sources of the Holders' presumed errors may have been the fact that their experts used incomplete datasets that lacked large amounts of loan servicer information. The Holders' servicing expert appears to have dealt with this issue by ignoring it. That expert appears to have excluded from its analysis the <u>151,410 modifications</u> of private label RMBS loans performed between January 1, 2012 and December 31, 2013 that indicate "no servicer data" in the CoreLogic database. This represents roughly <u>29%</u> of all private label MBS loan modifications made during that period. More troubling than ignoring the data was how the Holders' economic expert dealt with missing loan servicer information. That expert chose to rely on data provided to it by counsel to the Holders, eschewing objectivity and making replication of its analyses impossible.

Finally, it is also telling that the Holders' servicing expert purported to compare Ocwen's performance to the performance of all other Servicers without controlling for the quality of the collateral. While the Holders claim in a footnote that their "robust results . . . hold true even if

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[20] See Notice at 6-7.

[21] <u>See</u>, <u>e.g.</u>, Scott Anderson, Bernadette Kogler, and Diana Kim, <u>Loan Modification Performance: A Multivariate Review Approach</u>, 18 JOURNAL OF STRUCTURED FINANCE 2, at 17 (Summer 2012) ("Loans with principal forgiveness outperform other modification types….[R]educing LTV (and thus bringing principal amount owed by underwater borrowers closer to the estimated value of the property) can have a positive impact on modification performance.").

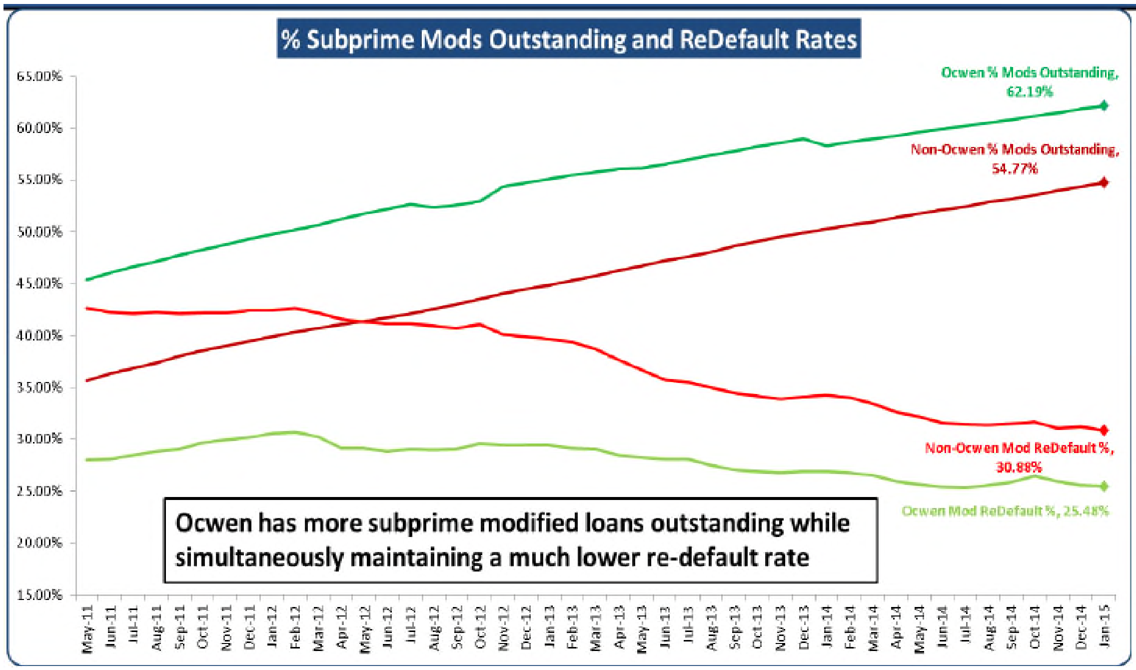
one were to look at only subprime Trusts," the lack of detail or any support for this statement is conspicuous. This is particularly so because more than 90% of the Ocwen-serviced Trusts identified by the Holders contain subprime loans, compared to approximately 55% across all other Servicers. Because there is a statistically significant relationship between the credit quality of collateral and the likelihood of re-default following modification,[22] the Holders' dismissive reference to credit quality raises concerns. In addition, the Holders' servicing expert purports to analyze only modifications resulting in a reduction to borrowers' monthly payment. It omits other modifications that increase or maintain the same payment. Why the Holders focus on this acute type of modification is unclear, but that focus raises questions about why other modifications were selectively excluded.

IV. Complete Data and Sound Analysis Debunks the Holders' Allegations

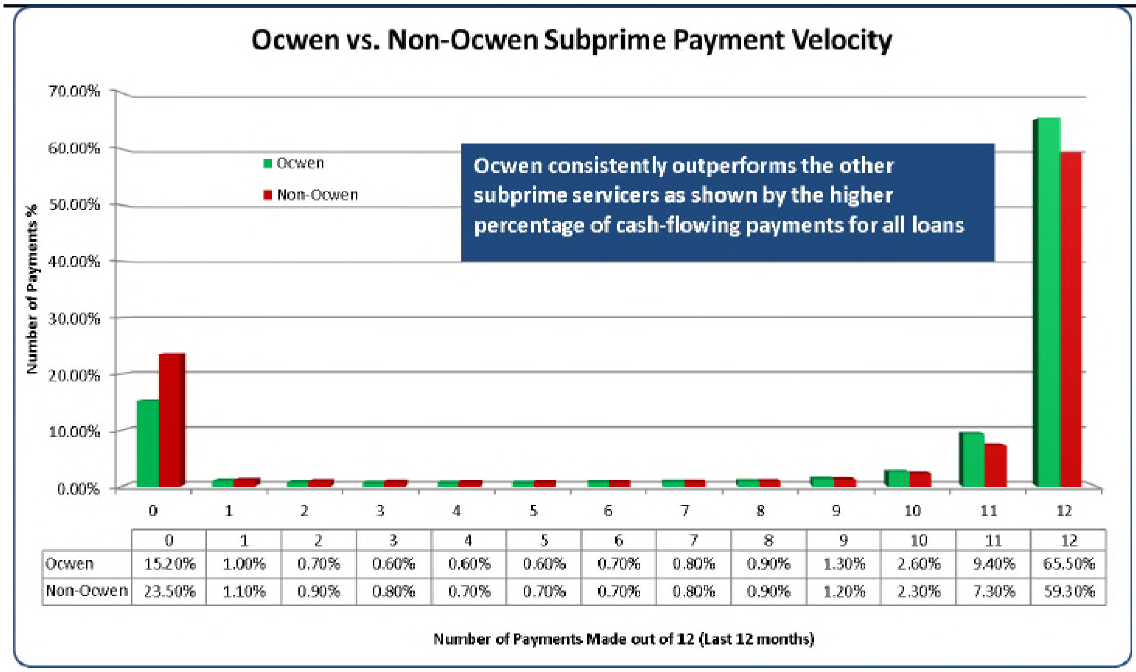
Ocwen regularly undertakes its own internal analyses to benchmark its performance versus its competitors. Unlike the Holders' analyses, Ocwen employs accurate loan servicer information, sourced from Blackbox Logic, which properly indicates the loans Ocwen does and does not service, and which loans Ocwen serviced at what time. As noted above, the CoreLogic data relied upon by Holders is incomplete in this regard.

[22] See, id., at 17 ("[T]he re-default odds for subprime modifications are 2.2 times as great as the prime modifications….").

When employing the proper data, one finds that Ocwen has more subprime modified loans outstanding while simultaneously maintaining a lower re-default rate.

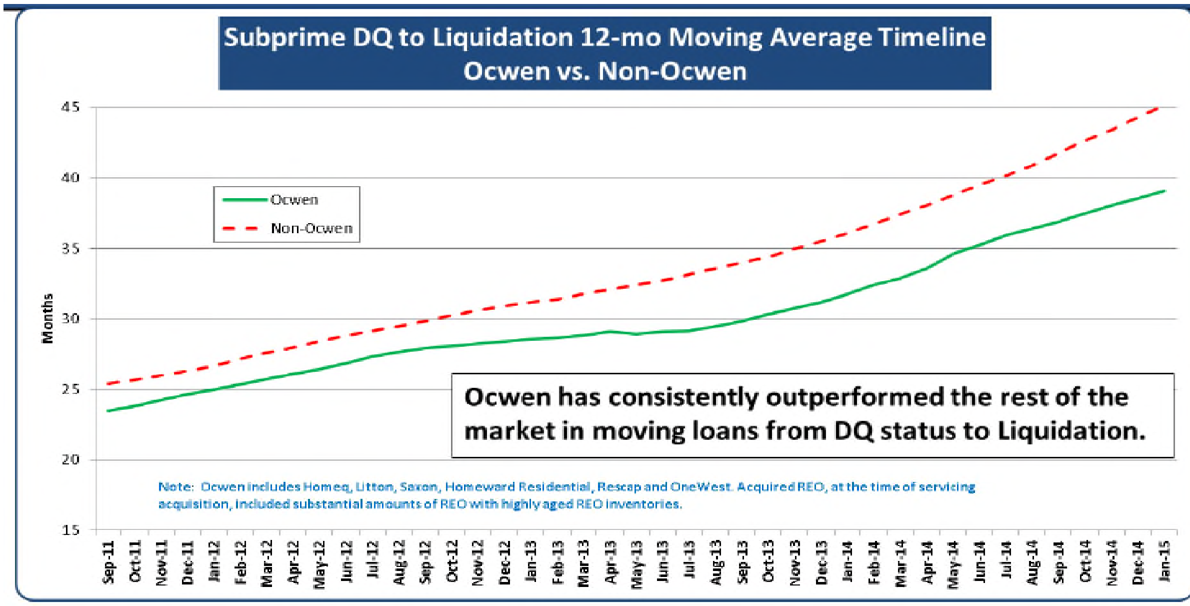


Ocwen also outperforms other subprime servicers when it comes to generating active cash flows from the loans it services:



	0	1	2	3	4	5	6	7	8	9	10	11	12
Ocwen	15.20%	1.00%	0.70%	0.60%	0.60%	0.60%	0.70%	0.80%	0.90%	1.30%	2.60%	9.40%	65.50%
Non-Ocwen	23.50%	1.10%	0.90%	0.80%	0.70%	0.70%	0.70%	0.80%	0.90%	1.20%	2.30%	7.30%	59.30%

And, Ocwen consistently outperforms the market in moving subprime loans from delinquency to liquidation.



Ocwen could provide numerous examples of how its performance bests its competitors. For present purposes, however, that is beside the point. The question at hand is whether the Notice identifies a continuing Event of Default. It does not.

B. THE NOTICE DOES NOT IDENTIFY ANY UNCURED EVENTS OF DEFAULT

I. <u>Ocwen's Servicing Practices Conform to its Agreements and Industry Standards</u>

a. Ocwen's Modifications Reflect Standard Industry Practices and Fully Accord With the Servicing Agreements

The Notice alleges that Ocwen's loss mitigation practices breached the Servicing Standard under the Agreements, without ever acknowledging what the Agreements actually require. In fact, the Agreements contain almost no prohibitory language circumscribing servicer loss mitigation practices. The Agreements vest Ocwen with broad discretion to determine an appropriate course of action to mitigate loss when loans are in default or for which default is reasonably foreseeable, including the implementation of robust loan modification programs.[23]

[23] The Servicing Agreements for the 119 Trusts are by no means unique in this regard. Perhaps the most comprehensive review of subprime deal documents ever conducted concluded that, by and large, loan modification

Accordingly, Ocwen's contractual obligation under the Servicing Agreements is not, as the Holders erroneously imply, to inherently favor foreclosure over modification as a means of loss mitigation, or to undertake to limit the number of modifications it performs. Because the Holders' allegations that Ocwen imprudently modifies loans are based on false premises, the Notice does not identify any breach of the Servicing Standard under the Agreements.

To comply with the Servicing Standard, Ocwen must perform modifications that are in the best interests of investors, giving due consideration to accepted industry practices. Industry-wide consensus, in turn, is that modification is in the best interests of investors when it is NPV positive relative to loss mitigation alternatives, meaning that the modified loan is expected to provide anticipated discounted cash-flows to investors that exceed the anticipated discounted cash-flows from the unmodified loan.[24] On that basis, NPV-positive modifications increase returns to investors and the trust as a whole over the life of a deal.

Ocwen's modifications comport with the Servicing Standard under the Agreements because in all cases they are the product of a determination, rooted in a net present value calculation, that modification is in the best interests of investors. Notably, the Notice does not attempt to argue otherwise, other than a single unsubstantiated statement that Ocwen "engages in [NPV]-negative modifications."

Under the program guidelines applicable to HAMP, Ocwen's HAMP modifications must meet NPV-positive requirements. The NPV model Ocwen employs to ensure that these requirements are met is based on the United States Department of the Treasury model and is regularly subjected to compliance testing to confirm proper function. Ocwen's proprietary modifications must similarly meet NPV-positive requirements, and are implemented through models that are also regularly monitored to ensure accurate function. Further, the accuracy of Ocwen's NPV testing is actively monitored for compliance with the Servicing Standards of the Consumer Financial Protection Bureau ("CFPB") Consent Judgment.[25] In short, Ocwen's modifications are not only rooted in NPV-positive determinations, but are supported by an

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is not subject to strict contractual limitations, such that "large-scale modification programs may be undertaken without violating the plain terms of PSAs in most cases." See John P. Hunt, *What Do Subprime Securitization Contracts Actually Say About Loan Modification*, Berkeley Center for Law, Business and the Economy, Mar. 25, 2009, at 10.

[24] See HAMP, Base Net Present Value (NPV) Model v 6.0 Model Documentation, at 3 (2015); see also The HAMP NPV Model: Development and Early Performance, at 2 (FHFA Working Papers, Working Paper 11-1) ("Most pooling and servicing agreements require servicers to increase the value of cash flows to investors. In the context of modifications this can be interpreted as a requirement for present value improving modifications").

[25] See CFPB Consent Judgment, at D1-3 (2013).

architecture constructed to ensure that those determinations are accurate. Under such circumstances, Ocwen's loan modifications unquestionably meet its contractual duty under the Servicing Agreements.

b. Ocwen's Modifications Comply with Applicable Law and By Definition Meet Industry Standard

Over 75% of the principal forgiveness that is contested in the Notice was performed by Ocwen under HAMP.[26] The Holders rely on the fact of those principal reduction modifications and the corresponding loan principal forgiveness to allege that Ocwen has breached the Servicing Standard. But that is wrong because, both as a practical matter and as dictated by federal statute, the HAMP modifications underlying such principal forgiveness constitute standard industry practice.

As noted, Ocwen's HAMP modifications must meet, and in fact do meet, NPV-positive requirements under applicable program guidelines, thereby ensuring that the modifications are in the best interests of investors. Pursuant to amendments to the Truth in Lending Act ("TILA"), the modifications that Ocwen performs under HAMP, in accordance with applicable program guidelines, definitively constitute "standard industry practice" for servicers.[27]

That HAMP modifications constitute a standard servicing practice is confirmed not only by servicer participation in HAMP across the industry, but by a strong legislative policy encouraging NPV-positive modifications that keep families in their homes. In amending TILA, Congress was particularly concerned that servicers would be discouraged from performing such modifications due to the threat of liability imposed by investor factions motivated uniquely by their specific tranche-level interests, i.e., investor factions like the Holders here.[28] Congress

[26] See Notice of Non-Performance, Ex. D, Trust by Trust Forgiveness.

[27] See 15 U.S.C. 1639a(c); see also Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (2008); "Helping Families Save Their Homes Act of 2009, Pub. L. No. 111-22 (2009). In making these amendments, Congress reported that it was merely "codifying concepts that are consistent with [servicers'] existing contractual obligations." H. Rep. 111-13, To Provide a Safe Harbor for Mortgage Servicers Who Engage in Specified Mortgage Loan Modifications, and For Other Purposes (Feb. 10, 2009) (emphasis added).

[28] To address this concern, Congress went so far as to provide a safe harbor in 15 U.S.C. § 1639a to shield servicers from liability for implementing qualified loss mitigation plans, including HAMP. Under the safe harbor, a servicer is insulated from liability and conclusively deemed to have met a duty to maximize net present value to investors if, prior to December 31, 2012, it implements a qualified loss mitigation plan, such as a HAMP modification, meeting the following criteria: (i) default on the payment of the mortgage has occurred, is imminent, or is reasonably foreseeable, (ii) the mortgagor occupies the property as his or her principal residence, and (iii) the servicer reasonably determined that the application of such loss mitigation plan will likely provide an anticipated recovery on the outstanding principal mortgage debt that will exceed the recovery through foreclosures. See 15 U.S.C. § 1639a(a)-(b). This reflects Ocwen's practice in modifying loans.

therefore clarified that, for any HAMP modification or other qualified loss mitigation plan in connection with a loan originated before May 20, 2009, a duty to maximize value to investors runs "to all such investors and parties, and not to any individual party or group of parties."[29]

Ocwen has satisfied that duty by performing NPV-positive HAMP modifications, consistently achieving compliance rankings that are comparable or superior to those earned by its peers.[30] Further, when assessing HAMP eligibility, Ocwen observes the requirements of the Servicing Agreements themselves and any applicable investor rules, as the HAMP guidelines contemplate a servicer will.

Finally, Ocwen's record as the industry leader in HAMP modifications may explain why the Holders have launched this campaign against its servicing practices.[31] Holder BlackRock and its affiliates have a long history of protesting against HAMP, arguing that it "alienates investors" and that the NPV model prescribed for use with HAMP requires substantial reform.[32] Those complaints, nonetheless, should be directed to government lawmakers, and not leveraged for the improper purpose of attacking Ocwen.

c. The Holders' Claim that Ocwen Modifies Just to Recover Advances Is Baseless

Without any basis, the Holders in Section B(ii) of the Notice purport to identify four traits that allegedly indicate modifications for which Ocwen had no motivation other than the recovery of servicing advances: (i) the modification almost immediately fails; (ii) the modification actually increased the borrower's principal and interest payment; (iii) the modification was to a borrower who had not made a payment in 4+ years; and (iv) the modification was at least the fourth failed attempt to modify the loan.

None of those traits addresses whether there was a determination by Ocwen, made at the time of modification and based on a net present value calculation, that a potential modification would maximize recovery for investors relative to other loss mitigation alternatives. As such, those traits do not provide any basis to claim that Ocwen breached the Servicing Standard under

[29] 15 U.S.C.1639a(a)(1).

[30] See, e.g., Making Home Affordable: Program Performance Report through the Fourth Quarter of 2014, at 18 (2015). While Ocwen was given a two-star rating along with the majority of other servicers, the report noted that its compliance results "approached the level required" for a three-star rating, the highest ranking. In the Second Quarter of 2014, Ocwen was given a three-star ranking. See Making Home Affordable: Program Performance Report through the Second Quarter of 2014, at 2 (2014).

[31] See Making Home Affordable: Program Performance Report through the Fourth Quarter of 2014, at 15 (2015).

[32] See, e.g., BlackRock, The Housing Finance Conundrum: The Need for a Holistic Approach, at 6-7 (2013); BlackRock Letter.

the Agreements. Further, those traits do not even provide a basis to infer that Ocwen's motivation for modifying was to recover advances, as the Holders allege. Having falsely accused Ocwen of disregarding industry standards, it is telling that the Holders ignore that the industry does not consider the four traits they cite as conclusive of a modification "with no conceivable rationale."

First, a possibility of re-default shortly after modification exists with all modifications. HAMP modifications, despite being subject to strict NPV-positive requirements, show a 5.2% re-default rate within six months of modification across all participating servicers.[33] Second, capitalization of arrears is a standard first step in a modification waterfall, meaning principal and interest payments are liable to increase unless offset by further borrower relief.[34] The fact that Ocwen may have evaluated a homeowner's circumstance and determined that they could potentially afford more than their current payment benefits Investors because it allows for the potential of full debt recovery. The Holders' true motives are revealed by their apparent preference for foreclosure even as alternatives to modifications that seek to recover the full amount owed. Third, modifications after an extended period of non-payment, or after prior failed modification, represent a small percentage of any servicer's portfolio, as they do Ocwen's. Rather than having "no conceivable rationale," however, those modifications may be prompted by a change in borrower circumstances that requires a re-evaluation of the loan for modification, and in any event would still depend on an NPV-positive determination.[35]

Moreover, far from confirming the Holders' allegations, the loan-specific examples of modifications cited in Section B(ii) instead demonstrate the reasonable economic basis for Ocwen's modification and the modification terms.[36] For example, four of the five loans discussed in Section B(ii) of the Notice[37] were modified because they were the subject of ongoing litigation. Under such circumstances, Ocwen's modification was not motivated by the

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[33] U.S. Dep't of the Treasury, Comparing the Performance of Home Affordable Modification Program (HAMP) Modifications & Non-HAMP Modifications: Early Results, at 2

[34] See, e.g., Making Home Affordable Program, Handbook for Servicers of Non-GSE Mortgages, Version 4.4., at 111 (2014).

[35] See, id., at 134. Further, as a general matter, re-modification is recognized in the industry as an appropriate loss mitigation strategy in certain circumstances. The HAMP Tier 2 program was implemented, in part, to provide re-modification as an option for borrowers that defaulted under the HAMP Tier 1 program. See id.

[36] It is unsound, indeed disingenuous, to use the results of any single modification to argue that a servicer has engaged in imprudent modification. Modification is based on a determination of expected recoverable value relative to another loss mitigation alternative, and therefore anticipates—but cannot guarantee—a positive investor outcome as a result of the modification. It is only in the aggregate that NPV-positive modifications can be expected to yield, on average, the actual increased recovery to the trust predicted by the model.

[37] Loans 0112092573, 11206607, 141033096, 3027608379.

recovery of advances, as the Holders allege, but instead was performed to protect the investors' interest in the loans from being completely wiped out due to litigation.

The Notice also appears to take issue with the fact that certain of the loans were re-modified. But the Notice ignores that in certain cases a predecessor servicer performed the prior modification, not Ocwen.[38] Moreover, in connection with each re-modification, the borrower submitted a change in circumstances that required Ocwen to re-evaluate the related loan for modification.[39] For example, Ocwen re-modified Loan 6000174641 once in 2011, under HAMP, and again in 2014. In each case, the borrower submitted a hardship letter citing a change in circumstances that required Ocwen to re-evaluate the loan for modification. In fact, after a re-evaluation of the loan that showed the borrower met HAMP eligibility criteria, Ocwen was required to offer the 2011 re-modification under applicable program guidelines and its Servicer Participation Agreement with the federal government. Similarly, the amount of principal forgiveness granted to the borrower was derived from the HAMP model.

Finally, in addition to omitting information critical to understanding the context and rationale for these loan modifications, the Notice also asserts incorrect facts. For example, the Notice alleges that Ocwen never made the Trust whole on a $157,508 loss passed through to the Trust on a modification that was later reversed. Ocwen's records confirm, however, that shortly after the reversal it remitted the entire $157,508 amount ($157,507.70 to be exact) necessary to make the Trust whole.

d. The Holders' Arguments Based on Ocwen's Stop Advance Policy are Invalid

It is not clear which of Ocwen's practices the Holders are contesting in Section B(iii) of the Notice. The Section appears to be a continuation of the Holders' baseless argument that Ocwen's modifications are imprudent. But nowhere do the Holders provide any substantiation that the modifications discussed in Section B(iii) of the Notice were driven by anything other than a determination that they would maximize recovery on the related loans relative to other loss mitigation alternatives. As such, the Holders do not even attempt to claim that Ocwen's modifications breached the Servicing Standard.

Separately, the Holders call into question Ocwen's Stop Advance Policy, arguing that it cannot legitimately be applied to curtail advances on a loan that was recently modified based on an NPV-positive determination. That argument is flawed, however, because it implies a causal relationship between (i) an NPV-positive modification, and (ii) a designation that advances are "recoverable," that does not actually exist. While an NPV-positive test with respect to

[38] Loan 141033096.

[39] See, e.g., Loans 6000174641, 3027608379, 0112092573.

modification might be more likely to coincide with a “recoverable” designation shortly after the modification, there are factors that could cause a “non-recoverable” designation in that same scenario.

For example, if a loan became litigated shortly after modification, asset level triggers in Ocwen’s Stop Advance model would halt future principal and interest advances because of the uncertainty in recovery caused by the borrower litigation. That cut-off is not explained by Ocwen’s “attempt to maximize its own servicing fees and financial performance,” as the Holders allege. Rather, it is based on extensive servicing experience establishing that advances on loans subject to litigation almost always become non-recoverable and cause losses to the Trusts. A steep market value decline shortly after modification is another factor that, depending on other variables, could result in Stop Advance based on asset level triggers tied to valuation, or projected asset level losses.

Two of the three specific loans discussed in Section B(iii) were, in fact, flagged for Stop Advance due to a trigger indicating they were being litigated. In or around August 2014, Ocwen discovered that the litigation status for these two loans had been triggered in error. Ocwen promptly corrected the loans’ status, resumed advancing on the loans, and re-advanced past amounts due. Thus, as of approximately August 2014, Ocwen cured any breach of the Agreements that occurred due to the inadvertent inaccuracy.

Moreover, Ocwen’s Stop Advance Policy benefits investors by ensuring that advances are properly used to manage short-term cash flow disruptions efficiently. By promoting timely and prudent curtailment of advances, the Policy aims to prevent longer-term advancing timelines that ultimately result in greater losses to the Trusts. Indeed, in other contexts, the Holders have cried foul over the very advancing practices that the Stop Advance Policy is designed to safeguard against. As the Holders explained:

> advanc[ing] more funds, for longer, to pay principal and interest on loans that were hopelessly in default . . . . on the surface benefitted the trusts, [but] in reality, they magnified collateral losses: every advance creates a super-senior lien that must be satisfied on liquidation, at the expense of holders in loss bearing tranches.

In that same context, the Holders therefore expressed support for curtailing advances in favor of “modifications to troubled borrowers” to avoid “exacerbating losses” on delinquent loans. The contradictory position the Holders take in the Notice reflects their self-interested motives, not any alleged shortcomings of Ocwen’s Stop Advance Policy.

e. Ocwen Properly Accounts for Principal and Interest to the Trusts

The Holders contend that Ocwen has failed to account for principal and interest to the Trusts, suggesting that certain funds that should have been remitted to investors were not. These allegations are baseless. Ocwen remits all funds to the Trusts that it should—no money has disappeared and none of the expenses incurred are inexplicable, as the Holders claim.

If the Holders had requested an explanation, Ocwen would have walked them through each individual loan listed in the Notice (including all those identified in Exhibit H thereto) and explained the mechanics for each payment by showing the Holders that there is no "missing cash" or "unexplained expenses." Ocwen has personnel specifically dedicated to explaining recovery and remittance data to investors, and other investors request and receive clarification on these amounts from time to time. The Holders knew that if they wanted their remittance report questions answered they could have contacted these personnel. On at least one occasion, in October 2012, a portfolio manager at Kore Advisors, L.P. ("Kore Advisors") reached out to Ocwen, and Ocwen's Investor Relations Department walked the portfolio manager through a series of remittance report questions. Now however, Kore Advisors, along with the other Holders, disregarded this productive route. Instead, they are interested in creating a false narrative that intentionally ignores the facts.

The three loans that the Holders' servicing expert identifies as representative of Ocwen's alleged failure to account for principal and interest are representative of no such thing. The Holders misread and misinterpreted the recovery and remittance report data that they analyzed to "identify" the spurious discrepancies. For example, the Holders' analysis of Loan 324655711 ignores Ocwen's previously-advanced principal and interest amounts, which make up for the discrepancy.

The Holders' analysis of Loan 324650365 is equally flawed. After cobbling together various cherry-picked pieces of data that they present as the full picture of Ocwen's principal recovered, the Holders erroneously claim that the Trusts received "$40,951 less than what Ocwen should have passed through to the trust."[40] As the record shows, however, the Holders' indication that Ocwen had payoff expenses of $45,230 is wrong. The Holders ignored $42,174 in interest that Ocwen advanced on the loan, meaning that Ocwen's actual payoff expenses were $87,474. Additionally, the Holders' "loss reported" figure does not include the $1,292 that Ocwen remitted to the trust after reconciling the loan in January 2014, meaning that the actual loss was $135,415. When the numbers that the Holders overlooked are applied, it is clear that Ocwen remitted to the Trust everything that it recovered.

[40] See Notice at 12.

The Holders' analysis of Loan 1155160 is also amiss. Here, the Holders misinterpreted the REALPortal information and confused the data for a "scheduled-scheduled deal" with an "actual-actual deal."[41] As a result, while the Holders were able to determine correctly that Ocwen recovered $207,623 from the deal, they erroneously calculated that they only received $175,347 in cash as principal at resolution. The Holders reached this figure by taking the original loan balance of $332,000 and subtracting the realized loss, as reported by the Trustees, of $158,622. This painted an inaccurate picture. Ocwen has actually paid investors $192,262 on this loan, and the remaining difference of $15,360 is the amount that Ocwen had previously paid in principal advances, which were reimbursed to Ocwen pursuant to the terms of the relevant agreement.

Ocwen can also readily refute the Holders' unfounded allegations of "unexplained expenses." If the Holders truly wanted these "mysterious" expenses clarified, they knew that they could reach out to Ocwen for explanations. Again, however, the Holders opted to misread and mischaracterize the data in REALPortal to suggest that Ocwen was incurring "undisclosed" expenses during REO sales. For many of the loans, the "undisclosed" expense incurred during the sale was the fee that Ocwen paid to the realtor, which is a minimum of $2,000. In many other instances, where the loan had a low value, it was sold as part of a bulk sale, which can result in REALPortal attributing a certain sale price to a loan that is actually representative of the bulk sale price divided over multiple loans. In other cases, an individual loan will have a unique expense incurred, but none of these are undisclosed or mysterious.[42]

f. The Holders' Analysis of "Trust Performance" is Wrong

The Holders allege that Ocwen's servicing practices have materially harmed Certificateholders by reducing trust cash flows. However, the statistical analysis they provide in an attempt to show that Ocwen-serviced Trusts "perform worse" than Trusts serviced by

[41] In an actual-actual deal, the servicer remits the actual interest and actual principal collected from the borrower in the next remittance. In a scheduled-scheduled deal, the servicer remits a set, scheduled payment of interest and principal, which is calculated and remitted on a monthly basis regardless of the payment a borrower actually makes. A scheduled-scheduled deal may be preferable to an actual-actual deal because it allows for deposit float opportunities on principal and interest funds.

[42] The Holders took this action despite Ocwen's disclaimers that the data on REALPortal was not intended to be used for these purposes. These disclaimers—which are readily available and easily accessible on the REALPortal website—state that all of the information posted on REALPortal is for "marketing and informational purposes only" and does not "purport to be any measure of complete disclosure." Further, Ocwen specifically "does not warrant the accuracy of the materials and information provided herein, either expressly or impliedly, for any particular purpose . . . although the information provided to [investors] in this site is obtained or compiled from sources [Ocwen] believe[s] to be reliable, Ocwen cannot and does not guarantee the accuracy, validity, timeliness or completeness of any information or data made available to you for any particular purpose." The disclaimers go on to state that no party should utilize the data on REALPortal for legal or investment advice.

Ocwen's competitors is biased to support the Holders' pro-foreclosure position, and ignores the fact that measuring cash flows in the short term says little about what cash flows the Trusts will ultimately generate across their lifetime. The Holders also ignore Ocwen's duty to service the loans in the best interests of all investors and the Trusts as a whole, not only those tranches occupied by the Holders.

Ocwen suspects that were it able to analyze the underlying assumptions and data upon which the Holders relied, it would find that the results were skewed to support a self-serving narrative. In addition, even if one were to accept the Holders' findings, the Holders do not and cannot point to a contractual obligation that Ocwen has breached, for a good reason: "poor trust performance" on its own would not constitute a Servicer Event of Default. That Servicer Events of Default are not triggered by total Trust Performance is unsurprising as Servicers ultimately have no control over the quality of the collateral, and very limited control over its performance. Indeed, in another proceeding, the Holders endorsed the position that "[w]hen default levels at all servicers surpass historical levels, it becomes near impossible to ascribe the relative percentage of losses to servicer behavior or the innate character of the underlying mortgages in a pool."[43]

The key point is that the Holders' expert analysis says nothing about the expected return over the lifetime of these Trusts. The analysis concludes only that returns on securities serviced by Ocwen during a five-year period (between 2009 and 2013) were 1% lower than returns on securities serviced by other companies. However, the 2009 to 2013 returns on securities serviced by Ocwen say little about how well those Trusts will perform during their much longer lives. As the market-leader in loan modifications, one would anticipate that Ocwen-serviced loans would return greater benefits to Holders than loans serviced by Ocwen's competitors, because more loans will continue to perform for longer periods of time, generating more interest revenue and principal payback. As noted above, the Holders have already acknowledged their preference for these types of modifications.[44] Further, this is in contrast to servicing practices that prioritize fast (and unnecessary) foreclosures, which pump money into the Trusts quicker, at the expense of greater long-term gains. By ignoring long-term returns, the Holders present a myopic and manipulated picture of trust performance that does not redound to the benefit of the Trust as a whole. In short, the Holders are advocating for resolutions that result in lower cash flows on an NPV basis, rather than other viable resolutions with higher expected NPV cash flows.

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[43] Institutional Investors' Reply In Support of Settlement at 8, In Re Bank of NY Mellon, No. 651786-2011 (N.Y. Sup. Ct. Nov. 6, 2013) (citing Adam Levitin, Mortgage Servicing, 28 Yale J. on Reg. 1, 68 (2011)). In the article cited, Levitin wrote: "the heterogeneous nature of [private label RMBS] makes it difficult to compare different servicers' effect on MBS performance. It is impossible to separate out the quality of the servicing from the quality of the underlying loans." Levitin, supra at 81.

[44] See Institutional Investors' Statement in Support of Settlement and Consolidated Response to Settlement Objections, In re Bank of NY Mellon, No. 1:11-cv-05988-WHP, at ¶ 49 (S.D.N.Y. Oct. 31, 2011).

The Holders' expert analysis is also inappropriate to invoke here—in a "Notice of Non-Performance"—because, even if the findings were correct (they are not), they would not constitute an Event of Default. The Notice conspicuously fails to specify any contractual provision that Ocwen breached or any Event of Default that was triggered by way of Ocwen's "poor performance." This is unsurprising because none of the Agreements impose upon a Servicer an obligation of "elite" or "superior" performance. Ocwen is obligated to service the trusts with "due consideration to customary and usual standards of practice of mortgage lenders and loan servicers administering similar mortgage loans," and "for and on behalf of the Certificateholders."[45] These obligations do not require Ocwen to assure that the loans will be as profitable as possible, which, as the Holders have acknowledged, is largely outside a servicer's control.[46] Ocwen's obligation is to service loans prudently for the benefit of the Certificateholders, which it does by performing modifications that are in the best interests of investors when appropriate. The Holders have acknowledged their preference for this practice in open court.[47] The Holders' attempt to conflate the performance of loans that collateralize Ocwen-serviced Trusts with Ocwen's contractual obligations is fundamentally misplaced.

Moreover, even assuming that the 1% difference is supportable despite the issues identified (it is not), and further assuming that "Poor Trust Performance" could constitute an Event of Default (it cannot), a 1% difference would almost certainly not trigger such an imaginary contractual standard. The Holders do not and cannot provide factual or legal support for their assertion that the hypothetical 1% difference they purport to have identified would constitute "material harm" to the investors. Recognizing that the position is untenable, the Holders instead suggest that investors "compound" the 1% effect across 2,000 RMBS Trusts and speculate on a wildly inflated "loss" of $26 billion across roughly 1,900 Trusts that are not implicated in the Notice. This distraction should be ignored.

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[45] See e.g., GSAMP 2003-NC1 § 3.01 (" (a) For and on behalf of the Certificateholders, the Servicer shall service and administer the Mortgage Loans in accordance with the terms of this Agreement and the respective Mortgage Loans and, to the extent consistent with such terms, in the same manner in which it services and administers similar mortgage loans for its own portfolio, giving due consideration to customary and usual standards of practice of mortgage lenders and loan servicers administering similar mortgage loans. . . .) (emphasis added); see also FFML 2004-FF3 § 3.01 ("The Servicer shall service and administer the Mortgage Loans on behalf of the Trust and in the best interests of and for the benefit of the Certificateholders…giving due consideration to customary and usual standards of practice of mortgage lenders and loan servicers administering similar mortgage loans . . . .").

[46] See Institutional Investors' Reply In Support of Settlement at 8, In Re Bank of NY Mellon, No. 651786-2011 (N.Y. Sup. Ct. Nov. 6, 2013)

[47] See Institutional Investors' Statement in Support of Settlement and Consolidated Response to Settlement Objections, In re Bank of NY Mellon, No. 1:11-cv-05988-WHP, at ¶ 49 (S.D.N.Y. Oct. 31, 2011).

g. Ocwen's Agreement with the CFPB is in Accord with its Contractual Obligations

The Holders complain that Ocwen's commitment to principal reduction modifications as part of the $2 billion consumer relief under the December 2013 CFPB Consent Judgment constitutes a violation of Ocwen's contractual servicing obligations. The Holders are wrong. The Consent Judgment expressly provides that the "servicing standards and any modifications or other actions taken in accordance with the servicing standards are expressly subject to . . . the terms and provisions of . . . any servicing agreement."[48] Further, if there is a conflict between the Consent Judgment and Ocwen's contractual servicing obligations, the Consent Judgment provides that Ocwen must inform the Monitor that it will be complying with its contractual servicing obligations.[49]

Thus, by the Consent Judgment's terms, Ocwen may not perform any principal reduction modification that would violate Ocwen's contractual servicing obligations. Further, as noted in Section B.I.a, supra, all of Ocwen's principal reduction modifications are in the best interests of investors, so Ocwen is not in violation of any of its contractual servicing obligations.

h. Ocwen's Advance Recoupment Practices Conform to the Servicing Agreements and Industry Standards

The Holders argue that the Servicing Agreements governing 77 of the Trusts at issue prohibit the servicer from reimbursing itself for Advances it made prior to a loan modification. However the Holders are simply wrong about how the advance recoupment provisions in the Servicing Agreements work and mischaracterize these provisions to serve their own interests.[50] The Holders turn contract interpretation on its head by arguing that the absence of language touching on a subject should be read as a prohibition against certain actions.

"Industry or trade custom" governs interpretation of the 77 Agreements that do not speak to whether a servicer may recoup its advances after executing a modification.[51] One need look

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[48] 2014 CFPB Consent Judgment at Ex. A, § IX.A.1 (emphasis added).

[49] 2014 CFPB Consent Judgment at Ex. A, § IX.A.2.

[50] See Notice at 16-17.

[51] See, e.g., U.S. Naval Inst. v. Charter Commc'ns, Inc., 875 F.2d 1044, 1050 (2d Cir. 1989) (using custom and trade usage to define the term "publish . . . not sooner than," stating that "the custom in the industry to delay paperback publication until one year after the month of the hardcover edition; it was on this basis that Berkley filled in the October 1985 date on its form. Berkley's three industry witnesses stated that the reason for this 12-month delay was to provide a period in which the paperback edition would not compete with the hardcover edition."); Capital Funding v. Chase Manhattan Bank USA, 191 F. App'x 92, 97 (3d Cir. 2006) ("The term is not defined in the Agreement. Accordingly, 'the rules of contract construction require that the term be given the meaning commonly understood in the credit card industry, as established by the record.'"); Thomas v. Gusto Records, Inc., 939 F.2d

no further than the 42 Agreements which actually speak on the subject for guidance. All of these, without exception, provide that the Servicer may recover its advances upon execution of a loan modification.[52] None of the Agreements prohibit recoupment upon modification. Indeed, relevant trade publications confirm that it is standard practice in the industry for a servicer to recoup its advances when it negotiates a loan modification.[53] The parties to the contract all understand this to be the case, and the Holders' contrived outrage is disingenuous.

The Holders are right about one thing: every servicer advance Ocwen recoups is one that has been determined by Ocwen to be "non-recoverable," in accord with the Servicing Agreements. What the Holders misapprehend is why this is reconcilable with Ocwen's modification practices, and is to be expected in light of prevailing economic considerations, and other factors, like litigation status. Preliminarily, the Holders intentionally misinterpret what Servicing Advances are and are not. Servicing Advances are not funds owed to the Trust by the Servicer. Nor do they represent a "guarantee" that the Servicer makes on behalf of a Trust's underlying borrowers. Instead, Servicer Advances are a creature of contract whose intention is to maintain short-term cash flows to the Certificateholders when borrowers are late or miss payments.

Because the Advances are a stopgap rather than a guarantee, it follows that as soon as a Servicer is successful in negotiating an NPV-positive modification—rebooting borrower cash flows—the Servicer is entitled to stop advancing and reimburse itself for past Advances made. At that point, the Advance has performed its function, and the Holders' cash flow expectation has been restored. The Holders' interpretation of the 77 silent Servicing Agreements, would punish servicers for executing workable modifications that turn nonperforming loans into performing ones. The Holders would require servicers to wait for the full life of the loan (potentially as long as 40 years) to reimburse itself for Advances on a loan that had been revived through modification. This makes no sense and is contrary to industry custom and practice.

395, 396-97 (6th Cir. 1991) (holding that royalties from domestic licensing are payable to recording artists, where contract was silent on the issue of royalties, based on trade custom to allocate royalties in such a fashion).

[52] See Notice at 16.

[53] See ASF White Paper: Recommended Definitions and Investor Reporting Standards for Modifications of Securitized Residential Mortgage Loans, December 06, 2007, at 4, available at http://www.americansecuritization.com/uploadedFiles/FinalASFInvestorReportingStandards.pdf (defining a "Modified Loan" as one whose advances have been reimbursed to the servicer from the Trust); PriceWaterhouseCoopers, Servicing fees and advances: Show me the Money, at 2, 5 (2014), http://www.pwc.com/en_US/us/consumer-finance/publications/assets/pwc-servicing-advance-white-paper.pdf; Diane E. Thompson, Foreclosing Modifications, 86 WASHINGTON L.R. 755, 771 (2011); Ryan Bolger, Systemic Risk Concerns Despite Ocwen MSR Sales (March 5, 2015); Dominion Bond Rating Service, Methodology: Rating U.S. RMBS Servicing Advance Transactions, at 4-5 (Sept. 2013).

Indeed, the Holders do not provide a single example of a servicer who does not recoup its advances upon modification as a matter of course. This is because there are none.

Moreover, the Holders' insinuation of impropriety on the part of Ocwen in making its "recoverability" determinations is wrong. Merely because a servicer deems an Advance to be non-recoverable does not mean that a loan modification executed prior to that determination was not NPV-positive at the time it was made. A determination that the expected proceeds from a proposed modification outstrip the expected proceeds from foreclosure has nothing to do with the likelihood that the loan will generate sufficient liquidation proceeds to reimburse Ocwen for accumulative Advances. Ocwen's stop-advance model makes the objective determination that an Advance is non-recoverable based on two tests: the Asset Level Test and the Projected Asset Level Test. If the asset fails either test, it is put into stop-advance. Indeed, though it has no obligation to do so, Ocwen has established measures to ensure that for securitizations that contain one or more investment grade bonds, recovery of Advances will not preclude the required monthly interest distribution to those tranches; instead, they are recovered in a later distribution period.

II. Ocwen Is Working With Regulators And Through This Work Has Already Cured Certain Practices That Might Otherwise Have Risen to Events of Default

The Holders' Notice frequently cites to and purports to rely upon consent agreements entered into between Ocwen and regulators, alleging that (i) certain transactions with affiliates and former affiliates, and (ii) certain failures to maintain adequate systems and records, both constituted breaches of the prudent servicing standard set forth by the agreements. However, by selectively pointing only to the historical findings in the consent agreements, the Holders overlook that the agreements themselves, and Ocwen's measures taken to comply with them, represent the "cure" for the issues identified. The findings and allegations in those agreements cannot, therefore, provide the basis for an uncured Event of Default, as the fact of the consent agreements themselves precludes it.

The purpose of Ocwen's consent agreement with the New York Department of Financial Services ("DFS") in December 2014[54] was to resolve the very issues identified therein—the same issues that comprise the majority of the allegations set forth in Sections A and D of the Notice.[55] Ocwen agreed to: "conduct semi-annual benchmarking studies of pricing and performance standards with respect to all fees and expenses," "not share any common officers or

[54] See N.Y. Dep't of Fin. Serv., Consent Order Pursuant to N.Y. Banking Law § 44, In the Matter of Ocwen Fin. Corp. (Dec. 22, 2014) (hereinafter "Dec. 2014 Consent Order").

[55] DFS's willingness to execute the December 2014 Consent Order reflects its belief that Ocwen can resolve the matters covered by the Order.

employees with any related party," "not share risk, internal audit, or vendor oversight functions with any related party," and "recus[e] from negotiating, or voting to approve a transaction with [a] related party" or "[a]ny Ocwen employee, officer, or director owning more than $200,000 equity ownership in any related party."[56] In addition, William Erbey has resigned from his position as Executive Chairman of Ocwen and non-executive chairman of the related parties identified by DFS.[57]

All of the relevant Servicing Agreements require that certain breaches be continuing and unremedied in order to constitute Events of Default. The contracts specifically contemplate that remedial efforts are evidence of cure.[58] For example, FFML 2004-FF3 PSA § 7.01(a)(ii) provides that a "failure by the Servicer duly to observe or perform, in any material respect, any other covenants, obligations or agreements" must "occur and <u>be continuing</u>," (emphasis added) to constitute an Event of Default. No Event of Default exists, however, where a failure or breach "cannot be remedied within 30 days," and "<u>such remedy shall have been commenced within 30 days and diligently pursued thereafter</u>" (emphasis added).[59] This ongoing remedy or cure obviates an Event of Default.

a. Ocwen Has No Conflicts of Interest With Related Party Vendors And These Relationships Benefit the Holders

Ocwen's revised corporate structure and related-party policies erase any suggestion of impropriety or self-dealing and demonstrate Ocwen's dedication to regulatory compliance. Ocwen spun off Altisource Portfolio Solutions, S.A. ("Altisource") more than five years ago and no longer has any ownership stake in that company.[60] Similarly, Ocwen spun off Home Loan Servicing Solutions Ltd. ("HLSS") three years ago and owns no equity in that company.[61] Other

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[56] <u>See</u> Dec. 2014 Consent Order ¶¶ 53-57.

[57] <u>See</u> <u>id.</u> ¶ 57.

[58] <u>See e.g.</u> <u>Sterling Fed. Bank, F.S.B. v. DLJ Mortg. Capital, Inc.</u>, No. 09 C 6904, 2010 WL 3324705, at *8 (N.D. Ill. Aug. 20, 2010) ("Sterling has not alleged that SPS's alleged failings remained unremedied for 60 days after it received notice in the manner prescribed by the PSAs. We conclude, then, that Sterling's claim for breach of fiduciary duty cannot be based upon BNYM's post-default duties.") (citing <u>Dresner Co. Profit Sharing Plan v. First Fidelity Bank, N.A.</u>, No. 95 Civ.1924 (MBM), 1996 WL 694345, at *5 (S.D.N.Y. Dec. 4, 1996)).

[59] <u>See</u> FFML 2004-FF3 PSA § 7.01(a)(ii).

[60] <u>See</u> Ocwen Related Party Transactions Approval Policy at 7 (Feb. 24, 2015); Ocwen 2011 10-K at 4.

[61] <u>See</u> Home Loan Servicing Solutions, Ltd., Form S-1 Registration Statement, United States Securities and Exchange Commission (filed on Feb. 24, 2011) <u>available at</u> http://www.nasdaq.com/markets/ipos/filing.ashx?filingid=7405050; REUTERS.COM, <u>Home Loan Servicing Solutions prices IPO at $14/shr: underwriter</u> (Feb. 28, 2012) <u>available at</u> http://www.reuters.com/article/2012/02/28/us-homeloanservicingsolutions-idUSTRE81R28V20120228. Additionally, New Residential Investment has

prior alleged conflicts have also been cured: with Mr. Erbey's resignation from Ocwen and the formerly related companies, there is no overlap between Ocwen's board or management and any of those companies.[62] As of January 31, 2014, an independent market fee analysis found that no default, foreclosure or bankruptcy-related fees were performed by or paid to an affiliate of Ocwen.[63] Moreover, Ocwen's newly adopted Related Party Transactions Approval Policy meticulously governs the review and approval of Related Party Transactions.[64]

Accordingly, Ocwen's commercial relationship with Altisource is neither unusual nor harmful to Holders. Altisource serves as one of Ocwen's outsourcing vendors and provides the same services to Ocwen that it provides to other companies in the mortgage and real estate industries, including a top-ten U.S. mortgage bank. Ocwen's use of the Hubzu website is also standard practice; Fannie Mae similarly requires that all offers for Fannie Mae REO be made through the HomePath.com website.[65]

announced plans to acquire HLSS. See Ben Lane, HOUSINGWIRE.COM, Moody's: Home Loan Servicing Solutions sale bolsters Ocwen's future (Feb. 25, 2015).

[62] The Chief Risk Officer positions of each company are no longer held by the same individual. Marcelo Cruz is Ocwen's CRO and Gurucharan Raman is the Altisource Director of Internal Audit reporting to Altisource's Board of Directors. See Altisource Portfolio Solutions Says Ocwen Financial Mortgage Ban is Unlikely, FORBES.COM, available at http://www.forbes.com/sites/antoinegara/2015/01/16/altisource-portfolio-solutions-says-ocwen-financial-mortgage-ban-is-unlikely/ (Jan. 1, 2015).

[63] Independent Financial Industry Advisory Firm, Review Report of Default-Related Fees for Ocwen Loan Servicing, LLC, at 5 (Jan. 31, 2014).

[64] See Ocwen Related Party Transactions Approval Policy at 2 (Feb. 24, 2015) ("The Board of Directors… has established the Independent Review Committee . . . to provide independent review, approval and oversight of Related Party Transactions. The Board and the Committee recognize that Related Party Transactions are important to be business of the Company and that the Committee's policies and procedures should be structured towards good governance and the best interests of the Company.").

[65] See See Nat'l Ass'n of Realtors, Fannie Mae Rolls Out Online-only REO Offers (Feb. 7, 2012), available at: http://speakingofrealestate.blogs.realtor.org/2012/02/07/fannie-mae-rolls-out-online-only-reo-offers/; Countrywide 2007 Q3 Earnings Transcript, available at http://seekingalpha.com/article/51626-countrywide-financial-q3-2007-earnings-call-transcript ("increased operating expenses in times like this tend to be fully offset by increases in ancillary income in our servicing operation, greater fee income from items like late charges, and importantly from in-sourced vendor functions that represent part of our diversification strategy, a counter-cyclical diversification strategy such as our businesses involved in foreclosure trustee and default title services and property inspection services."); Adam Levitin, Mortgage Servicing, 28 YALE J. ON REG. 1, 42 (2011) ("The expenses involved in foreclosure and REO maintenance are frequently insourced rather than competitively bid by servicers.").

i. Altisource, Hubzu, and RHSS provide value to Holders

Ocwen's use of Altisource's Hubzu benefits the Holders, who collect larger returns on liquidation when properties are sold through Hubzu than they otherwise would. Hubzu sells properties through the auction process unless applicable MLS and investor rules prohibit it, or there are some other particular qualities to the property because auctions result in a higher sale price.

Further, Altisource invests substantially in marketing and increasing prospective buyer traffic for the properties on the Hubzu platform,[66] which means those properties are available to a much broader audience of potential buyers than would be available otherwise. Moreover, Hubzu's screening process increases transparency, reducing the potential for fraud and collusion amongst brokers and buyers. Its online auctions ensure that the sellers, Holders and servicers are receiving market prices for the homes sold. The risk of fraud is especially prevalent in proposed short sales.[67] In response, Altisource developed its Assisted Short Sale program. In this innovative program, a traditional broker brings in a proposed offer to Ocwen, after which the property is put on auction on the Hubzu platform for two to three weeks to verify whether the initial proposed offer is market price or whether any higher offers may be received. Since the inception of the Assisted Short Sale Program, auctions on the Hubzu platform have generated higher offers than the original short sale offers brokered through "traditional means" on approximately 48% of the participating properties. For those properties, the average increase in sales price was $18,739 or 11.8% over the original offer—an increase in the sales price after payment of the buyer's premium and technology fee.[68] That translates to direct, net financial gains to the trust.

Additionally, the Holders' allegations regarding REALHome Servicing Solutions ("RHSS") are misplaced. For one, RHSS does not handle short sales, contrary to the allegations in the Notice. RHSS's business model results in economies of scale that enable managing brokers to handle a higher volume of properties efficiently and effectively. In addition, the level of services RHSS provides is consistent with or exceeds that of local real estate agents. In

[66] This includes syndication to 200 websites and marketing efforts by Altisource to drive traffic to property pages on Hubzu.

[67] FREDDIEMAC.COM, <u>Short Sale Fraud Prevention Summary for Real Estate Professionals</u>, June 2014, <u>available at</u> <u>http://www.freddiemac.com/singlefamily/preventfraud/docs/short_sale_fraud_summary_industry_profs.pdf</u>. The California Department of Real Estate was alerted to fraud in short sale transactions. Wayne Bell, Chief Counsel of Cal. Dep't of Real Estate, <u>Short Sales – An Overview and Warning to Real Estate Licensees Re: Fraud, and Legal and Ethical Minefields</u>, Mar. 2010, at 3, <u>available at</u> http://www.dre.ca.gov/files/pdf/Article_ShortSales03_2010.pdf.

[68] Where the offer is lower, Altisource does not charge a buyer's premium or technology fee.

addition, the property preservation services provided by RHSS result in more cost-efficient and better results for the property. A "local agent" would not personally perform Altisource's necessary property preservation services, but would contract this work to third-party service providers and pass that cost on to the Holders. However, that local broker would lack the buying power of a national vendor to leverage for more favorable rates.

ii. Altisource, Hubzu and RHSS charge market-range fees for their services

Contrary to the Holders' allegations, Altisource does not charge higher fees for services provided to Ocwen (including fees for the Hubzu platform) than for comparable services provided to other counterparties. Indeed, Altisource's Statements of Work and Master Agreements mandate that it charges at or below market range fees to Ocwen. The Servicing Agreements also mandate that Altisource also offer Ocwen any rate that it offers other clients for the same services. Those fees are consistent with GSE guidelines and industry practice. In compliance with the December 2014 Consent Order, these transactions are guided by Ocwen's Related Parties Relationship Management Policy and applicable laws and regulations. An independent firm that evaluated Ocwen's fee schedule identified no evidence that fees incurred by Ocwen were out of line with those charged by other vendors for like services.[69] Supporting these findings, Trustees and Master Servicers often review these fees for reasonableness relative to the market and Ocwen has never received any objections to the general fees charged by Altisource.

The Holders' specific allegations are also wrong. First, Hubzu's buyer's premium and technology fees (both of which are paid by the buyer and not the seller) are lower than the prevailing market rate. It is inappropriate to compare the 4.5% buyer's premium charged in Hubzu's full-service marketing programs with the 1.5% buyer's premium charged in the self-service direct-to-broker ("Direct to Broker") program because the services provided differ meaningfully. Hubzu charges a 4.5% premium to buyers of properties on full-service listings, which is paid by the buyer and results in no additional expense to the borrower or investor. That 4.5% premium applies to sales made by all institutional clients, not just Ocwen, and is lower than the typical 5% buyer's premium charged by competitors such as Auction.com, Realty Bid, and Williams & Williams. The 1.5% premium applies only to non-institutional sellers (e.g., real estate agents) that use Hubzu for marketing, similar to using sites such as Zillow or Trulia. Altisource does not actively manage those assets.

[69] Independent Financial Industry Advisory Firm, Review Report of Default-Related Fees for Ocwen Loan Servicing, LLC, at 1 (Jan. 31, 2014).

Further, Ocwen believes it pays its vendors at market rates for all other fees related to property preservation, valuation, and appraisal-related services.[70] Ocwen and the Trustees have contractual obligations to maintain and preserve each asset. Property preservation and maintenance services are necessary to protect and preserve the value of the property, regardless of which vendor provides the service. Valuation services are required to appropriately value the property for purposes of marketing and for the servicer to evaluate offers and options. Inspections must be performed on a regular basis according to the Holders' requirements. These critical services are performed to prevent further loss to the Holders from blight, criminal activity, code violations, and property disrepair. REO properties are by their very nature foreclosed and often vacant, frequently requiring extensive repair and maintenance so as to avoid further economic loss to the Holders.

b. No Events of Default Exist With Respect To Ocwen's Recordkeeping Because Ocwen Has Been Curing Them For Months And Will Continue To Do So

The Holders' allegation regarding Ocwen's misdated[71] letters is moot, as Ocwen has cured these issues. Ocwen distributed misdated letters with the goal of complying with HAMP. Ocwen letters were generally dated when the decision was made to create the letter (the "request date"), rather than when the letters were actually generated (the "generation date") and sent to a vendor for mailing. This use of the request date instead of the generation date resulted in letters being dated before they were mailed. Other of the letters were misdated during a transition period in which Fannie Mae relaxed HAMP eligibility modification rules. Ocwen refrained from offering modifications to buyers who had already been approved, or were close to being approved, until official adoption of the HAMP provisions.

Ocwen began curing the issues that caused the incorrect dating of letters in the Spring of 2014, concluding these efforts by remedying the date-generating templates well before the Holders issued their Notice. The Holders do not, and cannot, allege that Ocwen has been anything other than dedicated to remediation and cooperation with regulators.

Although the Notice indicates that California sought to suspend Ocwen's license, Ocwen has since settled those claims.[72] Ocwen also consented to extending the term of the National

[70] This belief has several bases: (i) Ocwen learned what other vendors were charging competitors when it acquired other servicing platforms prior to 2014; (ii) Ocwen is aware of what Ocwen services had been charging when it spun off Altisource and the prices have not changed markedly; and (iii) Ocwen's commercial servicing division uses other vendors and sees similar rates.

[71] "Backdating," the term used by the Holders (see Notice at 13), could be misleading as it might connote intentional misconduct, which this was not.

[72] See Consent Order, In the Matter of the Accusation of the Commissioner of Business Oversight vs. Ocwen Loan Serv., No. 413-0544, OAH No. 2014100930 (Jan. 23, 2015).

Monitor's reviews of Ocwen's compliance for at least two additional test periods,[73] and has reformed its borrower communication protocols. Its continued efforts to reform its recordkeeping protocols and systems technology have cured and are curing any alleged Event of Default.[74]

C. CONCLUSION

The Holders' transparent attempt to force Ocwen to service loans in contravention to its contractual duties must fail. The Holders do not establish a single continuing Event of Default. Ocwen looks forward to discussing these and other issues further.

Respectfully Submitted,

Ocwen Financial Corporation

By: ______________________________

Timothy M. Hayes
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General Counsel

[73] See Joseph A. Smith, Office of Mortgage Settlement Oversight, Continued Oversight: A Report from the Monitor of the National Mortgage Settlement (Dec. 16, 2014).

[74] 2013 CFPB Consent Judgment, at A-5, A-7 ("Servicer shall provide to borrowers . . . adequate information on monthly billing or other account statements . . . Servicer shall take appropriate action to promptly remediate any inaccuracies in borrowers' account information . . .Servicer's systems to record account information shall be periodically reviewed for accuracy and completeness by an independent reviewer"); December 2014 Consent Order, at 11-12, 14 ("The Operations Monitor will review and assess the adequacy and effectiveness of . . . [i]nformation technology systems and personnel, including with respect to recordkeeping and borrower communications. . . The Operations Monitor will act with reasonable expedition to develop . . . benchmarks [that] will address . . . [t]he development and implementation of a plan to resolve record-keeping and borrower communication issues. . . .").

Cc.

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Mr. Cory Nass (Kore Advisors, L.P.)
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