TEITELBAUM & BASKIN, LLP
Attorneys for JPMorgan Chase Bank, N.A.
as servicer for Deutsche Bank National
Trust Company, as Trustee for Long
Beach Mortgage Trust 2006-2
3 Barker Avenue, Third Floor
White Plains, NY 10601
(914) 437-7670
Jay Teitelbaum
jteitelbaum@tblawllp.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 7
	:	
SILVIA NUER,	:	Case No. 08-14106 (REG)
	:	
Debtor.	:	

TABLE OF CONTENTS

FOR

RESPONSE OF JPMORGAN CHASE BANK, N.A. IN OPPOSITION TO THE IMPOSITION OF SANCTIONS

2. Tab 2: Affirmation of Jay Teitelbaum With the Following Exhibits Annexed

Exhibit A	Docket No. 7: Application of Chase dated November 14, 2008 for Relief from the Automatic Stay with Exhibits
Exhibit B	Docket No 8: Motion for Relief Memorandum of Law dated November 14, 2008
Exhibit C	Docket No 28: Grigg Affidavit in further support of Motion for Termination of the Automatic Stay with Exhibits dated January 30, 2009
Exhibit D	Docket No 32: Grigg Supplemental Affirmation in further support of Motion for Termination of the Automatic Stay with Exhibits
Exhibit E	Fixed Adjustable Rate Promissory Note between Long Beach Mortgage Company and Sylvia Nuer dated January 6, 2006
Exhibit F	Recording Documents dated January 20, 2006, and the Mortgage Agreement between Long Beach Mortgage Company and Sylvia Nuer dated January 6, 2006
Exhibit G	January 6, 2006 Welcome Letter from Long Beach Mortgage Company to Sylvia Nuer

Exhibit H	January 11, 2006 Welcome Letter from Long Beach Mortgage Company to Sylvia Nuer
Exhibit I	Debtor's Marked Responses, dated June 17, 2009 to J.P. Morgan Chase Bank, N.A's First Request for Admissions
Exhibit J	Mortgage Loan Purchase Agreement ("MLPA") between Long Beach Securities Corp. and Long Beach Mortgage Company dated February 24, 2006
Exhibit K	Mortgage Loan Schedule for Long Beach Mortgage Loan Trust 2006-2 for March 7, 2006 Closing date
Exhibit L	Pooling and Servicing Agreement ("PSA") between Long Beach Securities Corp., Long Beach Mortgage Company and Deutsche Bank National Trust Company dated March 1, 2006 (relevant portions)
Exhibit M	Amended and Restated Sub-Servicing Agreement between Long Beach Mortgage Company and Washington Mutual, F.A. dated January 1, 2005
Exhibit N	Assignment of Mortgage in Blank by Long Beach Mortgage Company dated January 12, 2006
Exhibit O	Purchase and Assumption Agreement between Federal Deposit Insurance Corporation, Receiver of Washington Mutual Bank, and JPMorgan Chase Bank, National Association dated September 25, 2008
Exhibit P	Assignment of Mortgage by Scott Walter, Attorney in Fact for JPMorgan Chase Bank, N.A., dated November 1, 2008
Exhibit Q	Assignment of Mortgage by Ann Garbis, Vice President for JPMorgan Chase Bank, N.A., dated November 1, 2008
Exhibit R	Limited Power of Attorney by James Miller, Senior Vice President of J.P. Morgan Chase Bank, N.A, to LPS Default Solutions, Inc. dated October 22, 2008
Exhibit S	JP Morgan Chase Bank, N.A. Incumbency Certificate naming Helen Ann Garbis dated January 26, 2009, and November 9, 2009 E-mail from Jay Teitelbaum to Greg Zipes and Linda Tirelli indicating Ms. Garbis's

	authorization to execute the November 1 Assignment
Exhibit T	January 9, 2009 *In re Pawson* Letter from Edward Lesniak to the U.S. Trustee detailing procedures implemented by Chase Home Finance, LLC with regard to Motions for Relief from the Automatic Stay
Exhibit U	Debtor's November Home Loan Statement from Washington Mutual, F.A. dated November 19, 2007
Exhibit V	September 17, 2009 E-mail from Jay Teitelbaum to Linda Tirelli regarding the Herndon Deposition Testimony, and pages 109-112;157,163-169 of October 6, 2009 Transcript of deposition of Charles Herndon
Exhibit W	Lien Recording Documents dated May 1, 2007, and the Board of Mangers of the Parkchester North Condominium's Lien Documents for Unpaid Common Charges dated March 2, 2007

3. **Tab 3: Affidavit of Amy Polowy, sworn to February 22, 2010 (the "Baum Affidavit")**

    a. Exhibit A: JPMorgan Business Record Bate No. 0001219-1220 (Screen Shots")

4. **Tab 4: Affidavit of Ronaldo Reyes, sworn to February 22, 2010**

5. **Tab 5: Affidavit of Helen A. Garbis, sworn to February 22, 2010**

6. **Tab 6: Affidavit of Judith Greece, sworn to February 22, 2010**

    a. Exhibit A: Form of JPMorgan Welcome Letter (Documents Nos. 001222-001228)
    b. Exhibit B: Form of JPMorgan Pre MFR Warning Letter (Document Nos.001229-001233)
    c. Exhibit C: JPMorgan pre motion check list (Document No. 001234)
    d. Exhibit D: JPMorgan form of motion for relief (Document No. 001235-001249

TEITELBAUM & BASKIN, LLP
Attorneys for JPMorgan Chase Bank, N.A.
as servicer for Deutsche Bank National
Trust Company, as Trustee for Long
Beach Mortgage Trust 2006-2
3 Barker Avenue, Third Floor
White Plains, NY 10601
(914) 437-7670
Jay Teitelbaum
jteitelbaum@tblawllp.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 7
	:	
SILVIA NUER,	:	Case No. 08-14106 (REG)
	:	
Debtor.	:	

RESPONSE OF JPMORGAN CHASE BANK, N.A. IN OPPOSITION TO THE IMPOSITION OF SANCTIONS

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

JP Morgan Chase Bank, N.A. ("**Chase**"), as successor servicer to Washington Mutual Bank, F.A.("**WaMu**"), for Deutsche Bank National Trust Company, as Trustee ("**Deutsche Bank**" or the "**Trustee**") for Long Beach Mortgage Trust 2006-2 (the "**Trust**"), for its opposition to the requests by the Office of the United States Trustee for the Southern District of New York (the "**US Trustee**") and the Debtor for the imposition of sanctions against Chase in connection with the filing of a motion, dated November 7, 2008 (Docket No. 7), for relief from the stay (as amended and supplemented at Docket Nos. 8, 28 and 32, the "**MFR**")[1], and upon the

1 For the convenience of the Court, the pleadings filed in support of the MFR are annexed to the Teitelbaum Affirmation submitted in support of this response as: MFR Application with Exhibits (Docket No. 7) ("**MFR**

accompanying affidavits of Judith Greece Affidavit (the "**Greece Affidavit**"), Helen A. Garbis (the "**Garbis Affidavit**"), Reynaldo Reyes (the "**Reyes Affidavit**"), and Amy E. Polowy (the "**Baum Affidavit**"), and the Affirmation of Jay Teitelbaum (the "**Teitelbaum Affirmation**"), and the exhibits to each of the foregoing, respectfully states:

INTRODUCTION

The Debtor's request for sanctions under 28 U.S.C. §1927 against Chase is included in the Debtor's Objection to the MFR, dated December 2, 2008, as amended (Docket Nos. 22, 30 and 65, the "**Objection**"). The Debtor's sanction request has been "joined" and/or "supported" by the US Trustee (Docket No. 71), because Chase (i) filed two documents in support of the MFR that are allegedly "confusing and contradictory" as to the issue of Chase's standing in this matter (US Trustee Memo of Law at pp.2 and 7); (ii) allegedly did not satisfy the pleading requirements under LBR 4001-1(c) in connection with setting forth the chain of title of the mortgage and note (*Id.* at pp. 7-11); and (iii) allegedly engaged in similar conduct in the past (*Id.* at pp. 12-14).

Following the withdrawal of all of the Debtor's objections to the MFR (other than standing) and the proceedings before this Court on January 7, 2010, the remaining issue before this Court is whether sanctions should be imposed against Chase for filing the Garbis and Walter Assignments (each as defined below), which allegedly did not fully describe the chain of transfers of the Mortgage and Note (each as defined below), and allegedly sanctionable conduct in prior unrelated cases for which Chase has already accounted.

Sanctions against Chase are not appropriate under 28 U.S.C. §1927, Bankruptcy Rule 9011, Bankruptcy Code §105, or otherwise. To be sanctionable, a filing with the Court must be

---

Application")--Exhibit A; Memorandum of Law in Support (Docket No. 8)-- Exhibit B; Affidavit of Natalie Grigg with Exhibits (Docket No. 28) ("**Grigg Affidavit**")--Exhibit C; and Supplemental Affirmation of Natalie Grigg with Exhibits (Docket No. 32) ("**Grigg Affirmation**")--Exhibit D.

for an improper purpose (Fed. Bankr. R. 9011 (b) (1)), not be supported by existing law (*Id.* at (b)(2)), or lacks evidentiary support (*Id.* at (b)(3)).

The pleadings and documents filed in support of the MFR were presented for a proper purpose, based upon existing law, and are supported by the facts and evidence. The MFR ***correctly and accurately*** alleged that (i) Deutsche Bank, as Trustee for the Trust, was the holder and owner of the Mortgage and Note that were attached to the MFR; (ii) Chase, as successor servicer for the Trust, was the moving party and had standing as the agent for Deutsche Bank, as Trustee for the Trust; and (iii) cause existed for the relief requested, including (a) lack of adequate protection arising from the Debtor's failure to make pre and post petition payments for over a year pre-petition and more than 30 days post-petition, (b) the Debtor's stated intent to surrender the Premises (as defined below) and to make no further payments on account of the Note and Mortgage (as defined below), and (c) the Debtor's admission that the Premises were never the Debtor's residence.

Arguably, the MFR may have been somewhat confusing due to the inadvertent inclusion of the Walter Assignment and lack of detail surrounding the chain of transfers of the Mortgage and Note. However, the MFR was duly filed for the purpose of protecting the rights of the secured creditor; the basis for relief from the stay was duly pleaded; there were no misstatements of any fact; there was and is ample evidentiary support for all of the allegations in the MFR, and the MFR was supported by applicable law. The complex history of the Loan (as defined below) may not have been fully detailed; however, the untold history of the chain of transfers was legally and factually irrelevant to the truth of the allegations in the MFR or the merits of the MFR. The MFR accurately alleged that Deutsche Bank, as Trustee for the Trust, was, in fact, the lawful owner of the Note and Mortgage and the secured creditor on whose behalf the MFR was

duly filed by Chase, as servicer.

Moreover, the allegedly confusing and contradictory Garbis and Walter Assignments were duly executed by authorized representatives of Chase for a lawful and appropriate purpose. The Walter and Garbis Assignments were not required to effectuate the ownership interest of Deutsche Bank, as Trustee for the Trust, in the Mortgage and Note. The transfer of that interest to the Trustee for the benefit of the Trust occurred by the endorsement, assignment and physical delivery of the Mortgage and Note in March 2006. The Walter and Garbis Assignments were therefore prepared for the sole purpose of connecting the chain of title to the Mortgage from the last holder of record (Long Beach Mortgage Company) to the current holder and foreclosing party (Deutsche Bank, as Trustee for the Trust). Neither a written nor a recorded assignment is required by New York State law to effectuate the assignment. However, such a connection from the last record holder to the current holder is required by New York title insurers to insure marketable title.

There is also no basis for sanctions predicated upon any alleged systemic or ongoing issues with the filing of motions for relief by Chase, or upon past conduct which has already been addressed by Chase and the courts. The US Trustee and the Debtor cite *In re Schuessler*, 386 B.R. 458 (Bankr. S.D.N.Y. 2008); *In re Pawson,* (Case No. 05-18439); and *In re Humphrey,* (Case No. 08-23404), as proof of a so called systemic problem. However, not only are these cases factually inapposite (each case involved an alleged misstatement of fact which directly led to the filing of the motion for relief; *i.e.,* whether the Debtor was in default, the extent of the default and/or the Debtor's lack of equity, with respect to a principal residence that the Debtor intended to retain and would retain but for the alleged misstatement). As the US Trustee knows, all three of these cases pre-date the Pawson Letter (as defined below) and Chase's ongoing

implementation of new policies and procedures in connection with the Pawson Letter. The US Trustee has failed to identify a single case post dating the implementation of these procedures which questions Chase's filing of a motion for relief in this District or alleges a deviation from the representations in the Pawson Letter.

While Chase will address the concerns of this Court on the merits, Chase must also object to the conduct of these proceedings. The US Trustee has "joined" and/or "supported" the Debtor's request for sanctions under Rule 9011; however, the Debtor has never moved for sanctions under Rule 9011, and neither the Debtor nor the US Trustee has complied with the mandatory prerequisites for requesting sanctions under Rule 9011(c).

The request of the Debtor and the US Trustee must be denied. At worst, as Judge Morris stated in *Templehoff,* 339 B.R. 49 (Bankr. S.D.N.Y. 2005), this case involves:

> "a slight error that upon first blush appeared to have been an intentional attempt to mislead the Court, but after further investigation was discovered to be an innocuous inaccuracy."

Chase will also address the Debtor's conduct. The Debtor has unreasonably and vexatiously multiplied the litigation in this case by filing pleadings which are not supported by the law and which are directly contradicted by documentary evidence. The Debtor has attempted to capitalize upon the current economic and political climate to extract legal fees from Chase. There was no proper purpose for the Debtor's pleadings.

The Debtor has continued to object to the MFR notwithstanding that the Debtor has: (i) acknowledged the obligations under the Note and Mortgage; (ii) acknowledged the defaults (since September 2007) under the Note and Mortgage; (iii) acknowledged her intent to surrender the Premises; (iv) acknowledged that the Premises was never her residence; (v) acknowledged her inability to cure arrearages; (vi) never asserted that the obligations under the Note and

Mortgage are due to any other party; (vii) acknowledged no economic interest in the Premises; and (viii) has received documentary evidence to refute all claims that any false or fraudulent documents were created or filed by Chase. The facts prove that the Debtor has attempted to mislead this Court and the US Trustee as to the allegations against Chase.

Indeed, after all of the effort expended by the parties and the Court, the facts are precisely as initially set forth in the four page MFR.

Statement of Facts

1) On November 7, 2008, Chase, as successor servicer to WaMu for the Trust, filed the MFR Application (Teitelbaum Affirmation, Exhibit A), which correctly and accurately alleged that:

- Deutsche Bank, Trustee for the Trust, was the owner and holder of the Mortgage and Note and was the creditor on whose behalf the MFR was filed
- Chase, as successor servicer, was seeking to vacate the automatic stay for cause
- Cause included a lack of adequate protection, including the Debtor's failure to make pre and post petition payments; the stated intent to surrender the Premises and not to make any payments on the Note and Mortgage; and the fact that the Premises was not the Debtor's residence

Part I: The Loan and the Chain of Title

2) The Debtor applied to Long Beach Mortgage Company ("**Long Beach Mortgage**") for a loan in the amount of $130,000 (the "**Loan**"), which was used to finance 100% of the Debtor's purchase of certain property identified as 1651 Metropolitan Avenue Apt 7C Bronx, N.Y. 10462 (the "**Premises**").

3) On or about January 6, 2006, the closing of the Loan took place and the Debtor

executed, among other documents:

- A promissory note payable to the order of Long Beach Mortgage Company dated January 6, 2006, in the principal amount of $104,000 (the "**Note**") (Teitelbaum Affirmation, Exhibit E)
- A mortgage on the Premises in favor of Long Beach Mortgage, dated January 6, 2006 (the "**Mortgage**"), securing the obligations under the Note, and properly recorded with the Office of the New York City Register on January 20, 2006 (Teitelbaum Affirmation, Exhibit F).

4) The Loan was originated by Long Beach Mortgage and assigned Long Beach Loan Number 6641562, which number was affixed to the Mortgage and Note. At the closing, pursuant to a letter dated January 6, 2006 (the "**January 6 Welcome Letter**"), the Debtor was advised that the loan servicer for Long Beach Mortgage Loan Number 6641562 was WaMu and that a WaMu loan number would be issued. (Teitelbaum Affirmation, Exhibit G).[2] Thereafter, by letter dated January 11, 2006 (the **"January 11, 2006 Welcome Letter**" and together with the January 6 Welcome Letter, the "**Welcome Letters")** the Debtor was advised that WaMu Loan Number 0697215101 was replacing Long Beach Loan Number 6641562. (Teitelbaum Affirmation, Exhibit H).

5) Subsequent to the closing of the Loan, pursuant to a certain Mortgage Loan Purchase Agreement, dated February 24, 2006) (the "**MLPA**") between Long Beach Mortgage and Long Beach Securities Corporation ("**Long Beach Securities**") (Teitelbaum Affirmation, Exhibit J), Long Beach Securities Corporation purchased certain mortgage loans from Long Beach Mortgage, including the Loan evidenced by the Mortgage and Note. The MLPA provided in pertinent part:

---

2 In responses to admissions dated June 17, 2009 (Number 26), the Debtor admitted receipt of the January 6 Welcome Letter (copies of a marked Request and the Debtor's Response are annexed to the Teitelbaum Affirmation as Exhibit I).

- Long Beach Mortgage is the Seller and Master Servicer (MLPA at p.1)
- Long Beach Securities is the Purchaser (MLPA at p.1)
- the intent of the parties is to deliver the mortgages and loans sold under the MLPA to the Trust under the Pooling/Servicing Agreement (as defined herein) (*Id.*)
- Deutsche Bank is the Trustee under the Pooling/Servicing Agreement (MLPA at p.1)
- loans sold under the MLPA are identified on a schedule referred to as the "Closing Schedule", which shall serve as the Mortgage Loan Schedule under the Pooling/Servicing Agreement (MLPA, at Section 2)
- that Long Beach Mortgage ***either*** deliver the mortgage files to Long Beach Securities or hold them in trust for Long Beach Securities until the "Closing Date" under the Pooling/Servicing Agreement (defined in the MLPA as March 7, 2007), at which time the loans and required documents were to be delivered to Long Beach Securities ***or*** to Deutsche Bank as the Trustee for the Trust (MLPA at Section 4)

6) The Mortgage Loan Schedule identifies Long Beach Loan Number (6642562) and WaMu Loan Number (697215101) as the Loan. (Teitelbaum Affirmation. Exhibit K; Reyes Affidavit).[3]

7) Pursuant to a Pooling and Servicing Agreement, dated as of March 1, 2006 among Long Beach Securities, as Depositor, Long Beach Mortgage, as Seller and Master Servicer, and Deutsche Bank as Trustee for the Trust (the "**Pooling/Servicing Agreement**") (a copy of the relevant portions of the Pooling/Servicing Agreement is annexed to the Teitelbaum Affirmation, Exhibit L):

- Long Beach Securities is identified as the Depositor of the mortgage loans (p.29)

3 Exhibit C to the Debtor's Second Amended Objection purports to be a schedule of mortgage loans delivered to the Trust in March 2006. The last page of the Debtor's Exhibit C identifies Long Beach Loan Number 6641562 with WaMu as servicer.

- Long Beach Mortgage is identified as the Master Servicer of the mortgage loans (p.39)
- The Sub-Servicer is identified as any person with whom the Master Servicer has entered into a sub-servicing agreement (p.64)
- Deutsche Bank is identified as the Trustee (p.66)
- The Trustee is also identified as the Custodian of the mortgage loan documents (p.74) and is deemed to be holding the loan documents for the Trustee (Section 8.11)
- All right title and interest in the mortgage loans and the MLPA are conveyed to the Trustee for the benefit of the Certificateholders of the Trust (Section 2.01)[4]
- Documents required to be delivered to the Trustee and Custodian were:
  - original mortgage note endorsed in blank, or endorsed to the order of Deutsche Bank National Trust Company, as Trustee
  - original mortgage; and
  - assignment of mortgage in blank

  (Section 2.01)
- The Master Servicer or the Sub-Servicer is, among other things:
  - authorized and empowered by the Trustee to, among other things, institute foreclosure proceedings
  - granted a power of attorney by the Trustee to carry out the duties of the servicer (Sections 3.01 and 3.16(a));
- The Master Servicer may enter into sub servicing agreements including a Sub-Servicing Agreement between Long Beach Mortgage, as Master Servicer, and WaMu, as Sub-Servicer, dated April 9, 2001 (Section 3.02);
- The Depositor or the Master Servicer may be merged or consolidated with or into any person, or transfer all or substantially all of its assets to any person and such person shall be the successor to the Depositor or the Master Servicer

4 The Pooling/Servicing Agreement further provides that if the transaction contemplated under Section 2.10 is deemed not to be a sale, then the Depositor is deemed to have granted to the Trustee a first priority security interest in the Depositor's rights to the mortgage loans and all other property conveyed to the Trust. (p. 74)

without the execution or filing of any paper or further act on the part of the parties (Section 6.02)

8) In accordance with Section 3.02 of the Pooling/Servicing Agreement, an Amended and Restated Sub-Servicing Agreement, dated as of January 1, 2005 was executed by Long Beach Mortgage, as Master Servicer and WaMu, as Sub-Servicer (the "**Sub-Servicer Agreement**") (Teitelbaum Affirmation, Exhibit M). The Sub-Servicer Agreement provides in pertinent part that:

- it is an amendment to the April 9, 2001 Sub-Servicing Agreement between Long Beach Mortgage (as Servicer) and WaMu (as Sub-Servicer) (p.1)
- the Sub-Servicer Agreement applies to existing and future servicing agreements to which Long Beach Mortgage is identified as servicer, which agreements are defined as the "Outstanding Agreements" (p.1)
- Long Beach Mortgage appointed WaMu to perform the duties of the servicer for the Outstanding Agreements and authorized WaMu to take all actions which the servicer is authorized to take (Sections 2.1 and 2.3)

9) On or about March 7, 2006, Deutsche Bank, as Trustee for the Trust, pursuant to the Pooling/Servicing Agreement and the MLPA, received:

- the original Note, endorsed in blank by Long Beach Mortgage (Teitelbaum Affirmation, Exhibit E; Reyes Affidavit)
- the original Mortgage (Teitelbaum Affirmation, Exhibit F; Reyes Affidavit),
- the original assignment of the Mortgage to blank, executed on January 12, 2006, by Long Beach Mortgage (the "**Assignment to Blank**") (Teitelbaum Affirmation, Exhibit N; Reyes Affidavit)
- the title commitment with respect to the Mortgage (and subsequently received the original title policy) (Reyes Affidavit)

10) At all times since March 2006 to date, Deutsche Bank, as Trustee for the Trust has and continues to have beneficial ownership (at times through its agent Chase) of the original Note endorsed in blank, the original Mortgage, the Assignment to Blank and the

ancillary documents executed in connection therewith, on behalf of the Certificateholders of the Trust, pursuant to the PSA. (Reyes Affidavit)

11) At the request of Chase, as servicer, made in June 2009, the custodial loan file for the Loan was shipped by Deutsche Bank, as Custodian for the Trust on or about July 1, 2009 to Chase as servicer for the Trust, for litigation purposes in connection with the prosecution of the motion for relief from the stay with respect to the Loan. On or about July 24, 2009, the custodial loan file was returned to Deutsche Bank, as Custodian. At the subsequent request of Chase, as servicer, made in September, 2009, the custodial loan file was shipped by Deutsche Bank, as Custodian for the Trust to Chase, as servicer, on or about September 3, 2009, who now presently holds these documents as agent for the Trust. (Reyes Affidavit).

12) At all relevant times prior to September 25, 2008, WaMu was the Loan Servicer for the loans in the Trust, including the Loan. (Teitelbaum Affirmation, Exhibit L and M; Reyes Affidavit).

Part II: Long Beach Mortgage, WaMu and Chase

13) The corporate documents annexed to the Grigg Affirmation as Exhibit C reflect that as of July 2006 Long Beach Mortgage was merged into WaMu and WaMu was the successor entity. (Teitelbaum Affirmation, Exhibit D).

14) As set forth in the Grigg Affirmation (Teitelbaum Affirmation, Exhibit D), on September 25, 2008, WaMu was closed by the Office of Thrift Supervision and the FDIC was named as receiver; thereafter, the FDIC, as receiver for WaMu, pursuant to its authority under the Federal Deposit Insurance Act, transferred and assigned to Chase certain assets and liabilities of WaMu (as identified in a certain Purchase and Assumption Agreement between the FDIC as receiver of Washington Mutual and JPMorgan Chase Bank, N.A., dated

September 25, 2008 (the "**WaMu Purchase and Assumption Agreement**") (Teitelbaum Affirmation, Exhibit O).

15) Pursuant to the WaMu Purchase and Assumption Agreement, without the requirement of any further approval, assignment or consent of any party, Chase specifically assumed all mortgage and servicing rights and obligations of WaMu (Section 2.1); and specifically purchased all mortgage and servicing rights and obligations of WaMu (Section 3.1).

16) Pursuant to this transaction, from September 25, 2008 to date, Chase has been the servicer for the Trust and the Loan. (Reyes Affidavit).

Part III: Chase, LPS, the Walter and Garbis Assignments

17) As part of its loan servicing operations, Chase engages certain outside contractors for litigation support for loans that are in default or in bankruptcy proceedings. Among the outside contractors so engaged in connection with the Loan was LPS Default Solutions ("**LPS**"). (Garbis Affidavit).

18) LPS was responsible to, among other things, communicate with outside counsel concerning the status and enforcement of defaulted loans and was authorized, pursuant to a duly executed power of attorney by Chase in favor of LPS, to execute, as an agent for Chase, certain documents which outside counsel may require in connection with loans worked on by LPS for Chase. LPS employees are not employees of Chase. (Garbis Affidavit).

19) LPS referred the Loan to Steven J. Baum, P.C. ("**Baum**") to prepare and file a motion for relief from the automatic stay. Baum initially reviewed a computer screen shot delivered by LPS which indicated that JPMorgan was the servicer for the Loan which had been transferred and conveyed to Deutsche Bank, as Trustee for the Trust (the "**Screen**

Shot"). (Baum Affidavit) (Garbis Affidavit). (A copy of the Screen Shot produced to the Debtor on August 24, 2009 is annexed to the Baum Affidavit as Exhibit A).

20) Upon obtaining, the loan documents, including the Note and Mortgage, Baum reviewed a title search for the Premises which revealed that the Mortgage was recorded with the City Register on January 20, 2006 in the name of Long Beach Mortgage Company, as mortgagee and that there was no recorded assignment of the Mortgage to Deutsche Bank as Trustee for the Trust. (Baum Affidavit).

21) The MFR was prepared and accurately identified that JPMorgan was the servicer for the Loan and that Deutsche Bank as Trustee for the Trust was the secured creditor for the Loan. (Baum Affidavit; Teitelbaum Affirmation, Exhibit A).

22) Based upon their experience in the area of title and foreclosure in the State of New York, Baum determined that New York law does not require the recording of an assignment of mortgage for such assignment to be valid and enforceable between the parties thereto. Moreover, Baum determined that even though intervening assignments were not recorded (including the transfer from Long Beach Mortgage to Long Beach Securities pursuant to the MLPA) the lack of public recordation was not relevant to the rights and interests of Deutsche Bank, as Trustee for the Trust in the Loan or to the subsequent recoding of such interests to confirm the prior transfer of the Note and Mortgage to Deutsche Bank for the Trust since Deutsche Bank was still in possession of the Note and Mortgage. *(Id.)*

23) Therefore, Baum determined that the absence of a recorded assignment of the Mortgage into Deutsche Bank, as Trustee, did not affect the ownership interests of Deutsche Bank, as Trustee for the Trust. However, Baum determined that a reputable title insurance company would require a recorded assignment of the Mortgage from the last holder of record

(Long Beach Mortgage) to the foreclosing party (Deutsche Bank, as Trustee for the Trust) in order to insure a transfer of title in a foreclosure sale. (*Id.*). Accordingly, an assignment of mortgage was prepared to connect the chain of title, for purposes of public record only, from Long Beach Mortgage to Deutsche Bank, as Trustee for the Trust.

24) Based upon the documents annexed to the Grigg Affidavit and Grigg Affirmation, Baum determined that Long Beach Mortgage had been merged into WaMu in or about July 2006 and Chase had acquired substantially all of the assets and loan servicing rights and obligations of WaMu from the FDIC in or about September 2008. As such, as of October/November 2008, Baum concluded that Chase was the only entity that could execute an assignment of the Mortgage from Long Beach Mortgage to Deutsche Bank, as Trustee for the Trust. (Baum Affidavit).

25) Baum prepared an assignment of the Mortgage which reflected that:

i. Chase, as purchaser of loans and other assets of "Savings Bank" from the Federal Deposit Insurance Company, as receiver, was the Assignor

ii. Deutsche Bank National Trust Company, as trustee for Long Beach Mortgage Trust 2006-2, was the Assignee

iii. The original lender was Long Beach Mortgage Company; and

iv. The subject of the assignment was the Mortgage, as recorded with the New York City Register on January 20, 2006

(*Id.*)

26) The form of assignment did not specify that the "Savings Bank" was WaMu, or the identity of the representative of Chase who was to execute the assignment.

27) The form of assignment was delivered to LPS. On or about November 1, 2008,

an assignment executed by Scott Walter, as attorney in fact for Chase, was delivered by LPS to Baum (the "**Walter Assignment**"). (Teitelbaum Affirmation Exhibit P). However, Baum determined that the New York City Clerk would not accept an assignment executed in the capacity of attorney in fact for filing unless accompanied by a power of attorney. Accordingly, Baum requested that LPS provide a power of attorney for the Walter Assignment. (*Id.*).

28) Instead, an assignment dated November 1, 2008 executed by Ann Garbis, Vice President of JPMorgan Chase Bank, N.A (the "**Garbis Assignment**"), in recordable form without the necessity of a power of attorney, was delivered to Baum by LPS. (Teitelbaum Affirmation, Exhibit Q). Thus, the Walter Assignment was treated as a duplicate document and Baum caused the Garbis Assignment to be recorded with the City of New York in anticipation of obtaining relief from the stay and proceeding with a foreclosure sale. (*Id.*)

29) Baum inadvertently annexed the Walter Assignment to the MFR Application with the Note and Mortgage. (*Id.*) The error was identified in the Debtor's First Amended Objection dated February 3, 2009 (Docket No. 30), which also challenged the validity of the Walter Assignment and the description of the chain of title of to the Mortgage.

30) In response to the First Amended Objection, Baum filed the Grigg Affirmation (Teitelbaum Affirmation, Exhibit D), which annexed (i) a duly executed and acknowledged power of attorney evidencing the authority of Scott Walter, as attorney in fact for Chase (the "**LPS Power of Attorney**") (Teitelbaum Affirmation, Exhibit D at Exhibit A; Teitelbaum Affirmation, Exhibit R; Garbis Affidavit); (ii) the Garbis Assignment, together with proof of recording with the New York City Register (Teitelbaum Affirmation, Exhibit D); and (iii) documents evidencing the chain of mergers and/or asset acquisitions between and among

Long Beach Mortgage, WaMu and Chase (Teitelbaum Affirmation, Exhibit D).

31) The Grigg Affirmation specified:

- that the underlying Mortgage and Note were delivered and assigned to the Trustee for the Trust (Teitelbaum Aff., Exhibit D at ¶¶13-14)
- that WaMu was the ultimate successor to Long Beach Mortgage (*Id.* at ¶15)
- that Chase acquired substantially all of the assets, including servicing obligations and rights of WaMu from the FDIC, as receiver for WaMu (*Id.* at ¶16)
- that Chase was the current servicer (*Id.*)
- that Deutsche Bank, as Trustee, was the current holder and owner of the Note and Mortgage for the Trust (*Id.* at ¶17-18)

32) In addition, in response to the Debtor's continued claim that the Garbis Assignment was false or fraudulent, two duly acknowledged certificates of incumbency were produced to the Debtor. (Teitelbaum Affirmation, Exhibit S).[5]

33) It is acknowledged that how or why the Garbis and Walter Assignments were prepared was not fully explained in the MFR; however, Chase provided sufficient support to prove that the Walter and Garbis assignments were validly executed by duly authorized representatives of Chase, were not false or fraudulent, were consistent with the facts alleged in the MFR concerning the interests of Deutsche Bank, as Trustee and Chase, as servicer, had

5 On March 16, 2009, the Debtor was provided with a copy of an acknowledged certificate of incumbency, dated January 26, 2009, identifying, among others, Ann Garbis, as a duly elected officer of Chase authorized to execute, among other things, assignments of mortgages as appropriate in the ordinary course of servicing mortgage loans. Debtor's counsel incorrectly, and without any legal or factual basis, concluded that, because the January 26, 2009 Garbis Certificate of Incumbency post dated the November 1, 2008 Garbis Assignment, the Garbis Assignment "was signed by a party not authorized to sign on behalf of Chase". (Second Amended Objection at p. 20). In response, Chase, produced a second, duly acknowledged, certificate of incumbency, dated November 6, 2009, specifically tailored to Ms. Garbis which confirmed that Ms. Garbis was authorized, effective September 26, 2008, to execute among other documents, assignments of mortgages. (Teitelbaum Affirmation, Exhibit S). Nevertheless, the Debtor continues, without basis, to challenge the authority of Ms. Garbis to have executed the Garbis Assignment and to allege that the Garbis and Walter Assignments are false and fraudulent.

no effect upon the Debtor's obligations under the Note and Mortgage, and were prepared consistent with New York title insurance company practices of bringing current the record holder of the mortgage by recording an assignment from the last holder of record. Thus, Chase, as the successor to the interests of the last mortgage holder of record (Long Beach Mortgage), executed the assignments to publicly record, effective March 7, 2006, that the Mortgage and Note had been conveyed to the current holder (Deutsche Bank, as Trustee for the Trust).

34) The MFR complied with LBR 4001-1, accurately setting forth the chain of interests in the Mortgage and accurately alleging that Chase, as servicer had standing.

Part IV: Chase Policies Concerning Motions for Relief

35) As detailed in the Greece Affidavit, in conjunction with the resolution of the Pawson Case, the Pawson Letter was delivered to the US Trustee and filed in the Pawson Case on January 22, 2009, as Docket No. 30. The Pawson letter was more than aspirational; it stated the intention of Chase[6] to implement improved practices and policies in connection with motions for relief from the stay[7] filed in the Southern District of New York (Teitelbaum Aff., Exhibit T).

36) Since the filing of the Pawson Letter, Chase has incurred significant cost to continue to voluntarily implement practices and procedures in connection with the filing of motions for relief from the stay with respect to individual debtor cases.

37) The efforts to improve the quality of motions for relief and to work with borrowers before seeking relief remain ongoing. To date, Chase has institutionalized the

6 In this context Chase includes affiliated and related entities, such as Chase Home Finance, LLC.
7 The MFR filed in this case in November 2008 predated the filing of the Pawson Letter.

following procedures:

- Obtained the agreement of investors to extend the period of default before a matter is referred to outside counsel for the preparation of a motion for relief is filed from 35 days to 62 days for all loans, other than Freddie Mac, and to 45 days for Freddie Mac loans
- Upon receipt of notice of the commencement of a bankruptcy case, a letter ("**Initial Bankruptcy Letter**") is sent to the Debtor indicating how the loan will be handled during the bankruptcy, including how post petition payments are to be made (a copy of the form of Initial Bankruptcy Letter (Documents Nos. 001222-001228) is annexed to the Greece Affidavit as Exhibit A)
- Prior to causing a motion for relief to be filed, the Debtor or counsel to the Debtor will receive a notice informing the Debtor (i) that the loan is at least 30 days post petition delinquent and specifying the defaults; (ii) that a motion for relief will be filed unless the defaults are cured; (iii) that options including loss mitigation are available; (iv) how to make cure payments; and (v) of the contact information for a person or department responsible for the loan ("**Pre MFR Filing Letter**") (a copy of the form of Pre MFR Filing Letter (Document Nos.001229-001233) is annexed to the Greece Affidavit as Exhibit B)
- A check list has been created for internal use to ensure that all documents that are relevant to the completion of the LBR 4001-1 work sheet and the motion for relief are reviewed (the "**Check List**") (a copy of the Check List (Document No. 001234) is annexed to the Greece Affidavit as Exhibit C)
- A form of motion for relief has been created for outside counsel to adapt as necessary, and which is substantially more detailed than is required under LBR 4001-1 to include, among other things, a description of whether the subject property is the debtor's residence, detail as to the defaults and payment history, an assessment of the equity cushion, if any, identification of the chain of title to the mortgage and note, and specific references to efforts to contact the opposing party prior to filing the motion (the "**Form MFR**") (a

copy of the Form MFR (Document No. 001235-001249) is annexed to the Greece Affidavit as Exhibit D)

- Once a loan is referred to outside counsel for the preparation of a motion for relief, before a motion can be filed, counsel must document efforts (at least two efforts providing at least 15 days notice) to contact counsel for the Debtor (or the Debtor if *pro se)* to inform such party of the intent to file a MFR and to provide the Debtor with an opportunity to address the alleged defaults, or to seek loss mitigation under the local rules; these efforts are documented in the motion for relief that is filed
- A title search is ordered for all loans referred for a motion for relief in order to verify, among other things, the due recording of the mortgage and the chain of title to the mortgage
- A policy and procedure has been distributed to Chase employees and agents which outlines steps that must be taken in connection with the referral of a loan to outside counsel for a motion for relief ("**JPM Policy**") (a copy of the JPM Policy has been withheld subject to either agreement on the terms of a protective order or an order of this Court which addresses the proprietary and confidential nature of such internal policies)
- In addition to hiring outside counsel to prepare and prosecute motions for relief, Chase has engaged additional outside counsel to review the motion for relief before filing in the Southern District of New York
- Chase has made significant investments in systems and personnel to bolster its National Bankruptcy Practice Group, which is responsible for monitoring and managing mortgage loans (other than commercial and home equity loans) which are the subject of an individual bankruptcy
- Chase has made significant investments in systems and personnel to integrate a loss mitigation/loan modification group under the direction of Chase's National Bankruptcy Practice Group in an effort to promptly assess loan modification as an alternative to a motion for relief from the stay
- Additional and other improvements to Chase systems are being implemented to improve the information available concerning, among other things,

payment histories, escrows, and defaults.[8]

Part V: The Debtor's Baseless And Misleading Pleadings

38) In opposition to the MFR, the Debtor asserted, without any legal or factual basis, a laundry list of defenses to the MFR. As a result of the pleadings filed and documents produced in response to the Objection, virtually all of the claims and defense have been withdrawn. The Debtor also sought legal fees pursuant to 28 U.S.C. §1927, not Rule 9011, in the event that the MFR was withdrawn or denied on any of the grounds asserted in the Objection. (Docket No. 22 at pp. 2 – 8; Docket No. 65).

39) The Objection was addressed, point by point, in the Grigg Affidavit, demonstrating:

- payments and charges were properly assessed (pages 2-4)[9]
- no notice of default was required (page 5)
- Freddi Mac/ Fannie Mae/Ginnie Mae guidelines were not applicable (page 5)
- the defenses of bad faith and unclean hands were baseless (pages 6-10)
- HUD counseling was neither required by statute nor applicable (page 10)
- Chase had standing to file the MFR on behalf of Deutsche Bank (pages 11-12)
- production of the original note was not required (pages 12-14)

40) Notwithstanding the Grigg Affidavit, the Debtor's First Amended Objection continued with claims that were directly contrary to facts then known to the Debtor. By way of example, the Debtor alleged that the loan number on the face of the Walter Assignment (Loan Number 0697215101, the "**WaMu Loan Number**") was "unfamiliar to the Debtor

8 The foregoing is not an exclusive list of enhancements being implemented by Chase and Chase continues to reserve the right to modify its procedures and forms in order to address changing circumstances, laws and local rules. Chase is not aware of any other institution which has gone to the lengths described above to improve the quality of its practice before this and other courts.

9 The Debtor even alleged that payments had been misapplied, when in fact no payments had been made since September 2007. (Docket No. 22 at para 1).

and does not appear in any other documents known to the Debtor". (Docket No. 30 at ¶ 2). However, in response to discovery demands by Chase, the Debtor produced, among other documents, a Home Loan Statement dated November 19, 2007 (the "**Loan Statement**"), which provided "Your Loan Number 0697215101". (Teitelbaum Affirmation, Exhibit U). This is the identical loan number set forth on the Walter and Garbis Assignments of which the Debtor claimed no knowledge. In addition, as discussed above, the WaMu Loan Number on the Walter Assignment and Garbis Assignment is the loan number identified in the January 11, Welcome Letter and in the Mortgage Loan Schedule. (Teitelbaum Affirmation, Exhibits H and K).

41) On October 6, 2009, Chase produced Charles Herndon, Operations Unit Manager- - Litigation Support for Chase, to testify with respect to the business records of Chase relating to the chain of title of the Mortgage and Note and the standing of Chase (a copy of the relevant portions of the Herndon Transcript; together with a copy of an email dated September 17, 2009 reflecting the capacity in which Mr. Herndon was to expected to testify is annexed to the Teitelbaum Affirmation as Exhibit V). [10]

42) On November 10, 2009, the original loan file delivered to counsel for Chase in connection with this litigation, including the original Mortgage, Assignment to Blank of the Mortgage in Blank, Note endorsed in blank, and title policy was produced to the Debtor for inspection and copying at the offices of Teitelbaum and Baskin. (Teitelbaum Affirmation, Exhibit E, F and N). Nevertheless, the Debtor continues to allege that the Note was not endorsed or duly transferred and assigned to the Trustee. (Second Amended Objection at pp.

10 Contrary to the claim that Mr. Herndon lacked personal knowledge as to the facts of the MFR, Mr. Herndon did competently testify as to his understanding of the chain of title of the Mortgage and Note and the roles of Long Beach Mortgage, Deutsche Bank, WaMu and Chase, based upon his review of the business records of Chase and his personal knowledge as an employee of WaMu and Chase. Based upon agreement of the parties, this was the reason Mr. Herndon was produced. (*See* US Trustee Pleading at p 4).

5, 11-12, 15-18, and 22).

43) On February 4, 2010, Chase responded to Debtor's request for the deposition of Chase under Fed R. Civ. P. 30 (b) and the production of documents in connection therewith and produced to the Debtor and the US Trustee, among other documents, copies of forms of documents being utilized by Chase as part of the policies and procedures being implemented since January/February 2009 (Document Nos.001222-1249) as annexed to the Greece Affidavit.

44) The Debtor has admitted, among other things:

- Her signature on the Note (Teitelbaum Affirmation, Exhibit I, Response No. 1)
- Her initials and signature on the Mortgage (*Id.* at Response Nos. 3 and 4)
- Not making homeowner association and other assessment payments in the amount of at least $10,461 to Parkchester North Condominium (*Id.* at Response No. 10) (A copy of the lien filed by the association on May 1, 2007 is annexed to the Teitelbaum Aff. as Exhibit W)
- The last payment made on account of the Loan that is the subject of the MFR was September 2007 (*Id.* at Response No. 17)
- The Debtor has never occupied the subject premises (*Id.* at Response No. 19)
- Her initials on a disclosure concerning the affiliate relationship between Long Beach Mortgage and WaMu (*Id.* at Response No. 24)
- Her initials on the January 6 Welcome Letter identifying WaMu as the servicer (*Id.* at Response No. 26)

45) On December 7, 2009, the Debtor filed an Amended Objection (the "**Second Amended Objection**") (Docket No.65), wherein the Debtor omitted virtually all previously asserted claims and defenses to the MFR, purportedly "in order to narrow the issues presented before the Court". (Second Amended Objection at p. 1). However, as set forth in the chart annexed hereto as Exhibit 1, the Debtor continued to raise legally and factually

baseless objections to the MFR.

46) On January 8, 2010, as represented to this Court on January 7, 2010, a loan modification package was sent by counsel for Chase to counsel for the Debtor to explore whether the Debtor could afford the Premises.

47) Notwithstanding the Debtor's alleged interest in a consensual resolution, no responsive information to loan modification package was provided as of January 28, 2010. Indeed, no responsive information or agreement to consent to relief from the stay has been received to date.

48) In view of the foregoing, precisely as was discussed with the Court and all parties on January 7, 2010, Chase filed the January 28, 2010 letter withdrawing the MFR. Incredibly, the Debtor has opposed Chase's withdrawal of the MFR and has again sought sanctions against Chase under 28 U.S.C. §1927. Chase has filed its response to this latest frivolous pleading.

Argument

SUMMARY OF ARGUMENT

49) Sanctions against Chase are not appropriate under 28 U.S.C. §1927, Bankruptcy Rule 9011, Bankruptcy Code §105, or otherwise. A pleading or allegation, to be sanctionable, must be presented for an improper purpose (Fed. Bankr. R. 9011 (b)(1)), or not be supported by existing law (*Id.* at (b)(2)), or lack evidentiary support (*Id.* at (b)(3)).

50) The pleadings and documents filed in support of the MFR were presented for a proper purpose, based upon existing law, and are supported by the facts and evidence. ***The MFR is factually accurate and is supported by the evidence.*** The allegations in the MFR are that (x) Deutsche Bank, as Trustee for the Trust, was the holder and owner of the

Mortgage and Note which were attached to the MFR; (y) Chase, as successor to WaMu, and as successor servicer for the Trust and Deutsche Bank, as Trustee for the Trust, was the moving party; and (z) cause existed for the relief requested, including (i) the Debtor's failure to make post petition payments on account of the Note and Mortgage with respect to the Premises, that was not the Debtor's residence, and which the Debtor intended to surrender.

51) The obligations on the Note and Mortgage are undisputed and it has never been suggested that the Debtor is obligated on the Note and Mortgage to any entity other than Chase, as successor servicer for Deutsche Bank, as Trustee for the Trust.

52) The documentary evidence available to the Debtor undeniably refutes the baseless claims that false or fraudulent documents were created to support the MFR and there is not a scintilla of proof to support the claims of the US Trustee or the Debtor that Chase systematically engages in the filing of improper motions for relief from the stay. To the contrary, the US Trustee relies on alleged past conduct which has been addressed and has chosen to disregard its actual knowledge of Chase's ongoing implementation of new policies and procedures with respect to motions for relief in individual cases since the filing of the Pawson Letter. The US Trustee has failed to identify a single case post dating the implementation of these procedures wherein Chase has filed a motion for relief which is improper or in breach of its representations in the Pawson Letter.

53) There is no procedural basis to award sanctions in this case under Bankruptcy Rule 9011. No separate motion or order for sanctions has been filed as required pursuant to Bankruptcy Rule 9011(c).

54) There is no legal or factual basis to for the imposition of sanctions against Chase or to compensate counsel for the Debtor under 28 U.S.C. §1927. The MFR has a valid legal

and factual predicate and was not filed in bad faith or for an improper purpose. There is no basis to reward the Debtor for the excessive and unreasonable fees allegedly incurred in prosecuting claims and objections to the MFR which, as recognized by this Court at the January 7, 2010 hearing, have been "thrown together with little regard for the facts and seemingly the law". (Transcript of January 7 Hearing at p. 2).

55) Bankruptcy Code §105 cannot be relied upon to create substantive rights or to modify substantive provisions of the Code or Rules. Thus, §105 cannot be the basis to impose sanctions in this case since there is no basis under either Rule 9011 or 28 U.S.C. §1927 to impose sanctions.

Point I
Sanctions Are Not Appropriate Under Bankruptcy Rule 9011

56) Sanctions may be imposed under Bankruptcy Rule 9011 only if the procedural and substantive prongs of the rule are satisfied. *In re Highgate Equities, Ltd.*, 279 F. 3d 148, 153 (2d Cir. 2002). The substantive prongs of Rule 9011 (b) which are arguably relevant herein are (b) (1) , (2) and (3). Pursuant to Rule 9011(b), by presenting a pleading to the court, the filing party is certifying that to the best of the person's knowledge information and belief, formed after reasonable inquiry under the circumstances:

> (i) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
> (ii) the claims, defenses or other legal contentions therein are warranted by existing law . . .
> (iii) the allegations and other factual contentions have evidentiary support. . .

57) Moreover, an award of sanctions under Rule 9011 is predicated upon a determination of whether the conduct and or pleading were objectively reasonable at the time of the filing, without the benefit of hindsight. *In re Highgate Equities, Ltd.*, 279 F. 3d at 153; *Ginther v. Provident Life and Cas. Ins. Co.*, 2009 WL 3424217 at *2 (2d Cir. October 26,

2009) (sanctions under Fed. R. Civ. P. 11(b)(1) when party knew claim was barred by *res juducata* but filed a pleading for no purpose other than to harass) [11]; *Rotter v. Leahy,* 93 F. Supp. 2d 487, 502 (S.D.N.Y. 2000) (no sanctions would be imposed where factual ambiguities, rather than factual certainty prevented determination that party knew statute of limitations had run at the time the pleading was filed); *LaVigna v. WABC Television, Inc.*, 159 F.R.D. 432, 434 (S.D.N.Y. 1995) ("[a] court cannot rely on hindsight in assessing the propriety of the attorney's conduct, but must instead base its award on the particular facts that were reasonably accessible to the attorney at the time of the signing."); *In re Intercorp Intern., Ltd.,* 309 B.R. 686, 693-94 (Bankr. S.D.N.Y. 2004); *In re Wingerter,* 2010 WL252184 at *1(6th Cir. January 25, 2010) (reversing the award of sanctions imposed by the bankruptcy court and affirmed by the 6th Circuit BAP against claims trader that purchased claims with an express warranty as to the validity of the claim and filed a proof of claim without supporting documents, but later withdrew the claim following the filing of an objection to the claim and the inability of the creditor to locate supporting documents; Circuit Court held that, the conduct of the claims agent in obtaining the warranty and inquiring as to the validity of the claim was reasonable under the circumstances known at the time, without the benefit of hindsight).

58) Thus, not every pleading which may fail to state a claim, is confusing, or even contains inaccuracies violates Rule 9011. *See, e.g., In re Templehoff,* 339 B.R. 49, 55 (Bankr. S.D.N.Y. 2005) (allegation that debtor was not in military service based upon counsel's review of the United States Defense Department data center record was inaccurate and contrary to the statements in the debtor's petition, but did not violate Rule 9011 where

11 *In re Interncorp Inter., Ltd.,* 309 B.R. 686,693 (Bankr. S.D.N.Y. 2004) (Fed. R. Civ. P. 11 informs the application of Bankruptcy Rule 9011).

counsel had conducted an objectively reasonable review of facts and where there was no injury to the debtor).

59) The US Trustee has not alleged that Chase has violated any of the substantive provisions of Rule 9011. Rather, the US Trustee alleges that Chase (i) filed two documents (the Garbis and Walter Assignments) in support of the MFR that are allegedly "confusing and contradictory" as to the issue of Chase's standing in this matter (Trustee Memo of Law at pp. 2 and 7); (ii) allegedly did not satisfy the pleading requirements under LBR 4001-1(c) (*Id.* at pp. 7-11); and (iii) has allegedly engaged in similar conduct in the past (*Id.* at pp. 12-14). These allegations fail to allege a *prima facia* claim for the imposition of sanctions under Rule 9011.

60) Similarly, the Debtor's prolific, *albeit* factually and legally deficient, pleadings do not support an award of sanctions or legal fees under 28 U.S.C. §1927. The Debtor's pleadings have been filed without regard for the facts or law known to the Debtor and in opposition to a motion for relief related to property in which the Debtor has expressed no interest to retain or pay for. None of the Debtor's fees or expenses are reasonable or compensable.

a) Bankruptcy Rule 9011 (b)(1): The MFR Was Filed For A Proper Purpose:

61) Sanctions may be imposed only if the pleading serves no legitimate purpose. *In re Highgate,* 279 F.3d at 154; *In re* Schuessler, 386 B.R. at 484. In *In re Highgate,* the Court of Appeals found that a letter filed with the bankruptcy court which advised the court of the disbarment of counsel had at least two legitimate purposes and therefore did not violate Rule 9011(b)(1). Similarly, in *In re Schuessler,* the court found that the filing of a motion for relief from the stay which the court determined could not be sustained due to factual

inaccuracies may have been filed for no purpose, but did not violate Rule 9011(b)(1) as it was not filed for an improper or nefarious purpose. *See also, In re Intercorp Intern., Ltd.*, 309 B.R. at 697 (filing of a petition to collaterally attack state court foreclosure judgment where debtor had not operated its business for years and there was no prospect for reorganization was filed without any purpose other than to delay and harass).

62) At the time of the filing of the MFR, the Debtor was indisputably over one year in arrears on the Mortgage and Note for the period up to the petition date and more than 30 days in arrears post petition. The Premises were vacant and had never been occupied by the Debtor. The Debtor also indicated on her schedules her intent to surrender the Premises and therefore not to make any further payments. Thus, the MFR was filed for cause for the legally proper purpose to protect the rights of a secured party with respect to its collateral. *Cf. In re Gaines,* 243 B.R. 221, 223-226 (Bankr. N.D.N.Y 1999) (purpose of motion for relief from stay was to permit the secured party to foreclose upon its mortgage - - relief granted).

63) Sanctions are not appropriate under Rule 9011(b)(1).

b) <u>Bankruptcy Rule 9011 (b)(2): The MFR Was Supported By Existing Law:</u>

64) The burden of proof on a motion for relief from the automatic stay is a shifting one. The movant has the burden of demonstrating cause and the debtor has the burden on all other issues other than the debtor's equity in the property. *In re Sonnax Industries, Inc.*, 907 F.2d 1280, 1285 (2d Cir. 1990); *Ford v. Board of Managers of Cameo Townhouses at Massapequa,* 2009 WL 425888 at *6 (E.D.N.Y. 2009) (not reported in F. Supp. 2d).

65) Cause exists where the Debtor has failed to make post petition payments. *In re Schuessler,* 386 B.R. at 480 ("to be sure, the failure to make mortgage payments constitutes cause for relief from the automatic stay and is one of the best examples of a lack of adequate

protection"); *In re Lord,* 325 B.R. 121, 129 (Bankr. S.D.N.Y. 2005) (failure to make post petition payments constitutes cause even where there may be equity in premises where the debtor indicated no intention to reorganize or cure arrears); *In re Uvaydov,* 354 B.R. 620, 623-24 (Bankr. E.D.N.Y. 2006); *Ford v. Board of Managers of Cameo Townhouses at Massapequa* 2009 WL 425888 at *6 (failure to make post petition payments can constitute cause).

66) Moreover, under Section 362(d)(2), relief from the stay shall be granted where the debtor has no equity in the property and the property is not necessary to an effective reorganization. By definition, in a Chapter 7 case, there is no effective reorganization and this element needs no further proof. *In re B.N. Realty Assoc. v. Lichtenstein,* 238 B.R. 249, 258 (S.D.N.Y. 1999); *Powers v. America Honda Finance Corp.*, 216 B.R. 95 (Bankr. N.D.N.Y. 1997); *In re Diplomat Electronics Corp.*, 82 B.R. 688, 693(Bankr. S.D.N.Y. 1988); *In re Ray*, 2009 WL4506291 at *3 (Bankr. E.D.N.Y. November 25, 2009).

67) The MFR was properly filed under Bankruptcy Code§362(d)(1) and (2). The MFR alleged that the Trust, by Deutsche Bank as Trustee, was the secured creditor in possession of the Mortgage and Note and that Chase, as servicer for the Trust, was the movant. Further, the MFR properly alleged that, the Debtor had not made a payment for more than one year up to the petition date and over 30 days post petition. Based upon the Debtor's statement of intent to surrender the Premises, it was admitted that there was no intent to make any payments. The Premises were admittedly not necessary to an effective reorganization in this Chapter 7 and were not even the Debtor's residence. Based upon a valuation annexed to the MFR, which reflected a value of $137,000, it was alleged that there was minimal if any equity in the Premises. Indeed, there was no equity in the Premises as of

the Petition Date considering the aggregate mortgage debt in the principal amount of approximately $130,000 and the Debtor's obligations to the condominium association in the amount of in excess of $10,000, which was a lien against the Premises. Even assuming equity in the Premises, cause existed based upon the Debtor's failure to make post petition payments and stated intent to surrender the Premises and therefore not make any further payments. *In re Lord,* 325 B.R. at 1219

68) The MFR alleged facts supported by evidence and applicable law:

- the Mortgage and Note were duly negotiated to and in the possession of Deutsche Bank, as Trustee for the Trust; Chase, pursuant to the WaMu Asset Purchase Agreement, was the successor to WaMu as servicer for the Trust; and Chase, as servicer, had standing to enforce the terms of the mortgage for the Trust, including the ability to commence a foreclosure action and obtain relief from the automatic stay. *See MERS v. Coakley,* 838 N.Y.S.2d 622 (2d Dep't 2007) (servicing agent has standing to bring foreclosure); *Fairbanks Capital v. Nagel,* 289 A.D.2d 99 (1st Dep't 2001) (servicing agent has standing to bring foreclosure action); *In re Conde Dedonato,* 391 B.R. 247 (Bankr. E.D.N.Y. 2008) (loan servicer has standing as creditor); *see also Greer v. O'Dell,* 305 F. 3d 1297, 1302-03 (11th Cir. 2002) (loan servicer as agent for disclosed principal is a real party in interest with standing); *In re Wooberly,* 383 B.R. 373, 379 (Bankr. D. S.C. 2008) (loan servicer has standing to seek relief from stay).
- The Note is a negotiable instrument as defined in N.Y.U.C.C. §3-104. *MERS v. Coakley,* 838 N.Y.S.2d 622 (2d Dep't 2007). The Note was endorsed in blank (permanently affixed to the back of the third page) by Long Beach Mortgage. (Teitelbaum Affirmation. Exhibit E). The Note was a bearer instrument which may be negotiated by delivery alone. N.Y.U.C.C. §3-204; *MERS v. Coakley,* 838 N.Y.S.2d at 622.
- On or about March 7, 2006, the Note, endorsed in blank, together with the Mortgage and the Assignment to Blank were delivered, pursuant to the

MLPA and the Pooling/Servicing Agreement, to Deutsche Bank as Trustee and Custodian for the Trust and remained in the possession of the Trust as of the filing of the MFR. Pursuant to New York Law, the Note was negotiated to the Trustee for the Trust and the Trust's interest in the Note was duly perfected by such possession. N.Y.U.C.C. §§9-304(b)(1) and 9-305.

- The obligations under the Note were secured by a duly recorded Mortgage held and owned by the Trust as of March 7, 2006. Under New York law, as of the recording of the Mortgage on January 20, 2006, the obligations under the Note were secured by a perfected interest in the Premises. N.Y.R.P.L. §291; *Alliance Funding Co. v. Taboada,* 39 A.D. 3d 784 (2d Dep't 2007); (Grigg Affirmation at para 8).
- Pursuant to New York law, an assignment of mortgage does not have to be in writing or recorded to be effective and an assignment may confirm an actual prior transfer. N.Y.R.P.L. §291; *Fryer v. Rockefeller,* 63 N.Y. 268, 276 (1875) (a good assignment of a mortgage is effected by delivery only and recording only serves to put the world on notice of the assignee's interest); *U.S. Bank, N.A., v. Adrian Collymore,* 890 N.Y.S.2d. 578 (2d Dep't 2009) (upon the transfer of a note, endorsed in blank, the mortgage passes with the debt as an inseparable incident thereof); *MERS v. Coakley, supra.; HSBC Bank USA National Association as Trustee, etc. v. Delacadena,* 2009 WL 3384432 at *2 (Sup. Ct. Suffolk 2009) (same); *Deutsche Bank National Trust Co., as Trustee v. Gillio,* 881 N.YS. 2d 362 (Sup. Ct. Suffolk Co 2009) (assignment executed subsequent to commencement of action was deemed effective as of an earlier date when the mortgage note endorsed in blank together with mortgage were actually delivered to transferee as of the stated effective date); *Freemont Investment & Loan v. Laroc,* 873 N.Y.S. 2d. 511 (Sup. Ct. Queens Co. 2008) (mortgage may be assigned by delivery of the note and mortgage or by a written instrument; in addition the written instrument may be executed to acknowledge and record an interest that was conveyed at an

earlier time); *See also* (Grigg Affirmation at para 10).

69) The title report reviewed by Baum prior to filing the MFR confirmed that, on January 20, 2006, the Mortgage was recorded in the name of Long Beach Mortgage with the New York City Register and that, as of the commencement of this case no subsequent mortgage or assignment, including to the Trustee for the Trust, was of record. The Mortgage, together with the Note, endorsed in blank by Long Beach Mortgage, and the Assignment to Blank of the Mortgage, executed by Long Beach Mortgage were actually delivered to the Deutsche Bank, as Trustee for the Trust on or about March 7, 2006 pursuant to the MLPA and the Pooling/Servicing Agreement. Accordingly, as of the filing of the MFR, Deutsche Bank was, in fact, the holder of the Mortgage and Note as alleged in the MFR and the MFR was supported by existing law.

70) Why then were the Walter and Garbis Assignments prepared? As set forth in the Baum Affidavit, an assignment of mortgage was necessary to connect the chain of title, of record only, to the moving party. Parties to the foreclosure sale typically expect that title will be marketable or insurable post foreclosure. In New York, in order for a title insurer to insure title conveyed pursuant to a foreclosure judgment, the recorded chain of title must include an assignment from the last record holder to the party bringing the foreclosure action. In this case, the last holder of record of the Mortgage was Long Beach Mortgage. As Long Beach Mortgage was no longer in existence, the assignment of mortgage to the Trust was effected by Chase, as the ultimate successor to the interests of Long Beach Mortgage in the Mortgage. Under New York law, an assignment may be recorded to confirm a transfer which actually occurred at an earlier time. *Deutsche Bank v. Gillio,* 881 N.Y.S.2d at 362; *Freemont Investment & Loan v. Laroc,* 873 N.Y.S. 2d. at 511. Thus, the Walter and Garbis Assignments were prepared based upon the evidence available that Chase was the successor

to the last holder of record (Long Beach Mortgage) and that the assignment was consistent with New York practice of bringing current the record holder by assignment from the prior record holder and confirming, as matter of public record, the prior assignment.

71) To be clear, at the time the Garbis and Walter Assignments were executed, Chase was not the holder of the Note and Mortgage. However, contrary to Debtor's contentions, that did not make the Walter and Garbis Assignments false or fraudulent, or result in any misrepresentation to this Court. The assignments were duly executed by authorized representatives or agents of Chase as evidenced by the LPS Power of Attorney and the Garbis Certificates of Incumbency. The Walter and Garbis Assignments were executed for the purpose of confirming and recording the fact of the prior transfer to the Trustee for the Trust. Chase, as the successor to the interests of the last holder of record was the proper assignor. There was no misrepresentation of any fact or the law in support of the MFR, but rather, at worst; a failure to fully describe the steps leading to the correct conclusion that Deutsche Bank was the secured creditor.

72) The cases cited by the Debtor similarly do not support an award of sanctions under these facts. (Second Amended Objection at pp. 23-24.) In *Wells Fargo Bank, N.A. v. St. Aubin,* 880 N.Y.S. 2d 877 (Sup. Ct. Kings 2009) the court denied without prejudice a motion to appoint a foreclosure referee and required movant to submit an affidavit explaining why or how a nonperforming mortgage could be assigned and the authority of the movant as servicer. Putting aside whether the court had the authority to question the validity of the transfer of a nonperforming mortgage, the case is irrelevant. First, the Mortgage and Note were transferred to the Trust in March 2006, at a time when the Debtor was making payments. Second, the undisputed proof in this case establishes that WaMu and then Chase

were the servicers with authority under the Pooling/ Servicing Agreement to act on behalf of the Trust. In *Deutsche Bank National Trust Co. as Trustee v. Bailey*, 880 N.Y.S. 2d 872 (Sup. Ct. Kings Co. 2009), the court acknowledged that assignments may be made by instrument or physical delivery of the note and mortgage; but dismissed the action without prejudice where the assignment was recorded after the commencement of the action and the assignee did not have possession of note and mortgage at the time the action was commenced. In *Indymac Bank, FSB v. Bethley,* 880 N.Y.S.2d 873 (Sup. Ct. Kings 2009), the motion for summary judgment on a foreclosure complaint was denied without prejudice as the assignment to the plaintiff occurred two days after the action was commenced and the plaintiff was not the owner or holder of the note and mortgage as of the commencement of the action.

73) The Debtor also argues that Chase or the Trust must show that "the last entity to communicate instructions to the Debtor is still the holder of the note" (Second Amended Objection at p. 28). The Debtor relies upon relies upon *HSBC Bank, U.S.A., N.A. v. Valentin,* 873 N.Y.S. 2d 512 (Sup. Ct. Kings 2008). However, this case stands only for the undisputed proposition that the plaintiff must demonstrate its interest in the mortgage and note in order to commence a foreclosure action. Indeed, in *HSBC v. Valentin,* the court dismissed the action with prejudice for failure to comply with a prior court order directing the submission of (x) an affidavit of a person with knowledge of the assignments, (y) a valid power of attorney, and (z) an explanation as to the purchase of a nonperforming loan. Moreover, the Debtor's position is directly contrary to the provisions of the Note, the Mortgage and the related documents, including the Welcome Letters, which expressly provide that the mortgage is transferable without notice to the Debtor and that a loan servicer, not the holder of the note, would be in contact with the Debtor regarding the loan. (Teitelbaum Affirmation,

Exhibit F, Mortgage at para 20 and Exhibits D&E). In fact, WaMu as servicer, was the entity which communicated with the Debtor as evidenced by the Loan Statement. (Teitelbaum Affirmation, Exhibit K) and the Debtor never claimed that the obligations under the Note and Mortgage are due to any party other than as alleged in the MFR.

74) The Debtor also objects to the MFR on the ground that the Mortgage and Note were allegedly transferred in violation of the Pooling/Servicing Agreement and New York Trust Law. (Second Amended Objection at pp. 28-31). As demonstrated above, the Mortgage, the Assignment to Blank of the Mortgage, the Note endorsed in blank and the title report were delivered to the Trust as required by the terms of the Pooling/ Servicing Agreement and the MLPA. Moreover, the Debtor is not a party to the Pooling/ Servicing Agreement, the MLPA or any other agreement regarding the Mortgage. Nor is the Debtor a beneficiary of any trust involving the Mortgage and Note. The Debtor's obligations under the Note and Mortgage are not affected by how parties to the Pooling/ Servicing Agreement or any other agreement not involving the Debtor choose to perform their contract, including with respect to transfers or assignments of negotiable instruments, such as the Note and Mortgage. Simply, the Debtor has no standing to intervene in or challenge the operation of any agreement or trust involving the transfer or negotiation of the Note and Mortgage. *Caravella .v City of New York*, 79 Fed. Apppx . 452 (2d Cir. 2003) (stranger to a contract has no standing to intervene in the contract). Further, the Mortgage expressly provides that it may be sold or transferred without any notice to the Debtor. (Teitelbaum Affirmation, Exhibit F at para 20).

75) There is no basis for an award of sanctions under Rule 9011(b)(2).

c) Bankruptcy Rule 9011 (b)(3): The Allegations And Factual Contentions Have Evidentiary Support:

76) Sanctions under Rule 9011(b)(3) "may be not be imposed unless a particular allegation is utterly lacking support. *In re Highgate,* 279 F3d at 154. It appears that the only allegations in the MFR that are alleged to be false or fraudulent by the Debtor and "confusing and contradictory" by the US Trustee relate to filing of the Walter and Garbis Assignments in support of the allegations in the MFR that Chase, as servicer, and Deutsche Bank, as Trustee for the Trust, have standing and are the proper parties in interest in connection with the MFR.[12]

77) First, there is ample evidentiary support for the allegations in MFR that the Trust, through the Trustee, at all times was the holder of the Mortgage and the Note. The evidentiary support includes: (i) the original Mortgage, (ii) Note, endorsed in blank, (iii) the Assignment to Blank, delivered by the Trustee to counsel for Chase (Teitelbaum Affirmation, Exhibit E, F, N; Reyes Affidavit), (iv) the Mortgage Loan Schedule annexed to the MLPA and the Pooling/Servicing Agreement identifying the Mortgage and Note (Teitelbaum Affirmation., Exhibits K and S), and (v) the business records of Chase identifying the Trust as the investor (*Id.* at Exhibit V and Baum Affidavit, Exhibit A).

78) Second, there is evidentiary support for the allegation that Chase is the servicer of the Mortgage. (Reyes Affidavit). Pursuant to the Welcome Letters, before the Loan was conveyed to the Trust, WaMu was identified as the servicer. (Teitelbaum Affirmation, Exhibits G and H). The Pooling/ Servicing Agreement provides that Long Beach Mortgage is the servicer and WaMu is the sub servicer of the Trust. There is proof of the merger of Long

12 As noted above, the assignment of the Loan to the Trust was effective in March 2006 and the Walter and Garbis Assignments were made in anticipation of obtaining insurable and marketable title, not as a requirement of New York Law to effectuate the transfer and assignment.

Beach Mortgage and WaMu. (*Id.* at Exhibit C). Following the merger of Long Beach Mortgage and WaMu, pursuant to Section 6.02 of the Pooling/ Servicing Agreement, in or about July 2006 WaMu became the servicer. There is evidence that Chase acquired certain assets and all loan servicing obligations and rights of WaMu from the FDIC as receiver. (*Id.* at Exhibit O). The evidence is that Chase is the successor servicer to WaMu with respect to the Mortgage. (Reyes Affidavit) (Teitelbaum Affirmation, Exhibit V and Baum Affidavit, Exhibit A).

79) Third, there is evidentiary support that the Walter and Garbis Affidavits were duly executed for a proper purpose. The LPS Power of Attorney, was duly acknowledged and authenticated, yet the Debtor continues to challenge the authority that Chase granted certain employees of LPS to execute mortgage assignments in connection with litigation support activities. (Teitelbaum Affirmation, Exhibits D and R) (Garbis Affidavit). The Garbis Certificates of incumbency evidence the authority of Ann Garbis to have executed the Garbis Assignment. (Teitelbaum Affirmation, Exhibit S). Again, the Debtor has no standing to intervene in the business affairs of contracting parties.

80) Fourth, there is evidentiary support for the execution of the Garbis and Walter Assignments. Though Chase was not the holder of the Mortgage at the time the Walter and Garbis Assignments were executed, Chase was the ultimate successor to the interests of Long Beach Mortgage in the Mortgage by virtue of the acquisition of WaMu assets. In that capacity Chase executed the Walter and Garbis Assignments to record, on behalf of Long Beach Mortgage, as the last holder of record of the Mortgage, the prior transfer of the Mortgage and Note to the Trustee for the Trust. (Baum Affidavit).

81) Fifth, as set forth in the Baum Affidavit, the filing of the Walter Assignment was

nothing more than an inadvertent error. The purpose of the Walter and Garbis Assignment, as explained in the Baum Affidavit, conformed to local requirements of title companies for there to be a recorded assignment from the last record holder of title to the foreclosing party. The Walter and Garbis assignments could have been better explained in the MFR to reflect how and why Chase was executing the assignments, but there was nothing false or fraudulent about either assignment. Rather, once explained, the evidence supports the execution of the Walter and Garbis Assignments by Chase as the ultimate successor to the interest of Long Beach Mortgage in the Mortgage.

82) Sixth, the US Trustee's statement, that Deutsche Bank was not the holder of the Mortgage and that the Walter and Garbis Assignments violated the automatic stay is wrong. (US Trustee Memo at p 8).

83) Section 2.01 of the Pooling/Servicing Agreement provides:

> The Depositor, concurrently with the execution and delivery hereof, does hereby transfer, assign, set over and otherwise convey to the Trustee without recourse for the benefit of the Certificateholders all the right, title and interest of the Depositor . . . in and to the Mortgage Loans identified on the Mortgage Loan Schedule. . . .

84) Consistent with the Pooling/ Servicing Agreement, the Walter and Garbis Assignments provided for the assignment to the Trustee on behalf of the Trust. As discussed above, pursuant to New York law, the interest in the Premises was perfected upon the recording of the Mortgage in January 2006 and the Trust's interest in the Note was perfected upon the Trustee obtaining possession of the Note endorsed in blank, the Mortgage and the Assignment to Blank in March 2006. The recording of the Garbis Assignment was not required under New York law to effect or perfect the assignment or the Mortgage and did not violate the automatic stay. In *In re Patton*, 314 B.R. 826, 833-34 (Bankr. D. Kan. 2004) recording an assignment of a mortgage was held not to violate the stay because, like the New

York statutes, the lien was perfected prepetition by the recording of the mortgage and the act of recording the assignment was not necessary to create, perfect or enforce a lien against property of the estate.

85) Chase disputes the US Trustee's conclusion that MFR failed to provide adequate documentation showing the chain of ownership of the Mortgage or proof of standing of Chase. The US Trustee's conclusion is predicated upon an inaccurate reading of LBR 4001-1. The US Trustee asserts that LBR 4001-1(c) "requires the submission of a worksheet with the following documents":

> 1) Copies of documents that indicate movant's interest in the subject property, including any assignments in the chain from the original mortgagee to the current moving party.
> 2) Copies of Documents establishing standing to bring the motion.
> 3) Copies of documents establishing that movant's interest in the real property or cooperative apartment was perfected. For purposes of example only, a complete and legible copy of the Financing Statement (UCC-1). . . .

(US Trustee's Memo at pp. 7-8).

86) However, instruction (1) of the LBR 4001-1(c) Worksheet actually provides:

> Copies of documents that indicate Movant's interest in the subject property. **For purposes of example only, a complete and legible copy of the promissory note or other debt instrument together with a complete and legible copy of the mortgage and** any assignments in the chain from the original mortgagee to the current moving party. (Emphasis added to reflect the language omitted by the US Trustee).

87) Contrary to the position taken by the US Trustee, the documents referred to in the instructions to the worksheet are identified by way of example and are not mandatory attachments. Thus, as long as the MFR includes sufficient proof of the movant's interest, the motion complies with this section of LBR 4001-1 (c).[13]

13 Even assuming that the MFR did not satisfy LBR 4001-1 pleading requirements, the remedy is denial of the motion, not the imposition of sanctions under Rule 9011(b) (1). *G-I Holdings, Inc., v. Baron & Budd,* 2002 WL 1934004 at *15 (S.D.N.Y. 2002) (not reported in F. Supp. 2d) ("the Second Circuit has ruled that a court should sanction a party for legally insufficient pleadings only where it is patently clear that a claim has no chance of

88) The MFR did contain sufficient proof of movant's interest in the Premises and the Mortgage. The MFR alleged that the Trust by the Trustee was the Secured Creditor and that Chase, as servicer for the Trust, was the Movant. (Teitelbaum Affirmation, Exhibits A at p.1 and C at p.1). The MFR further alleged that the Trust was the holder of the Mortgage by assignment dated January 6, 2006. Attached as an exhibit to the MFR Application was a copy of the Note and Mortgage, with proof of recording of the Mortgage with the New York City Register by Long Beach Mortgage, and the Walter Assignment. (Teitelbaum Affirmation, Exhibit A at Exhibit A). These documents reflected that the Note and Mortgage were originated by Long Beach Mortgage, recorded by Long Beach Mortgage, and held by the Trust, through Deutsche Bank, the Trustee. Admittedly, the initial pleading did not attach the Assignment to Blank, dated January 12, 2006 of the Mortgage (not January 6, 2006), executed by Long Beach Mortgage (Teitelbaum Affirmation, Exhibit N), and did not explain how or why Chase was the assignor in the Walter and Garbis Assignments, or the authority of Scott Walter, as an employee of LPS, to execute the Walter Assignment as attorney in fact for Chase.

89) Nevertheless, the evidence supports the pleadings and the Grigg Affirmation submitted in further support of the MFR, did address these issues; for example: at paragraphs 3-5, with respect to the authentication of the Walter Assignment by the LPS Power of Attorney and the replacement of the Walter Assignment with the Garbis Assignment, and paragraphs 12-18 with respect to the fact that the Garbis and Walter Assignments were duly executed by or on behalf of Chase as the ultimate successor to the interests of Long Beach

---

success under existing precedents. . . *Eastway Constr. Corp. v. City of New York,* 762 F. 2d 243, 254 (2d Cir. 1985); *MacMillan Inc. v. American Express Co.,* 125 F.R.D. 71, 78-79 (S.D.N.Y. 1989) (failure to satisfy technical pleading requirements of Fed. R. Civ. P. 9(b) may result in dismissal, but without more egregious conduct does not support sanctions); *In re Wingerter,* 2010 WL252184 at *9 (6th Cir January 25, 2010) (ramifications for filing incomplete proof of claim is denial of the claim, not sanctions).

Mortgage in the Mortgage (the last party of record in the chain of title) by virtue of the acquisition of WaMu assets from the FDIC, as receiver for WaMu. (Teitelbaum Affirmation, Exhibit D). The LPS Power of Attorney, the Garbis Assignment, the merger documents of Long Beach Mortgage and WaMu, and proof of Chase's acquisition of WaMu assets were annexed as exhibits to the Grigg Affirmation. (*Id.*).

90) In its totality, the MFR complied with LBR4001-1. The MFR (x) attached an accurately completed worksheet, (y) accurately alleged cause for relief, and (z) accurately alleged that the Trust was the holder of the Mortgage by delivery of the Note endorsed in blank and the Mortgage and the Assignment to Blank of the Mortgage.

91) The MFR may have been arguably somewhat confusing due to the inadvertent inclusion of the Walter Assignment, the failure to attach the original Assignment of Mortgage to Blank, and the failure to fully explain the transaction which is detailed *supra.;* however, documents which evidenced the interest of the Trust in the Premises and the Mortgage were annexed to the MFR, proof that the Walter and Garbis Assignments were duly and properly executed was provided, and there was nothing in the MFR which was factually inaccurate.

92) Further, this case is readily distinguishable from the cases relied upon by the Debtor and the US Trustee wherein sanctions were imposed for alleged factual misrepresentations. *See, e.g., In re Schuessler,* 386 B.R. at 458 (the Court found that there were factual errors going to the heart of a motion for relief including whether the lender rejected payments which were the basis for alleging post petition defaults, whether the lender acted precipitously in filing a motion for relief, whether the movant properly identified the holder of the note and mortgage, whether the lender had any basis to allege no equity in the

premises); *In re Pawson*, 05-18439 (movant based motion on inaccurate allegation that payments had not been made); *In re Humphrey* (08-23404) (motion to lift the stay based upon alleged missed payments where the debtor demonstrated that WaMu had in fact refused to accept attempts to make payments); *In re Gorshtein,* 285 B.R. 118, 122 (Bankr. S.D.N.Y. 2002) (misstatement in motion for relief that the debtor was in default post petition); *In re Fagan,* 376 B.R. 81 (Bankr. S.D.N.Y. 2007) (misstatement in motion for relief that the debtor was in default post petition); *In re Parsley,* 384 B.R.138 (Bankr S.D.Tex. 2008) (stating policy of protecting homesteads);[14] *In re Nosek*, 386 B.R. 374, *aff'd in part and vacated in part by In re Nosek*, 406 B.R. 434, 437 (D. Mass. 2009) (loan servicer submitted numerous pleadings alleging that it was the holder of the note, long after it sold its interest in such note and appeared before the court as the note holder, even after it no longer serviced the note, without informing the court of such facts); *In re Rainbow Magazine, Inc.,* 77 F.3d 278, 279-282 (9th Cir 1996) (the debtor intentionally filed a "misleading and inaccurate petition" with the wrong address to manipulate jurisdiction and a false disclosure statement which failed to identify a related proceeding).

93) The MFR was not predicated upon any misstatement of fact. Each allegation in support of the in the MFR was accurate and supported by the evidence. There was inadvertence in attaching the Walter Assignment to the MFR. There may have been a failure to clearly articulate why the Garbis and Walter Assignments were prepared and why they identified Chase as the assignor. The Walter and Garbis Assignments could have been more explicit. However, the fact remains that the MFR was factually accurate and supported by evidence and existing law, particularly when fully explained.

14 The Premises is not the Debtor's residence.

94) Under these facts, sanctions under Rule 9011 (b)(3) may not be imposed.

Point II

Deterrent Sanctions Are Not Warranted

95) Citing *In re Schuessler, In re Pawson and In re Humphrey,* the US Trustee essentially argues that this case is Chase's fourth strike and therefore sanctions are necessary to deter future conduct. The US Trustee's position is simply wrong. As discussed below, these cases are readily and materially distinguishable from the instant case. Moreover, it is improper for the US Trustee to seek to extrapolate from the facts of these cases to try to impose broad constraints or sanctions upon Chase as a deterrent. Indeed, as held in *In re Wingerter,* 2010 WL 252184 at *9, Rule 9011 requires an analysis of whether sanctions are appropriate under the circumstances of a particular case and does not lend itself to categorical prescriptions.[15]

96) Even assuming that the cases relied upon by the US Trustee may be considered as strikes against Chase, as discussed above, this is not Chase's fourth strike. The MFR did not violate Rule 9011. As such, there is no predicate for this Court to consider sanctions to deter future conduct.

97) This case is markedly different from any of the cases relied upon by the US Trustee. There was no misrepresentation made in the MFR. At worst, this case, like in *In re Templehoff, supra*, involved "a slight error that upon first blush appeared to have been an intentional attempt to mislead the Court, but after further investigation was discovered to be an innocuous inaccuracy" the result of which caused no injury to the debtor. *In re Templehoff,* 339 B.R. at 55.

15 Indeed, to the extent that the Courts in *Schuessler, Pawson and Humphrey* already imposed sanctions for conduct in those cases, the imposition of additional sanctions based upon those cases would be patently unjust.

98) Chase has honored its commitment to the US Trustee's office, as initially described in the Pawson Letter and as detailed in the Greece Affidavit to improve its policies and practices with respect to the filing of motions. As demonstrated in the Greece Affidavit, the policies and practices which have been voluntarily implemented by Chase far exceed the requirements of the Bankruptcy Code, the Bankruptcy Rules and the local rules of this Court.

99) Even if this Court were to find that sanctions were appropriate to address the specifics of this case, there is no basis to support the Trustee's request for sanctions as a deterrent against future conduct or the imposition of "categorical prescriptions". *In re Wingerter,* 2010 WL 252184 at*9. The US Trustee has not identified a single case, including this case, which post date the January 2009 filing of the Pawson Letter and the implementation of improved practices and policies by Chase to support the contention that Chase is engaged in a systemic practice of filing improper motions for relief from the automatic stay.

100) Chase has worked with Bankruptcy Courts and Offices of the United States Trustee in various jurisdictions to implement local rules applicable to all parties which may file motions for relief. Chase again offers to work with this Court and the US Trustee to review local rules to enhance procedures for all parties who come before this Court. Given the forgoing, Chase opposes the imposition of special rules or orders applicable only to Chase.

101) The Greece Affidavit demonstrates that Chase has taken material steps on its own accord to improve the quality of motions filed in this Court. To the extent that the US Trustee and this Court are concerned about systemic problems, the remedy is to implement new rules applicable to all parties who appear before this Court.

Point III

Sanctions Are Not Procedurally Appropriate

102) Pursuant to Bankruptcy Rule 9011 (c) (1) (A) and (B), sanctions may be imposed by the Court if (x) a request is initiated by a motion for sanctions filed and served separately from other motions and the alleged offending pleading is not withdrawn within 21 days after such service, or (y) upon the Court's own initiative by the issuance of an order to show cause.

103) No separate motion for sanctions has been filed in this case prior to the filing of the January 28 Letter withdrawing the MFR. Debtor's counsel, in the MFR Objection, included a request for attorney's fees pursuant to 28 U.S.C. §1927, not Rule 9011, as a sanction. The US Trustee's pleading purportedly joined and supported the Debtor's request for sanctions, but sought sanctions under Rule 9011. Neither of these pleadings constitutes a separately filed motion and they are not sufficient to initiate a proceeding on sanctions. *Hadges v. Yonkers Racing Corp.*, 48 F.3d 1320, 1323 & 1328 (2nd Cir. 1995)(request for sanctions not appropriate where Plaintiff failed to file separate motion for sanctions); *In re Pennie & Edmonds LLP*, 323 F.3d 86, 89 (2d Cir. 2003) ("[w]here a sanction is initiated by a party's motion, this provision requires initial service of the motion but delays filing or presentation of the motion to the court for 21 days; filing of the motion is permitted 21 days after service only if the challenged motion is not "withdrawn or appropriately corrected"); *In re Galgano III*, 358 B.R. 90, 92 (Bankr. S.D.N.Y. 2007)("The safe-harbor provision in Rule 9011 is crucial because it gives a moving party an opportunity to avert sanctions by withdrawing a motion that lacks merit or an appropriate legal or factual basis").

104) The failure of the Debtor and the UST to comply with Bankruptcy Rule 9011 precludes any request for sanctions by such parties.

105) Further to the extent that sanctions may be imposed upon the Court's own initiative without affording the alleged offending party the opportunity to withdraw the pleading, the Court must find that the party acted in bad faith or with intent to deceive the court. *In re Pennie*, 323 F.3d at 90 ("We have previously held that when courts are acting either pursuant to their inherent powers or their statutory power to impose contempt sanctions upon attorneys while those attorneys are engaged in matters intended to further the interest of their clients, a finding of bad faith on the part of the attorney is essential to a finding of contempt ... These cases provide strong support for the proposition that, when applying sanctions under Rule 11 for conduct that is 'akin to a contempt of court,' a bad faith standard should apply.") citing *Schlaifer Nance & Co., Inc. v. Estate of Andy Warhol*, 194 F.3d 323, 338 (2d Cir. 1999); *Milltex Indus. Corp. v. Jacquard Lace Co.*, 55 F.3d 34, 38 (2d Cir. 1995); *Sakon v. Andreo*, 119 F.3d 109, 114 (2d Cir. 1997). See also *Centaur Shipping Ltd. V. Western Bulk Carriers KS*, 528 F. Supp.2d 197, 200 (sanction proceedings initiated by the court are subject to "the heightened standard of 'subjective bad faith' established by the Second Circuit in Pennie.").

106) There is no basis for a finding of bad faith in connection with the MFR

Point IV

Fees Under 28 U.S.C. §1927 Are Not Appropriate

107) An award of fees to Debtor's counsel under 28 U.S.C. §1927 is not appropriate in this case. The standard for the award of fees is that the court must find "clear evidence that (1) the offending party's claims were entirely meritless and (2) the party acted

for improper purposes". *Fields v. Merrill Lynch, Pierce Fenner & Smith, Inc.*, 2004 WL 626180 at * 4 (S.D.N.Y. 2004) (Not reported in F. Supp. 2d) (citing *Revson v. Cinque & Cinque, P.C.*, 221 F. 3d 71, 79 (2d Cir. 2000) (holding that a finding of bad faith similar to that necessary to invoke the court's inherent power must be found).

108) For all the reasons discussed above, there is no basis to conclude that the MFR was utterly meritless or undertaken in bad faith or for an improper purpose.

109) On the other hand, Chase requests that the Court to consider the motivations of the Debtor in opposing the MFR to the extent evidenced by the pleadings filed, where the Debtor admitted the obligations under the Note and Mortgage, admitted the defaults under the Note and Mortgage and admitted that there was no intent to retain or pay for the Premises.

Point V

Sanctions Are Not Appropriate Under Bankruptcy Code §105

110) The Court may not rely upon Section 105(a) of the Code to impose sanctions in direct contravention of the provisions of Rule 9011 or 28 U.S.C. §1927. In *In re Barbieri*, 199 F.3d 616 (2nd Cir. 1999), the Second Circuit set forth the limits of Section 105(a):

> "[T]he equitable powers emanating from § 105(a) . . . are not a license for a court to disregard the clear language and meaning of the bankruptcy statutes and rules.' (cite omitted) In short, although § 105(a) grants a Bankruptcy Court broad powers, it does not authorize the Court to disregard the plain language of § 1307(b).
>
> . . . Nevertheless, our concerns about abuse of the bankruptcy system do not license us to redraft the statute.

Id. at 620-21.

111) More recently, in *In re Smart World Technologies, LLC*, 423 F.3d 166 (2d

Cir. 2005) the Second Circuit concluded that Code Section 105 could not be relied upon to grant a creditor standing to a circumvent, among other things, the provisions of Bankruptcy Rule 9019 which provides that only the debtor can bring a settlement motion. In *In re Aquatic Dev. Group*, 352 F.3d 671, 680 (2nd Cir. 2003), Judge Straub, in his concurring opinion, stated: "Nonetheless, this Court has repeatedly cautioned that Section 105(a) 'does not "authorize the bankruptcy courts to create substantial rights that are otherwise unavailable under applicable law, or constitute a roving commission to do equity."' (cite omitted). Similarly, in *In re Yashaya,* 403 B.R. 278, 288 (Bankr. E.D.N.Y. 2009), Judge Craig rejected an attempt to extend the deadline to file a complaint objecting to discharge, holding "this equitable power may not be used to circumvent any section of the Bankruptcy Code or any Bankruptcy Rule".

112) In *In re Westpoint Stevens, Inc.*, 333 B.R. 30 (S.D.N.Y. 2005), after citing Barbieri, the district court quoted from the First Circuit Court of Appeals:

> Section 105(a) does not provide bankruptcy courts with a roving writ, much less a free hand. The authority bestowed thereunder may be invoked only if, and to the extent that, the equitable remedy dispensed by the court is necessary to receive an identifiable right conferred elsewhere in the Bankruptcy Code.

Id. at 54, *quoting Jamo v. Katahdin Fed. Credit Union*, 283 F.3d 392, 403 (1st Cir. 2002). *See also In re Carrow*, 315 B.R. 8, 16 (Bankr. N.D.N.Y. 2004) (stating "*Barbieri* cautions bankruptcy courts to use their equitable powers sparingly").

113) Neither the substantive nor the procedural provisions of Bankruptcy Rule 9011 or 28 U.S.C. §1927 have been satisfied. The Court cannot use Section 105(a) to circumvent these provisions and impose sanctions upon Chase.

Conclusion

It is respectfully submitted that there is no basis to impose sanctions of any kind against Chase in this case. Neither the Debtor nor the US Trustee have identified any conduct by Chase in this case for which violates Bankruptcy Rule 9011, 28 U.S.C. §1927, or any local rule, or which has caused any compensable injury to the Debtor.

Dated: White Plains, New York
February 22, 2010

TEITELBAUM & BASKIN, LLP
Attorneys for JPMorgan Chase Bank, N.A.
as servicer for Deutsche Bank National
Trust Company, as Trustee for Long
Beach Mortgage Trust 2006-2

By: /s/ Jay Teitelbaum

3 Barker Avenue, Third Floor
White Plains, NY 10601
(914) 437-7670
jteitelbaum@tblawllp.com

Exhibit 1

ALLEGATIONS MADE BY THE DEBTOR IN CONTRAVENTION OF DOCUMENTED FACTS AND ESTABLISHED LAW KNOWN TO THE DEBTOR

Second Amended Objection	**Proof Known to the Debtor to the Contrary**
Chase failed to prove its role as servicer--(page 5)	WaMu Asset Purchase Agreement between Chase and the FDIC as Receiver of WaMu, dated September 25, 2008 (Document No.0231-0274)(Teitelbaum Aff. Exhibit N); Chase business record (Document Nos. 0012219-12220) (*Id.* at Exhibit H);, Herndon's testimony (*Id.* at Exhibit I at pp.109-112), and the Pooling / Servicing Agreement Section 6.02 (Document Nos. 0439-0636) (Teitelbaum Aff Exhibit O)
Chase lacks standing as servicer to file the MFR (pages 6-14)	Controlling case law set forth in Grigg Affidavit ¶¶ 37-42 (Teitelbaum Aff Exhibit A-3)
Chase had no authority to assign the mortgage and note to the Trust (pages 5, 15-18)	the original mortgage, assignment of mortgage in blank and original note endorsed in blank (Teitelbaum Aff. Exhibit L), together with the Mortgage Loan Purchase Agreement (Document Nos. 001250-001284)(*Id.*at Exhibit P), the Pooling/Servicing Agreement (*Id.* at Exhibit O), and Mortgage Loan Schedules annexed to the MLPA and the Pooling and Servicing Agreement (Document Nos. 0157-0159) (*Id.* at Exhibit Q) prove that the note and mortgage were endorsed and delivered to the Trust as of March 7, 2006 and that Chase, as successor to the interests of Long Beach Mortgage in the Mortgage, executed the Walter and Garbis Assignments to reflect, as a matter of public record, the March 2006 assignment and transfer from Long Beach Mortgage, as the last record holder, to the Trustee on behalf of the Trust
the mortgage and note were not properly negotiated to the Trust (pages 5, 11-12, 15-18 and 22)	the original note endorsed in blank, the original mortgage, the original assignment of mortgage in blank, the Mortgage Loan Schedule (Teitelbaum Aff Exhibits L and Q) and the last page of Exhibit C to the Second

	Amended Objection, confirm that the mortgage and note were in fact delivered to the Trust as required under the Pooling and Servicing Agreement and the U.C.C.
the Garbis and Walter Assignments are false and fraudulent as they refer to the wrong loan number (pages19-20, 25-27)	January 6, 2006 Welcome Letter from WaMu (Document No.0089-90) identifying the Long Beach Loan Number (Teitelbaum Aff. Exhibit C) and the January 11 WaMu Welcome Letter (*Id.* at Exhibit D), identifying the change from the Long Beach Loan Number to the WaMu Loan Number, were delivered to the Debtor; the Mortgage Loan Schedule refers to both the Long Beach Mortgage Loan Number and the WaMu loan number (*Id.* at Exhibit Q), Herndon testimony (*Id.*at Exhibit I at pp. 163-169), and the Loan Statement produced by the Debtor (*Id.* at Exhibit B) all refer to the Loan and the WaMu Loan Number on the Walter and Garbis Assignments
the Garbis and Walter Assignments are false and fraudulent as they are of questionable authenticity (pages19-20, 25-27)	acknowledged power of attorney for the Walter Assignment, annexed to the Grigg Affidavit as Exhibit A (Teitelbaum Aff. Exhibit A-3); and acknowledged Chase certificates of incumbency for Garbis (Teitelbaum Aff. Exhibits K and T)
the assignment and transfer of the note and mortgage to Deutsche Bank, as Trustee for the Trust, was in violation of various agreements and/or trusts and New York Trust Law (pages 15-30)	as discussed above the undisputed proof is that the mortgage and note were properly transferred to the Trust; the mortgage and note provide that they may be sold or assigned without notice to the Debtor (Teitelbaum Aff. Exhibit L, Mortgage, section 20); and as discussed *infra*, the Debtor is neither a party to, nor a beneficiary of any such agreements and has no standing to object to such transfers or assignments
Chase is "deserving of sanctions" for conduct alleged to have occurred in this case and allegedly for repeating past sanctionable conduct (pages 31-34)	as discussed *infra.*, the Debtor has ignored the facts of such other cases, all of which also predate the implementation of new policies and practices described herein