

District Court, Archuleta County Colorado
Court Address: P.O. Box 148 Pagosa Springs, CO 81147

IN THE MATTER OF THE APPLICATION OF AURORA
LOAN SERVICES, LLC, FOR AN ORDER AUTHORIZING
THE PUBLIC TRUSTEE FOR ARCHULETA COUNTY,
STATE OF COLORADO, TO SELL CERTAIN REAL
ESTATE CONTAINED IN A DEED OF TRUST.

Petitioner Attorneys (for Aurora Loan Services):

Name: Robert J. Aronowitz, Esq. Reg. No. 5673

Joel T. Mecklenburg, Esq. Reg. No. 5673

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Address: 1199 Bannock Street
Denver, CO 80204

Defendant:

Jeffrey T. Maehr, Pro Se (924 E. Stollsteimer Rd., Pag Spgs, CO 81147)

▲ Court USE ONLY▲

CASE NUMBER: 10CV71

Div:

Ctrm:

1 **REPLY TO PETITIONER’S RULE 120**
2 **RESPONSE TO MOTION TO DISMISS**

3 COMES NOW Respondent, before this honorable Court with his Response to Petitioner’s
4 Response, reminding the Court that this is in addition to the discussion and case law evidence for
5 Petitioner having no Standing, and thus the Court has no Subject Matter Jurisdiction, (and no
6 default), in the Motion to Dismiss, and requests the Court to thoroughly review this Motion to
7 Dismiss along with this Response discussion for the truth of the matter. Petitioner or the Court
8 cannot presume facts not in evidence.

9
10 **Mandatory Judicial NOTICE: C.R.E. 201(d)**

11 1. Colorado’s Rules of Professional Conduct require Petitioner’s counsel to demonstrate candor
12 toward the Court and Respondent. Concealment of material facts is adverse to concepts of
13 fundamental fairness and “candor.” Respondent maintains, as evidence of record proves, that

14 Petitioner's counsel is providing not only false testimony, but has demonstrated to be distorting
15 the actual facts of record and laws to their own benefit, apart from legislature intent.

16 In the Complaint and Response, the Petitioner must be forthright and explicit in setting forth all
17 pertinent facts; anything short of full disclosure is a "**fraud on the Court**" and renders any
18 judgment against Respondent void. See *Mason-Jares, Ltd. v. Peterson*, 939 P.2d 522 (Colo.
19 App. 1997); *Coppinger v. Coppinger*, 130 Colo. 175, 274 P. 2d 328 (1954). (Also see Response
20 Exhibit A).

21 2. Not only must the Petitioner provide adequate proof of Court Jurisdiction, but the Court must
22 Also prove jurisdiction on the record:

23 If Subject Matter Jurisdiction is questioned in the Court, the Petitioner cannot rely solely upon
24 the allegations in the complaint and **must bring forward relevant, adequate proof that**
25 **establishes Subject Matter Jurisdiction**. The court may consider evidence outside the
26 **pleadings to resolve factual disputes concerning jurisdiction**. (Emphasis added) *Nelson*
27 *Construction Co. v. U.S.*, No. 05-1205C, 2007 WL 3299161 at *3 (Fed. Cl., Oct. 29, 2007)
28 (citing *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178 (1936)); see Also
29 *Nichols v. Muskingum College*, 318 F.3d 674, (6th Cir. 2003).

30 "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert*, 469 F2d 416.

31 "Court must prove on the record, all jurisdiction facts related to the jurisdiction asserted."

32 *Lantana v. Hopper*, 102 F2d 188; *Chicago v. New York*, 37 F Supp 150.

33 "It is well established that the court has an independent obligation to assure that standing exists,
34 regardless of whether it is challenged by any of the parties." *Summers v. Earth Island Institute*,
35 No. 07-463 (U. S., March 3, 2009) (citing *Bender v. Williamsport Area School Dist.*, 475 U. S.

36 534, 541 (1986)).

37 3. C.R.S.A. 38-38-302 states:

38 (1) Requirements for redemption. A lienor or assignee of a lien is entitled to redeem if the
39 following requirements are met to the satisfaction of the officer;

40 (a) The lienors lien is a deed of trust or other lien that is created or recognized by state or
41 federal statute or by judgment of a court of competent jurisdiction;

42 (b) The lien is a junior lien as defined in section 38-38-100.3(11)

43 c) The lienor's lien appears by instruments that were duly recorded in the office of
44 the clerk and recorder of the county prior to the recording of the notice of election
45 and demand or lis pendens and the lienor is one of the persons who would be entitled to
46 cure pursuant to section 38-38-104(1)..." (Emphasis added).

47 Respondent states that said legal requirements of C.R.S.A. 38-38-302 by Petitioner have NOT
48 been met, and that the required filing with the Recorder's Office is not of record, and thus, the
49 Rule 120 hearing must be dismissed for insufficiency of pleadings.

50 **4. CANON 3. A JUDGE SHOULD PERFORM THE DUTIES OF HIS OR HER OFFICE**
51 **IMPARTIALLY AND DILIGENTLY.** CANON 3. A. (1) A judge should be faithful to the
52 law and maintain professional competence in it. A judge should be unswayed by partisan
53 interest, public clamor, or fear of criticism.

54 **5. CANON 1. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE**
55 **OF THE JUDICIARY.** An independent and honorable judiciary is indispensable to justice in

56 our society. A judge should participate in establishing, maintaining, and enforcing, and should
57 personally observe high standards of conduct so that the integrity and independence of the
58 judiciary may be preserved. The provisions of this Code should be construed and applied to
59 further that objective.

60 6. The 8th Circuit Court ruled in *Anastasoff v. United States* (2000) that, "The judicial power of
61 the United States is limited by the doctrine of precedence." **All case precedence, whether**
62 **Federal or state, regarding the same, issues and circumstances, is to be considered in**
63 **decisions.**

64 **Respondents refutes claims made by Petitioner in its** 65 **Response, per below rebuttal and discussion:**

66 Respondent NOTICES the Court that Petitioner has failed to rebut significant relevant evidence
67 presented in the Motion to Dismiss, and refers the Court also to said Motion for complete
68 discussion. Petitioner is seemingly playing a foreclosure game in these proceedings that it has
69 apparently played for years, which avoids the true legal issues, obfuscates known duties and
70 facts of law, presuming facts not in evidence, and reveals contradictions in testimony, (See
71 Motion) which demonstrates of record a **lack of credibility**, (Fraud on this Court) because it
72 interferes with the mechanics of justice, and is an attempt to induce this Court to defraud
73 Respondent of property under color of law. Judicial Economy is being maximized in
74 Respondent having to show Petitioner what the laws actually say where they should not only
75 know the laws, but be following it, which they seemingly refuse to do. These issues have been
76 brought up in the original Motion to Dismiss, and are now more fully discussed in this Response.

77 1. Petitioner, on P. 4 of Response, states "the Court must take all material factual allegations as
78 true." Respondent points out to the Court the contradiction in this statement. The words

79 “material factual” convey actual verified evidence of record... evidence made factual by the first
80 hand witness, and certified by same. The word “allegations” is simply hearsay and holds no
81 weight in this honorable Court. Allegations (hearsay) cannot be used as evidence...

82 “An allegation (also called adduction) is a claim of a fact by a party in a pleading, which the
83 party claims to be able to prove. Allegations remain assertions without proof, until they can be
84 proved. Wikipedia.

85 “1: the act of alleging 2: a positive assertion; specifically: a statement by a party to a legal
86 action of what the party undertakes to prove. 3: an assertion unsupported.” Merriam Webster
87 Dictionary.

88 “Evidence in its broadest sense includes everything that is used to determine or demonstrate the
89 truth of an assertion. Giving or procuring evidence is the process of using those things that are
90 either (a) presumed to be true, or (b) were themselves proven via evidence, to demonstrate an
91 assertion's truth. Evidence is the currency by which one fulfills the burden of proof.” Wikipedia.

92 Hearsay evidence provided by Petitioner is void in this Court, and no credible (non-hearsay)
93 evidence has been presented by Petitioner and is of record to date.

94 2. Petitioner on P. 1 A, states, “A motion to dismiss... should not be granted unless it appears
95 beyond all doubt that Petitioner can prove no set of facts that would entitle him or her to relief.”
96 Respondent, in Motion to Dismiss, and now in this Response clearly proves that Petitioner has
97 absolutely no evidence of record to prove the slightest entitlement to relief, OR, that they have
98 standing, OR that this Court has Jurisdiction. Petitioner has not proven they have any
99 consideration in the mortgage and note, and even provide evidence they are but the servicer, per
100 below discussion and Motion to Dismiss evidence.

101 3. Petitioner states on P. 1 B, that the original Note states... “lender or anyone who takes this
102 Note by transfer and who is entitled to receive payments under this Note is called the Note
103 Holder.”

104 This is an obvious attempt to obfuscate the facts. Anyone who “takes this note by transfer,”
105 must do so with consideration involved or it is void. Petitioner has provided NO evidence of any
106 consideration in any alleged “transfer,” security interest, assignment, or otherwise. In addition,
107 Petitioner appears to be attempting to equate their “servicing” of this Note, with actual
108 ownership of this note, and thus being the “note holder.” (See #5 below). Because Petitioner is
109 acting as the “servicer” of the Note, and who claims is “entitled to receive payments under this
110 Note,” does not confer security interests in this Note or Deed, and therefor NO right to foreclose.
111 Rather, this clause in the Note clearly is referring to the actual “owners” of the Note who are
112 “entitled to receive payments under this Note.” It is a cheap ploy and word game Petitioner is
113 attempting to use to confuse the facts and truth of this Note language, and to usurp authority it
114 does has not legally proven it has.

115 In addition, even if Petitioner COULD prove a security interest in this mortgage, ALL parties
116 involved with a security interest MUST be party to the foreclosure, and provide proof of claim,
117 or it is possible that these security interests could well be lost or stolen by Petitioner. Petitioner
118 alleges security interests are held by Bank of New York, in trust, (See Motion to Dismiss Exhibit
119 B-2), Lehman Brothers, (See Motion to Dismiss Exhibit AA-2, and Petitioner’s Response P. 2,
120 bottom). NONE of these parties have been named in any of these proceedings, contrary to law.

121 4. Petitioner continues on P. 1-2, that “the promissory note was sold, assigned, transferred or
122 otherwise conveyed to Petitioner.” Respondent presented evidence that Home Loan Center
123 (HLC) did, on or about January 29, 2004, sell the Note and Servicing rights to Aurora Loan
124 Services (Petitioner), (See Motion to Dismiss Exhibit F*Line 257) however, since that time,
125 Petitioner has not only provided a “widow page” (Motion to Dismiss Exhibit AA-2) never before

126 seen by Respondent, showing indorsements FROM HLC TO Lehman Brothers, and affiliates, as
127 Petitioner clearly testifies to on P. 2, bottom, of their Response, (without any nexus or evidence
128 that this indorsement has anything to do with Respondent’s Deed of Trust or Note), but they
129 Also provided conflicting testimony that Bank of New York was the “current owner of the debt,”
130 (See Motion to Dismiss Exhibit B-2), in addition to Petitioner being the “holder” of the Note,
131 and this is prima facie evidence that the actual owners of the Deed of Trust and Note are
132 clouded, and are not being truthfully disclosed.

133 5. Petitioner on P. 3, top, states... “If an instrument is payable to bearer... it may be negotiated
134 by transfer of possession alone,” quoting C.R.S. 4-3-201. 4-3-201 clearly specifies in official
135 comment... “In most cases negotiation occurs by a transfer of possession by a holder or remitter.
136 Remitter transactions usually involve a cashier's or teller's check.”

137 Petitioner has steadfastly refused to provide any evidence of consideration for this alleged
138 “transfer” to Petitioner. Petitioner is attempting to obfuscate the lawful facts by stating that the
139 very step of handing someone a “negotiable instrument” makes them the “legal holder” of the
140 instrument.

141 The official comment on this C.R.S. is... “if an instrument is payable to bearer and it is stolen by
142 Thief or is found by Finder, **Thief or Finder becomes the holder of the instrument** (Emphasis
143 added) when possession is obtained. In this case there is an involuntary transfer of possession
144 that results in negotiation to Thief or Finder.” Petitioner is claiming to be the “holder” (without
145 any evidence in fact or of record to date to prove so, and in conflict with previous testimony), so
146 what difference is of record to determine whether Petitioner is merely “holding” the Note and
147 Deed, by theft or finding, when they refuse to show legal consideration and proof of original
148 Note and Deed?

149 In addition to this, “payable to” elements were clearly given to Lehman Brothers Holdings, as

150 Petitioner discusses on P. 2 of Response, (and not to Petitioner as Petitioner in other testimony
151 claims for themselves) yet no such “payable to” negotiation evidence has been presented
152 showing any nexus to Petitioner, Bank of New York, or any other legal entity. This would
153 provide prima facie evidence that Petitioner has stolen or “found” the original Deed of Trust and
154 Note they claim to possess and is NOT the legal rightful “owner” of the Deed and Note.

155 6. Petitioner goes on to quote C.R.S. 4-3-301... “4-3-301. Person entitled to enforce instrument.”

156 In this official discussion in the C.R.S. 4-3-301, it states... “A person may be a person entitled to
157 enforce the instrument even though the person is not the owner of the instrument or is in
158 wrongful possession of the instrument.” Once again, Petitioner is providing prima facie
159 evidence (without the original Note and Deed, and without evidence of proper lawful
160 consideration being provided for this possession, that it “could well not be the owner of the
161 instrument or is in wrongful possession of the instrument.” Possession of a Note or Deed is
162 NOT the criteria through which “legal enforcement” of an instrument takes place. The intent of
163 the Colorado legislature is clear... that of lawful ownership and possession.

164 As was discussed in the Motion to Dismiss, a “copy” of the Note and Deed do not prove
165 Petitioner is “holding” the originPetitioner, OR has legal right to the payments toward this Note.
166 Respondent has the same copy, as do others, therefore, according to Petitioner’s logic, this would
167 Also make anyone with a copy, and some sort of certification, (which can easily be provided),
168 the true “holder” of the Deed and Note. (Please see line 392-399 below on the required
169 production of original Note).

170 7. Petitioner, on P. 3 quotes C.R.S. 38-38-101, regarding the “certification made by Aurora...
171 signed by its counsel thereby establishing a prima facie showing that Aurora is the holder of the
172 evidence of debt.”

173 Respondent notices the court of multiple defects in this “certification, which makes it void on its
174 face.

175 a) “Certification” states at #1, that “Qualified holder is the holder of the original evidence
176 of debt. A true and correct copy of the original evidence of debt is attached hereto.” Petitioner
177 fails to state whether this is a true and correct copy of the “original evidence of debt” **as it was**
178 **on January 16, 2004, or as it is now**, in Petitioner’s possession as it testifies. This is
179 obfuscation of testimony. This Note should clearly show assignments as part of the note and not
180 some erroneous “widow page” with no nexus to anything in this issue, but no copies of Note
181 have such assignments.

182 b) “Certification” states, at #2, “Qualified holder is the current beneficiary of the Deed
183 of Trust. A true and correct copy of the recorded Deed of Trust is attached hereto.” Petitioner
184 states it is a copy of the “recorded Deed of Trust,” but does not state this Deed of Trust is in
185 Petitioner’s possession. (See line 451). It states simply that it is... “A true and correct copy of
186 the **recorded** Deed of Trust,” which any human being on the planet could obtain. This Deed of
187 Trust is a copy of the “closing” Deed of Trust, as originally filed with the Recorder’s office,
188 NOT the current Deed of Trust today that must show some assignment to Petitioner or Bank of
189 New York... or whomever is the real owner of the Note and Deed. This is hearsay,
190 unauthenticated evidence. It is also prima facie evidence that the Note and Deed are likely
191 separated, as no certification to having a true updated copy of the Deed of Trust is stated. (See
192 Foot Note, P. 26).

193 c) Signature of the “Attorney for Qualified Holder” is illegible. No identification is
194 available, thus concealing this witness from the Court and from Respondent.

195 d) Attorney, by law, cannot be party to counsel and be a witness in the same case. (See
196 letter i) below).

197 e) Notary certification is void on its face. Respondent is a Colorado Notary, and can
198 attest to these defects first hand. The notary fails to name or witness the name (in legible text) of
199 the affiant in the notary, so identification and cross-examination can occur.

200 f) Notary journal of Sara Farb is demanded for identification of this certification witness,
201 and for proving identity of Attorney and proper recording as required.

202 g) This “certification” record is devoid of any documentation by the concealed witness
203 to demonstrate to the court there had, as a matter of law, been diligent inquiry and reasonable
204 diligence. Colorado is a LIEN, not TITLE theory, state, requiring the documentation
205 Respondent demanded so often in his Qualified Written Requests: 38-35-117, 10 C.R.S. The
206 record is devoid of any affirmative demonstration the court has jurisdiction to allow Petitioner to
207 foreclose as real party in interest because Petitioner has failed to document its merely speculative
208 interest in the account and property or its authority to seek foreclosure as an agent of current real
209 party, as yet UNVERIFIED to the court.

210 h) There is no proper foundation for foreclosing without proper certification...
211 insufficiency of pleadings.

212 i) Attorney statements in certification are PURE HEARSAY, (also See #12 at line 370
213 below) and are NOT competent testimony, and place NO “facts” before the court. In Supreme
214 Court of Colorado: STONE v. UNION FIRE INS. CO., No. 14654, Nov. 4, 1940, En Banc., the
215 Colorado Supreme Court quotes Wigmore on Evidence as follows:

216 “To a better understanding of the application of the **hearsay** rule to this **testimony**, a discussion
217 of first principles will be helpful. Historically, the development of the rule is fully covered by
218 section 1364, Wigmore on *527 Evidence, 3d Ed., vol. V, where it is defined as ‘that rule which
219 *prohibits the use of a person's assertion, as equivalent to testimony to the fact asserted,* unless

220 the assertor is brought to testify in court on the stand, where he may be probed and cross-
221 examined as to the grounds of his assertion and of his **qualifications** to make it.’ ” [emphasis
222 added].

223 “ This finding of a continuing investigation, which forms the foundation of the majority opinion,
224 comes from *statements of counsel* made during the appellate process. As we have said of other
225 **un-sworn statements** which were not part of the record and therefore could not have been
226 considered by the trial court: **Manifestly, [such statements] cannot be properly considered**
227 **by us in the disposition of [a] case.**” *United States v. Lovasco* (06/09/77) 431 U.S. 783, 97 S.
228 Ct. 2044, 52 L. Ed. 2d 752. (Emphasis added).

229 “No instruction was asked, but, as we have said, the judge told the jury that they were to **regard**
230 **only the evidence admitted by him, not statements of counsel.**” *Holt v. United States*,
231 (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2. (Emphasis added).

232 All competent judges know and understand that statements of counsel, especially where- as here-
233 they are 100% devoid of any foundation by client witness testimony or attached competent and
234 authenticated evidentiary documents of record, and are **never** facts before any court and are thus
235 not to be given “testimonial” weight by any court. The Bill of Rights, 14th Amendment, Section
236 1, guarantees Respondent an inalienable right to procedural due process. A judge who uses
237 hearsay statements of counsel and relies upon unauthenticated, limited hearsay copies instead of
238 the full record from beginning of the mortgage to present, DENIES Respondent fundamental
239 fairness and demonstrates a pro-bank, pro-petitioner, pro-attorney bias, denying Petitioner equal
240 protection of the laws, Also guaranteed under the 14th Amendment.

241 Respondent has not provided to this Court anything showing what certifying agent/counsel relied
242 on to state to the Court whom is the true holder if attorney never saw the original Deed and Note
243 w/proper indorsements? To make such “certification” without having first hand knowledge of

244 the original Deed of Trust and Note, or where they reside, is unconscionable, and nothing more
245 than hearsay, and is prejudicial, and is Fraud on the Court if no such first hand knowledge exists.
246 Plaintiff is moving to put Respondent's disabled mother, and Plaintiff, a disabled veteran, on the
247 streets, and to deprive Respondent of substantial equity in this process under the color of law.
248 Should it not at least be fair and impartial, and follow the law and rules?

249 The Court MUST follow established criteria for determining the true "holder," especially in this
250 case, and that criteria is the presentment of the original Deed and Note to the Court and to
251 Respondent for inspection as multiple cases of foreclosure have shown. (See Response Exhibits
252 E and F). **Petitioner has never even disclosed where the original Deed and Note documents**
253 **actually reside, or provided witness to this.**

254 8. As discussed in Motion to Dismiss (Line 429), Petitioner stated in one place... (Exhibit V)...
255 Aurora Loan Services, LLC claimed it was the "Current holder of Evidence of debt" and "legal
256 holder" of a "negotiable instrument," and "secured by a Deed of Trust from" Respondent, yet in
257 other testimony, (Motion to Dismiss line 451) Petitioner states it had provided "complete
258 information" as to who was "the owner of the loan who has possession of the original Note,"
259 which is Bank of New York as Petitioner testifies. (See Exhibit B-2). Petitioner can't have it
260 both ways. Either Petitioner has possession of the Note and the Deed of Trust, or it doesn't, and
261 someone else does. It doesn't get much simpler.

262 The issue is "who has the legal right to payments as the true Holder of the Note and Deed," as
263 Respondent has been seeking to ascertain for many months now, yet being met with obfuscation
264 all along the way. A mere "holder" of the Note, if they have no provable consideration in the
265 Note and Deed, and have no risk or injury which has been demonstrated or is in evidence, (as
266 was discussed in the Motion to Dismiss, lines 94-123), have NO Standing or authority to be
267 foreclosing and this Court has no Jurisdiction over this issue.

268 Petitioner “bears the burden of demonstrating standing and must plead its components
269 **with specificity.**” (Emphasis added) *Coyne*, 183 F. 3d at 494; *Valley Forge Christian*
270 *College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464
271 (1982).

272 The Petitioner must show that it was the **holder of the original note and original**
273 **mortgage at the time the complaint was filed.** *Coyne v. American Tobacco Company*,
274 183 F.3d 488, 492-93 (6th Cir. 1999). (Emphasis added).

275 An example of this was the decision handed down by U.S. Federal District Court Judge
276 Christopher A. Boyko of Ohio, who on October 31, 2007, dismissed 14 foreclosure actions at
277 one time with scathing footnote comments about the actions of the Petitioners and their attorneys
278 in attempting to submit copies of the Note and Deed, and claiming to have been **not only the**
279 **“holder of the note and mortgage,”** but Also were “the holder of the note and mortgage **at the**
280 **time the complaint was filed.**” (See Response Exhibit E*).

281 Not long after that series of cases, came the dismissal of 26 foreclosure cases in Ohio by U.S.
282 District Court Judge Thomas M. Rose who referenced the Boyko ruling in his decision. (See
283 Response Exhibit “F”*). New York Courts, and others following, show how the Courts are
284 adjudicating this issue, and how the only true, genuine and equitable means of determining who
285 the true owner and holder of the original Deed of Trust and Note are is to force compliance with
286 Rules of Evidence and have the claimants provide “proof of claim” in the original Deed of Trust
287 and Note. Copies prove nothing before this Court. (*The 8th Circuit Court ruled in *Anastasoff*
288 *v. United States* (2000) that, "The judicial power of the United States is limited by the doctrine
289 of precedence." Precedence cannot be dismissed, regardless of Federal or State precedence).

290 9. Petitioner appears to be attempting to submit COUNTERFEIT SECURITIES to the Court as
291 their “proof of claim.” A copy of the Deed of Trust and the Note, as discussed in the Motion to

292 Dismiss, and which Petitioner is relying on as “evidence of debt,” are NOT authenticated
293 evidence, not is it evidence presented by a competent fact witness with first hand knowledge of
294 the ORIGINAL Deed and Note, showing proper assignment, which copies do NOT reveal.
295 (U.S.C. Title 28, Rule 901). This can only be an attempt to introduce documents meant to
296 deceive and defraud Respondent, and to commit Fraud on this honorable Court. (See Response
297 Exhibit A).

298 The “averments” that Petitioner claims to have introduced as evidence (See P. 2, and P. 7 of
299 Petitioner Response) that it is the owner of the Note and Mortgage, without any mention of an
300 assignment, creates a conflict. Petitioner claims (P. 2 A of Response) that the “court must accept
301 all averments of material facts as true...”

302 Respondent refutes this claim and asserts that such averments are simply hearsay and that they
303 present NO “material facts” that are valid or authenticated... (See Point 7, I) above). In every
304 instance, Petitioner has not satisfied its burden of demonstrating standing at the time of the filing
305 of the Complaint. (See line 62-68 above). Sufficiency of pleadings has NOT been met by
306 Petitioner . No “injury in fact” demonstrated means “no standing” and the Court lacks Subject
307 Matter Jurisdiction.

308 The minimum constitutional requirements for standing are: proof of injury in fact,
309 causation, and redressability. *Valley Forge*, 454 U.S. at 472.

310
311 “The **Petitioner must be a proper proponent**, and the action a proper vehicle, to
312 vindicate the rights asserted.” *Coyne*, 183 F. 3d at 494 (quoting *Pesttrak v. Ohio Elections*
313 *Comm’n*, 926 F. 2d 573, 576 (6th Cir. 1991)). (Emphasis added).

314 To satisfy the requirements of Article III of the United States Constitution, the Petitioner must
315 show it has personally suffered some actual injury as a result of the illegal conduct of the

316 Respondent. See *Coyne*, 183 F. 3d at 494; *Valley Forge*, 454 U.S. at 472. No evidence has been
317 submitted to prove Petitioner has lost, is losing, or will lose, investment or consideration which it
318 paid for the original Deed and Note.

319 10. Respondent Also reminds the Court that a “servicer” has no right of action and is not a
320 proper party before the Court. Petitioner, throughout their testimony over the many months
321 states frequently that they are “servicing” the account, and used this testimony to excuse
322 themselves from having to answer the Qualified Written Request (QWR-Entire copy available-
323 see Motion to Dismiss Exhibit B example, and Response Exhibit B) regarding anything that was
324 not “servicing related.” In addition, in this QWR, Petitioner testifies ONLY that “Aurora has the
325 right to enforce the Note evidencing the debt, (with absolutely no evidence of record provided
326 for this testimony) and **has the right to receive payments of the debt for and on behalf of the**
327 **owner of the debt.**” They have the alleged (and as yet unproven) “right” to receive payments...
328 ON BEHALF OF THE TRUE OWNER, who is entitled to receive payment FROM Petitioner.
329 This conveys NO authority for Petitioner to be foreclosing against Respondent.

330 Petitioner makes no claim here to “own” this original Deed and Note, and goes on to provide
331 testimony that they do NOT own the Deed or Note, and that Bank of New York is the “owner of
332 the debt,” therefore, this is more than prima facie evidence, and alone should prove they have no
333 standing to be acting on behalf of any true holder and owner of the Note and Deed, whomever
334 that is ever determined to legally be.

335 Partial assignments, as in servicing agreements, (if such has even occurred, and which no
336 evidence in fact is of record) transfers no title, lien or security interests to Petitioner, as
337 Respondent brought out in the Motion to Dismiss. Respondent and this Court have received NO
338 evidence in fact that Petitioner has present servicing rights, which clouds this issue.

339 Furthermore, Petitioner named Bank of New York as the alleged “owner” of the original Deed
340 and Note, and Bank of New York, to date, despite at least three communications, has not

341 provided no response and no evidence of Petitioner having security interests, servicing rights, or
342 any connection to this matter in any way. Strange behavior for an owner of an original Deed and
343 Note and who should be receiving payments from the alleged (unproven) servicer, Petitioner.
344 However, Petitioner persists in claiming they “hold” (own) the Deed and Note. This discredits
345 their testimony because of direct conflicting statements.

346 It should Also be pointed out that the testimony Petitioner provides states “the owner of the debt
347 is: Bank of New York, Mellon Corporation, in trust for, Structured Adjustable Rate Mortgage
348 Loan Pass-Through Certificates...” This is prima facie evidence that the Deed and Note are part
349 of a group pooling agreement, with multiple parties involved with security interests in this issue,
350 yet none of them have been properly identified, named, or are part of this foreclosure, thereby
351 eliminating any opportunity for them to not only provide testimony, but to be cross-examined as
352 well, which is my right as stated herein.

353 11. Respondent has the right to not only see and personally inspect the actual original Note and
354 Deed evidencing the debt, (including the assignments shown), but to Also have opportunity to
355 cross-examine all actual witnesses, under oath, (6th Amendment Constitutional right to confront
356 one's accusers) who have real consideration in this issue, and who can prove loss or damages,
357 AND all those who have first hand knowledge of the actual Deed and Note, AND the alleged
358 default, **AND, all those providing affidavits, averments, documents or other alleged**
359 **“evidence” into the record.** Anything offered outside those legal parameters is simply hearsay,
360 and cannot ultimately be used as evidence in this honorable Court.

361 In *Ohio v. Roberts (1990)*, the Supreme Court decided that the Confrontation Clause holds that
362 hearsay cannot be heard in Court if it does not have adequate “indicia of reliability” or if it does
363 not have “guarantees of trustworthiness.” (p. 66). And, “the only indicium of reliability
364 sufficient to satisfy constitutional demands is confrontation.” Pp. 5-33.

365 “The Confrontation Clause” requires that a witness must be present for cross examination
366 either at trial or before trial. *Crawford v Washington* 541 U.S. 36 (2004).

367
368 The Alabama Supreme Court established “the right to confront and cross-examine
369 adverse witnesses.” *Armstrong v. State*, 312 So. 2d 623 (1975).

370 No such witnesses have been presented, and no evidence of record supporting Petitioner’s claims
371 are valid.

372 12. Counsel for the Petitioner providing possible testimony or acting as a witness is
373 inadmissible hearsay, (as presented in the Motion to Dismiss and #7-I) above).

374 “Generally, where a witness has no personal knowledge of a fact, he should not be
375 allowed to give testimony concerning such fact, because there would then be reliance on
376 the out-of-court declaration of another, and the normal safeguards of oath, confrontation
377 and examination would be precluded.” *Simonton V. Continental Cas. Co.*, 507 P.2d 1132
378 *Colo.App.*, 1973, and *Federal Rules of Evidence 104(a)*.

379 Federal Rules of Evidence, (FRE) Rule 801, 28 U.S.C, defines hearsay as a "statement, other
380 than one made by the declarant while testifying at the trial or hearing, offered in evidence to
381 prove the truth of the matter asserted.”

382 13. Petitioner’s “verifying and evidencing the debt,” as also stated in the QWR Response by
383 Petitioner (Motion to Dismiss Exhibit B) is but hearsay evidence in the way of copies, or other
384 unauthenticated testimony, (See Article VIII of Colorado Rules of Evidence) that cannot prove
385 true ownership, clear line of title, or right to receive payments. (Foundation lacking, FRE Rule
386 602; Authentication lacking, FRE 901(a). Petitioner has provided no evidence of record they
387 were assigned anything by Bank of New York, as the Motion to Dismiss details, let alone their

388 claims to be the owners, and other conflicting testimony that they are NOT the true owners.
389 These issues provide clear prima facie evidence that there is NO evidence of record that
390 Petitioner has any authority or right to foreclose, and that the true, legal “lenders” and holder of
391 the original Deed and Note who are due repayment, are clouded, unknown and unproved at this
392 time.

393 14. Petitioner states on P. 6, E, that C.R.C.P. 120 “affords Respondent due process of law.”
394 Respondent denies this claim for the following reasons:

395 a) In Plymouth Capital Co. Inc. V. District Court of Elbert County, 955 P.2d 1014, 1017
396 (Colo. 1998), discussing the history and purpose of Rule 120, it says that Rule 120 was designed
397 to provide a summary process for streamlined public trustee foreclosures which protects a
398 creditor’s right to timely foreclosure upon default as well as a debtors’s right to **minimal due**
399 **process.**

400 b) C.R.S. 38-38-101 discusses that if the original evidence of debt is not submitted, a
401 copy of evidence of debt and deed can be submitted, yet in C.R.C.P. 121-1-14(f) it clearly
402 specifies: “If the action is on a promissory note, the original note **shall** be presented to the court
403 in order that the court may make a notation of the judgment on the face of the note.” (Emphasis
404 added).

405 This is a direct contradiction in laws and rules. Respondent is being denied access to the original
406 Note and Deed, yet this very Note must be presented to the Court for marking at the time of
407 assignment. Respondent wonders how Petitioner and this court could deprive Respondent of the
408 right to see the original Note and Deed, when it is mandatory that this same deed be presented to
409 the court later? This certainly deprives Respondent of elements of due process.

410 Respondent would also notice the Court of U.S. Supreme Court ruling that states “Rules shall

411 neither abridge, enlarge or modify the substantive rights of any litigant.” C.R.S. 3-2-108. The
412 conflict between a copy being sufficient in C.R.S. 38-38-101, and the original being required in
413 C.R.C.P. 121-1-14(f) violates Respondent’s due process rights, which, by law, cannot be
414 “minimal” or be “abridged” by statutes or rules, and must allow a full due process to occur.
415 Rights cannot be abrogated through local rules.

416 15. Further evidence creating additional questions as to what Petitioner is doing was recently
417 received by Respondent. (See Response Exhibit B1-3). Another law firm (Kahrl Wutscher, LLP
418 (KW) is responding to copies of correspondence from Respondent to Petitioner. In this
419 response, KW once again provides testimony that Petitioner is merely the servicer, and that the
420 owner of the debt was identified previously. (B1-2). **In addition, Petitioner is once again**
421 **offering Respondent a loan modification, (showing alleged ownership of the Deed and Note)**
422 **so how can Petitioner also be foreclosing and seeking a Rule 120 hearing while offering a**
423 **loan modification? This provides prima facie evidence that there is severe inconsistencies**
424 **in Petitioners performance in this issue.**

425 **NO STANDING, PROOF OF CLAIM, PROPER**
426 **DOCUMENTATION OR FILING BY PETITIONER**

427 Treatise from Westlaw specifies attorney responsibility in foreclosure proceedings...

428 3. Foreclosure of Pre-Judgment Liens.

429 B. Real Property—Judicial Procedure.

430 **§CRCP - 3.55. Matters preliminary to the commencement of an action**

431 “Before the pleadings are drafted and the action commenced, the attorney for the mortgagee should
432 secure from his client the original promissory note or other evidence of the secured indebtedness,
433 the security instrument, the abstract of title or title policy, insurance policy, tax receipts and any

434 assignment of rents. If the foreclosure is of a mortgage securing a promissory note, the attorney
435 always should obtain the original promissory note and mortgage so that he can satisfy himself that
436 the client is the holder of the debt and that the documents are available when the attorney needs
437 them.”

438 Petitioner has failed in doing their legal and ethical duty, in violation of Judicial Canon. (See
439 Judicial Notice above).

440 1. Petitioner, on P. 3 and 7, mentions... to the effect that “certification made by Aurora, a qualified
441 holder, signed by its attorney that it is the holder of the evidence of debt” is being presented.
442 Respondent challenges hearsay testimony in this invalid “certification.”

443 “Certification of qualified Holder” (Which Respondent, to the best of his knowledge or memory,
444 has NEVER received a copy of or seen till inquiry was made with the Court Recorder’s office on
445 5-4-10, which is ex parte communication - Colorado Code of Judicial Conduct, Canon 3, A , 4) and
446 should alone cause dismissal of this case, **(along with ex parte communication between the court
447 and Petitioner in previous hearing regarding the hearing not being a Rule 120 hearing, but
448 Respondent received no NOTICE of this yet Petitioner did)** states that counsel for Petitioner
449 “certifies to the County Public Trustee...to the best of our knowledge, following reasonable
450 inquiry:..”

451 Respondent demands that Petitioner provide proof of this “reasonable inquire,” and what it is based
452 on, and the witness who can testify to this inquiry. Is there first hand knowledge by the attorney
453 signing this certification, and who is the attorney, as yet unidentified? C.R.C.P. Rule 11 requires
454 any pleading entered by an attorney to be well-grounded in fact and warranted by existing law, or
455 sanctions can be imposed.

456 Certification states:

457 a. “Qualified Holder is the holder of the original evidence of debt. A true and correct copy
458 of the original evidence of debt is attached hereto.”

459 Respondent challenges this presumption. A “copy” of said “original” is NOT the original. Should
460 an Order Authorizing Sale (OAS) be granted, C.R.C.P. 121-1-14(f) clearly specifies: “If the action
461 is on a promissory note, the original note shall be presented to the court in order that the court may
462 make a notation of the judgment on the face of the note.”

463 If the original is to be provided (mandatory) to the court AFTER the OAS, then it most certainly
464 should be available for inspection in this court and by Respondent. This is a rule and NOT an
465 option, therefore, the presentment of this original Note (and Deed of Trust backing the Note) should
466 be readily available to Petitioner and therefore there is no legal excuse for Petitioner to refuse to
467 produce originals, or to prove standing by Petitioner, and other elements of standing and jurisdiction
468 by that required means. If Court authorizes sale, it would be an invalid order “*ab initio*,” and a tort
469 upon judicial resources, because Court is acting as if the rules are optional.

470 b. “Qualified Holder is the current beneficiary of the Deed of Trust. A true and correct
471 copy of the recorded Deed of Trust is attached hereto.” Deed of Trust names MERS (See #7, line
472 542) as the beneficiary, not Petitioner. A copy of the “recorded” Deed of Trust is hearsay evidence
473 and has no business as evidence in this court. As clearly presented to this court throughout, a copy
474 cannot prove a true holder, as anyone can produce a “copy” of the Deed of Trust from the
475 “recorded” instrument in the Recorder’s office.

476 c. The signature on this “certification” is illegible, and no printed signature is evident.
477 Inadmissible evidence.

478 Petitioner also claims right to cross-examine the signer of this certification witness as well to
479 determine elements of his first hand knowledge of this certification and other facts.

480 2. C.R.S. §38-38-101 allows two basic alternative approaches to filing a foreclosure
481 action. The first alternative, referenced herein as a "full-doc" foreclosure, allows a "holder of
482 evidence of debt" to initiate a foreclosure by putting into evidence, *inter alia*:

483 (a) "... [t]he original evidence of debt, together with the original endorsement or
484 assignment thereof, if any, to the holder of the evidence of debt ...," C. R. S. §38-38101(1
485)(b)), or "... a certified copy of the endorsement or assignment [of the evidence of debt]
486 recorded in the county where the property being foreclosed is located...". C. R. S. §38-38-
487 101(1)(b) and (6); and

488 (b) "... [t]he original recorded deed of trust securing the evidence of debt " C. R. S. §38-38-
489 101(1)(c) or a "... certified copy of the recorded deed of trust." C. R. S. §38-38-1 01
490 (1)(c)(1). C. R. S. §38-38-101.

491 Respondent has found no such certified evidence has been placed of Record, or with this Court, and
492 has received no such certified copy.

493

494 3. The burden is on Petitioner to establish with competent evidence, as a threshold matter, that it
495 is the real party in interest in this proceeding.

496 Colorado Rule of Civil Procedure 17(a) requires that every action "be prosecuted in the name of the
497 real party in interest." The real party in interest is that party who, by virtue of substantive law, has
498 the right to invoke the aid of the court in order to vindicate the legal interest in question...

499 Implicit in Rule 120 is the requirement that the party seeking an order of sale have a valid interest
500 in the property allegedly subject to the power of sale. Unless the "real party in interest" defense is
501 considered at a Rule 120 hearing, any order for sale might well result in the sale of property in favor
502 of a party who has no legitimate claim to the property at all. Once a debtor in a Rule 120 proceeding

503 raises the "real party in interest" defense, the burden should devolve upon the party seeking the
504 order of sale to show that he or she is indeed the real party in interest.

505 *Goodwin v. District Court*, 779 P.2d 837,842-843 (Colo. 1989) [remanded for determination
506 whether purported assignment of promissory note and deed of trust were invalid due to
507 interlineations, and whether person seeking to foreclose was, if assignment was invalid, real party
508 in interest in Rule 120 proceeding] (citations omitted).

509 These "full-doc" foreclosure provisions embody decades of Colorado precedent. It is well
510 established in Colorado case law that, in an action on a promissory note, the real party in interest
511 is the person who holds legal title to the note. *Platte Valley Savings & Loan v Crall*, 821 P.2d
512 305,307 (Colo. App. 1991).

513 **Even if Petitioner could produce the original Note and Deed, case law has shown that even this**
514 **isn't enough to prove standing:**

515 "GMAC has failed to demonstrate that it is the holder of the Note because, while it was in
516 possession of the Note at the evidentiary hearing, it failed to demonstrate that the Note is properly
517 payable to GMAC." Tucson Judge HOLLOWELL Denies MLS for Lack of Standing. *WEISBAND*
518 *Case No. 4:09-bk-05175-EWH. United States Bankruptcy Court.*

519 4. Where a claim is based on an assignment, the party must prove with competent evidence of a full
520 and complete assignment of the Note, **valid at the time its claim arose and at the time the**
521 **foreclosure was filed.** (*Alpine Associates, Inc. v. KP & R" Inc.*, 802 P. 2d 1119, 1121 (Colo. App.
522 1990).

523 A foreclosing party who meets the statutory proof requirements specified above - with original or
524 certified copies of recorded documents that show evidence of title and valid assignments of the Note

525 to that party - would presumably also meet its burden of showing that it is a real party in interest
526 (*Goodwin, supra*, at 843) by producing evidence that it currently holds legal title to the Note (*Platte*
527 *Valley, supra; American Surety, supra*), and, if this title is due to an assignment, that it has **a full**
528 **and complete assignment of the Note, valid at the time its claim arose and at the time the case**
529 **was filed.** (*Alpine Associates, supra*).

530 5. Petitioner did not choose the "full-doc" alternative in filing this case. Concerning the Note (the
531 "evidence of debt"): the copy of the Note filed by Petitioner is not the "original evidence of debt,"
532 and contains no "original endorsement or assignment thereof" to Petitioner (nor does the copy filed
533 by Petitioner contain any endorsements or assignments to Petitioner). Furthermore, the copy of the
534 Note contains no "certified copy of [any] endorsement or assignment" of the Note to Petitioner that
535 is "recorded" in Archuleta County.

536 6. Concerning the Deed of Trust: the copy filed by Petitioner is not the original, nor is it a certified
537 copy of the recorded Deed of Trust. Petitioner's choice to not file under the statutory "full-doc"
538 provisions leave it - on the record thus far - in a position where it has not met its burden of showing
539 that it is a real party in interest (*Goodwin, supra*, at 843) by producing evidence that it currently
540 holds legal title to the Note (*Platte Valley, supra; American Surety, supra*), and, since its claim of
541 title is due to an assignment, that it has a full and complete assignment of the Note, valid at the time
542 its claim arose and at the time the case was filed (*Alpine Associates, supra*).

543 7. Although the Deed of Trust states that MERS is the beneficiary "... solely as nominee for the
544 Lender and Lender's successors and assigns...." there is no claim in the Statement of the Attorney
545 for the person who claims to be the Qualified Holder under C.R.S. 38-38-100.3(20) and 38-38-101
546 that there was any assignment of the Deed of Trust from MERS to anyone, including Petitioner, and
547 there is no claim or evidence of any such assignment in the records of the Archuleta County Clerk
548 and Recorder. In MERS Rules 2009, it clearly states that all assignment shall be "promptly
549 recorded," and also that when any assignment is made, that the mortgage must be

550 removed/deactivated, properly recorded in the county where the property is, and then returned to
551 MERS. No such recordings are of record with the county recorder. MERS has NO assignments of
552 anything to anyone.

553 The burden is on Petitioner to establish with competent evidence that Mortgage Electronic
554 Registration Systems, Inc. ("MERS"), identified as the original beneficiary on the only recorded
555 Deed of Trust in the record, holds a valid security interest in the Note and the subject property, and
556 that MERS had the legal right to, and did in fact, execute valid assignments of any interest it may
557 have had in the Note or Deed of Trust, to any and all parties in the chain of title to the Deed of Trust.

558 The only recorded "security interest" affecting the subject property is the Deed of Trust that
559 identifies MERS as the "beneficiary" and as "nominee" for the nominal lender, Home Loan Center.
560 This Deed of Trust was recorded with the Archuleta County Clerk and Recorder at Reception No.
561 20310683 on January 16, 2004, and is relied upon by Petitioner as grounds for invoking a power of
562 sale in this proceeding.

563 7. There is no claim in the statement of the person who claims to be the Qualified Holder under
564 C.R.S. 38-38-100.3(20) and 38-38-101 that there was any assignment of the Note from Home Loan
565 Center, LLC, to Petitioner. Accordingly, the pleadings filed herein are defective on their face in that
566 the only recorded interest identifying a Lender is the Deed of Trust recorded with the Archuleta
567 County Clerk and Recorder at Reception No. 20400803 on January 16, 2004, which names Home
568 Loan Center as the obligee under the Note and holder of the evidence of debt, in direct contradiction
569 of the assertions in the Statement of Qualified Holder that Petitioner is the current holder of the
570 evidence of debt. Petitioner appears nowhere on any recorded interests affecting the subject
571 property, nor on the Deed of Trust or the Note.

572 8. Where a party's status as a real party in interest depends on an assignment, that party must prove,
573 in addition to the basic elements of its case, its status as assignee with evidence that shows a full and

574 complete assignment from the assignor. *Alpine Associates, Inc. v. KP & R" Inc.*, 802 P. 2d
575 1119,1121 (Colo. App. 1990). The assignment must be proven "... by evidence satisfactory in
576 character to protect the defendant from another action by the alleged assignor..." *Id.* The pleadings
577 in this action are, on their face, devoid of any evidence of a full and complete assignment of any
578 interests to Petitioner in either the Note or the Deed of Trust, or in any other pleadings or evidence
579 of record. Accordingly, the pleadings and documents fail to establish - on their face - that Petitioner
580 is the real party in interest in this action. This action must, therefore, be dismissed on the pleadings
581 for lack of standing and jurisdiction.

582 9. Under C. R. S. 38-38-100.3(10): ... "holder of an evidence of debt" does not include a person
583 acting as a nominee solely for the purpose of holding the evidence of debt or deed of trust as an
584 electronic registry without any authority to enforce the evidence of debt or deed of trust. ...
585 *Id.* Accordingly, MERS is not the holder of evidence of debt under Colorado law, has no
586 authority to enforce Respondent's Note or Deed of Trust, and no authority to proceed in a Rule
587 120 foreclosure proceeding under the power of sale contained in the Deed of Trust.

588 10. The security interest contained in a Deed of Trust ordinarily follows any assignments of the
589 Note, as a matter of law¹ - unless a contrary intent is provided by agreement between the parties.
590 Such separation, if it has occurred, provides no rights to the holder of the Note or Deed to exercise
591 enforcement of any power of sale, under the Deed of Trust or Note, to foreclose.

¹ Where a mortgage loan separates the interests of the Note and Deed of Trust, with the Deed of Trust lying with an independent entity that has no rights to payment, enforcement, or collection of the obligation contained in the Note, the Deed of Trust is unenforceable. The practical effect of splitting the Deed of Trust from the Note is to make it impossible for the holder of the Note (even if one can be identified in the instant case) to foreclose, unless the holder of the Note is the assignee or agent of the holder of the Deed of Trust. The mortgage loan is ineffectual when the note holder does not also hold the Deed of Trust.

The security interest contained in a Deed of Trust ordinarily follows any assignments of the Note, as a matter of law - unless a contrary intent is provided by agreement between the parties.... the interests in the Deed of Trust were separated from the interests in the Note and the subject property, provided no rights in the holder of the Deed of Trust to enforcement of any obligations under the Note, including the power of sale under a Rule 120 foreclosure.

Landmark National Bank v. Kessler, No. 98,489 (Kan., August 28,2009); *Bellisri v. Ocwen Loan Servicing, LLC*, 284 SW 3d 619 (Mo. App. 2009); *Mortgage Electronic Registration Systems, Inc. v. Southwest Homes of Arkansas*, No. 18-1299 (Ark., March 19, 2009).

592 Accordingly, any interests Petitioner may have had to enforce the power of sale under the Deed of
593 Trust (which interests it clearly did not have) did not follow any assignments of the Note as a matter
594 of law. An increasing number of other jurisdictions provide sound precedent for such a ruling under
595 Colorado law. *See, e.g., Landmark National Bank v. Kessler*, 216 P.3d 158 (Kan. 2009); *Bellistri*
596 *v. Ocwen Loan Servicing, LLC*, 284 SW 3d 619 (Mo. App. 2009); *AI0rtgage Electronic Registration*
597 *Systems, Inc. v. Southwest Homes of Arkansas*, No. 18-1299 (Ark., March 19, 2009).

598 Even if any interests MERS may have owned under the Deed of Trusts had followed the Note, there
599 is no evidence of complete and valid assignments of the Note or Deed to Petitioner, in this
600 proceeding or otherwise, so Petitioner lacks standing to pursue a foreclosure herein.

601 11. Rule 120 clearly states a court should **consider all relevant evidence** (See Federal Rules of
602 Evidence Rule 410) to assess whether there **is a reasonable probability that a** default or other
603 circumstance authorizing exercise of a power of sale **has occurred**. *Premier Farm Credit, PCA v.*
604 *W-Cattle, LLC*, 155 P.3d 504 (Colo. Ct. App. 2006). (Emphasis added).

605 Defendant has provided a preponderance of evidence herein, with “relevant evidence” that NO
606 default by Defendant initiated this controversy, and, in fact, the default is by Aurora Loan Services,
607 LLC, in at least two venues, in collaboration with Kahrl Wutscher, LLP and possibly with Counsel
608 for Petitioner .

609 12. Respondent would also Notice the court that he attempted to review the documents filed by the
610 Petitioner into the Court, but was denied access, stating that no hard copies were available, and that
611 I had to “pay” for a copy. Respondent was merely wishing to examine the filings, to see whether
612 he was in receipt of all documents entered into the record, but was denied. (Evidence available).

613 13. Respondent recently received communication from an attorney group with more documentation,
614 and with an offer for a loan modification program. This is a continuing exchange between multiple

615 parties from Petitioner, and is causing more confusion as to who is doing what, and when.

616

Alleged Default Denied

617 1. Petitioner, on P. 4 mentions Exhibit I-1 of the Motion to Dismiss and claims this is evidence of
618 a default. Petitioner ignored Motion to Dismiss evidence to the contrary. Exhibit I-1 is dated
619 September 8, 2009. Petitioner erroneously claims it reveals an “arrears on his mortgage for two
620 months.” First, Respondent could NOT have been in “arrears for two months,” considering the
621 statement clearly shows ONE month allegedly in “arrears,” and the “due” amount for September,
622 due later that month, added to it.

623 Motion to Dismiss, Exhibits II-2 and II-2, show clearly that Respondent was NOT in arrears for the
624 month of August as claimed and as shown on the Petitioner monthly statement. Exhibits show
625 August payment was paid, not only through the Petitioner website, but the bank’s debt evidence of
626 Petitioner having received payment for August. The alleged “default” began when Petitioner
627 breached its fiduciary duty to properly credit monies paid toward alleged August monthly due
628 amount.

629 This began as a billing dispute and does not constitute a default by law. Petitioner had an initial
630 billing error, and then ongoing failure to properly credit Respondent’s account for 5 months.
631 Petitioner failed to respond to these challenges to the billing and lack of crediting Respondent’s
632 account.

633 As the Motion to Dismiss clearly explains, this September billing error was but the last of ongoing
634 indiscrepancies Petitioner was showing, including conflicting and contradicting “ownership”
635 evidence. This default in the erroneous billing error by Petitioner merely supplied prima facie
636 evidence that Respondent was paying monies that were apparently disappearing and no clear
637 evidence as to WHOM it was owed to was yet provided. Previous documentation with Petitioner

638 shows Respondent's concern that something was very wrong in Petitioner's responses in providing
639 documentation on who the rightful owners and recipients of funds were. Respondent's suspension
640 of payments at that point, under due notice to Petitioner, (See Motion to Dismiss) was due to
641 Petitioner defaulting, and in financial concerns for Respondent responsibilities in paying the proper
642 party in interest, and not being held accountable for monies disappearing or being diverted.
643 Respondent was purely being responsible with payments and withholding payments (but saving
644 them as evidence clearly proves).

645 3. Petitioner, on P. 4 mentions Exhibit I-4 and I-5 then states that "Respondent was still behind two
646 payments, however, Petitioner's previous Exhibits mentioned showed Respondent was allegedly
647 "three payments" behind, so where is the admission of this sudden accounting discretion and
648 "credit" on the account, which has been unjustly and illegally used against Respondent?

649 Petitioner goes on to state that "Respondent made payments sufficient enough to pay the August and
650 September payments, but not the October or November payments." As proven above, the August
651 payment was paid long before. The September and October payments were suspended due to
652 default, and pending response on repeated requests for proof of claim, however, Respondent did
653 provide Sept and Oct payment as a show of good faith, and trusting in Petitioner's ability to provide
654 proof of claim. Respondent's actions do not reflect someone not willing to make lawful payments
655 to proper parties. In fact, evidence shows clearly that Respondent's intent is to pay the lawful debt
656 to the lawful owner and recipient of funds, but true owner is severely clouded.

657 4. Petitioner, on P. 4 mentions Exhibit K-4, "which is a copy of the same check photocopied twice."
658 This is in error. The photocopy is of the original cashed check, the back of this cashed check
659 showing acceptance of offer Respondent made, (discussed below) and a copy of the receipt of the
660 cashier's check. This was no attempt to show more payments than were factually made, just to show
661 the check was cashed by Petitioner, but not credited properly to Respondent's account, another
662 default.

663

664 5. Petitioner, on P. 5 mentions Exhibit I-8, and that “Respondent asserts that he sent a cashier’s
665 check with the number 12324 in the amount of \$957.51... but did not produce a copy of the back of
666 the cashiers’ check to evidence that the cashier’s check had been cashed.” Is counsel deliberately
667 being coy in this Response to the Court? The “assertion” is proven true of record... Petitioner goes
668 on to say... “In fact, Respondent provides evidence that this cashiers check was returned to him...”

669 Of course, Respondent didn’t and couldn’t provide a copy of the “cashed” check because this very
670 check which Petitioner denied they received for over 3 months, (which previously discussed
671 statements show lack of payment), Petitioner now twists to somehow be Respondent’s fault because
672 Petitioner refused this lawful payment, and which payment, contrary to Petitioners allegations, if
673 properly applied, and without yet another default by Petitioner, would not have continued the serious
674 breach of faith and prima facie evidence that financial issues were clearly improper. Petitioner held
675 this check for over three months, and had first hand knowledge of this check being in their
676 possession for at least a month prior to the return of the check, (and evidence shows receipt of this
677 check long before this) but failed once again (another default) to notice Respondent or other parties
678 of this fact, and which they consistently denied having received payment.

679 **Petitioner failed to mention that cashing the first cashier’s check was an acceptance of the**
680 **clear and unmistakable offer and conditions Respondent made, which stated that Petitioner**
681 **could and would provide the original Deed of Trust and the Note, and proper proof of claim**
682 **in Court or for forensic audit. They cashed this check, as evidenced by Exhibit K-4. They**
683 **then, with cashier’s check # 12324, refused the same conditions as accepted previously,**
684 **creating yet another default in this issue.**

685 In addition, as explained in detail in the Motion to Dismiss, petitioner’s failure to NOTICE
686 Respondent of the fact that they, in truth, DID have the cashier’s check, despite my repeated letters
687 attesting to sending the payment, and of concern on the “loss” or “misapplication” of this payment,

688 and repeated correspondence from Petitioner claiming to not have received this. The very fact in
689 evidence is that Petitioner not only denied receiving said payment, denied accepting and crediting
690 said lawful payment, but then later returned this same instrument with no explanation for their
691 breach of fiduciary duty, or its default in the agreement it accepted previously.

692 6. Petitioner, on P. 5 mentions the initiation of foreclosure action... “the C.R.C.P. 120 action.” At
693 this time, as referenced to above, Petitioner had not proven its ownership of said Deed of Trust and
694 Note instruments. Petitioner continues to discuss “default” over and over again, which now should
695 be a moot point given all the other evidence showing Petitioner’s multiple defaults.

696 7. Petitioner, on P. 5 goes on to state... “Respondent even shows an attempt to cure the default by
697 providing the court with a copy of another cashier’s check in the amount of \$2,77.97 (sic)...” (which
698 should be \$2777.97)... “which demonstrates an inconsistency on the behalf of Respondent who
699 claims Aurora is not the holder of the evidence but is attempting to make payment to Aurora...”
700 Respondent will remind Petitioner and this Court that a servicer receives funds on behalf of the real
701 party in interest, not on their own, and has **NO authority to be refusing a payment offer on behalf**
702 **of Bank of New York, or any other security interest.** In fact, such **refusal of payments nullifies**
703 **any claim that a default exists.** Petitioner is creating an artificial default in not crediting
704 Respondent’s account properly, and in refusing lawful payments toward alleged debt. In addition,
705 Petitioner has failed to respond to the correspondence with the offer to pay, thereby maintaining a
706 pattern of refusing payments.

707 Respondent finds it difficult to understand what is “inconsistent” about this show of payment, when
708 he has also made payments two previous times, and throughout the correspondence, has claimed the
709 desire to show good faith in temporarily accepting Petitioner claims of ownership and ability to
710 prove this, and this offer Petitioner accepted Respondent trusted and relied on in good faith
711 payments.

712 In addition, Respondent has demonstrated clearly with evidence of record (See Motion to Dismiss)
713 that Petitioner has shown conflicting testimony, and NO factual evidence of record of who the actual
714 owner of the original Deed of Trust and Note is to date.

715 8. Petitioner continues at the bottom of P. 5... “Clearly, Respondent was attempting to cure the
716 default. If there was no default, there would be no need for Respondent to obtain a cashier’s check
717 in this amount...” and that “there is no evidence to establish that Respondent is current on his
718 mortgage or that the loan is not in default.” If Petitioner is attempting to stand on technicalities, and
719 in twisting the spirit of the Rule 120 hearing or evidence in fact, Respondent reminds Petitioner and
720 this Court of the established Rule 120 criteria, as well as case law regarding “substance over form”
721 in Motion to Dismiss. Any Federal Court or Jury would easily be able to discern the intent of
722 Respondent, and the evidence of record supporting his position.

723 Respondent’s desire to show good faith through continuing payments despite this controversy is
724 obviously so as to not be behind should Petitioner keep its agreement and be able to provide proof
725 of claim. This isn’t a mystery, it is sound economics. Petitioner didn’t keep its word, didn’t keep
726 the agreement and acceptance of the conditions it previously agreed to by cashing the check, and
727 this simply led Respondent to believe that they would, in fact, keep it, and under which Respondent
728 provided payments so as to not be behind if Petitioner could prove standing, provide proof of claim
729 and the other elements of this controversy.

730 **CONCLUSION**

731 Petitioner states categorically that this issue began as a billing error and does not constitute a default
732 by law. Petitioner was the first to default in this issue, per above evidence, and in Motion to Dismiss
733 and Exhibits. To briefly recap some points;

734 a) Petitioner has provided ample evidence (and lack thereof) that the true owner and holder

735 of the original Deed of Trust and the Note are in clear dispute, and that clear title and proof of
736 ownership is unavailable at this point without the original Deed and Note being presented.

737 b) Petitioner has NOT produced the original Note and Deed of Trust, but copies, as anyone
738 in the world could do, which proves nothing in this Court.

739 c) Petitioner has not produced any evidence proving “it” is the true owner or holder of the
740 original Deed of Trust and Note.

741 d) Petitioner has not produced any evidence proving it has any security interests, full (or
742 partial) assigns or other elements of having a security interest from Bank of New York, in the
743 original Deed of Trust and Note.

744 e) Petitioner has not provided any competent fact witnesses with first hand knowledge of
745 the original Deed of Trust and Note, thus failing to fulfill their legal duty in sufficiency of pleadings.

746 f) Petitioner has not proven standing in the slimmest of means, and Respondent’s evidence
747 stands head and shoulders above Petitioner evidence of record, and the sheer weight of this
748 disproportionate evidence of record can’t be denied.

749 g) Petitioner has failed to accept legal payments totaling \$3735.48, and therefore cannot
750 claim a “default exists.”

751 h) Petitioner has failed to credit Respondent’s alleged account for payments made.

752 I) Petitioner has not acted in good faith in any of these issues.

753 j) Petitioner did not provide Respondent with copies of E-filings entered into the Court
754 record, including said Certification.

755 Respondent states that Petitioner lacks Standing to be in this Court, AND this Court lacks Subject
756 Matter Jurisdiction, AND that the default began with Petitioner, AND that no credible “reasonable
757 probability” of default exists, which is moot based on lack of Standing. Petitioner has legal recourse
758 for remedy and is not deprived of same by dismissing this case. Petitioner moves this Court to
759 immediately Grant the Motion to Dismiss this case with Prejudice, to preserve future judicial
760 economy and the integrity of this honorable Court and the Rule of Law.

761 Respondent also reminds the Court of the minimal Relief sought for having to defend this frivolous
762 action as stated in the Motion to Dismiss, P. 28, as well as an additional 20 hours at \$250 per hour,
763 or whatever the Court deems fitting, for research and preparation for this and all past Motions and
764 Responses, and the other relief requests in Motion.

765

766

767 Jeffrey T. Maehr

768

769 **Certificate of Mailing**

770 I, Jeffrey T. Maehr, do certify that I mailed, first class, prepaid, a true and complete copy of the
771 foregoing document, (34 pages and exhibits), to Petitioner's Counsel at the address above, and to
772 Steven R. Maehr at 542 Sunset Dr., Norcross, GA 30071, on May 7, 2010.

773

774 Jeffrey T. Maehr