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**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT,
IN AND FOR PASCO COUNTY, FLORIDA**

**ONEWEST BANK, F.S.B.,
PLAINTIFF(S),**

vs.

**CASE NO.: 51 2010 CA 6256 ES
CIVIL DIVISION: J4**

**KRISTINA LAROCCA, et. al.
DEFENDANT(S).**

ORDER

THIS MATTER, having come on consideration from the Defendant's Motion to Dismiss, the court having reviewed the pleadings and motions submitted by counsel and accepted argument thereon, it is hereby

ORDERED AND ADJUDGED that:

1. The Defendant's Motion to Dismiss is hereby GRANTED.
2. The Florida Supreme Court amended the Florida Rules of Civil Procedure to require that all complaints in residential foreclosure be verified. See In Re: Amendments to The Rules of Civil Procedure, 2010 WL 455295 (Fla.2010) (35Fla.L.Weekly S317a). Plaintiff filed with the court a document, not attached to the complaint, which Plaintiff asserted complied with the rule. That document is a separate document which Defendant asserted was not attached to the copy of the complaint that was served upon the Defendant.
3. The court finds that the requirements for verification of residential foreclosure complaints are governed both by the Florida Rules of Civil Procedure 1.110(b) and Florida Statute §92.525(2) which provides that a verification, "shall be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration." The purported verification filed by the Plaintiff does not

comply with the clear requirement of statute because it was not printed at the end of the complaint.

4. The purported verification provided by Plaintiff is further deficient because it is qualified with the words, "to the best of my knowledge and belief". The Florida Supreme Court stated that the primary purpose of the amendment to rules was:

1) to provide incentive for the plaintiff to appropriately investigate and verify its ownership of the note or right to enforce the note and ensure that the allegations in the complaint are accurate, 2) to conserve judicial resources that are currently being wasted on inappropriately pleaded "lost note" counts and inconsistent allegations, 3) to prevent the wasting of judicial resources and harm to defendants resulting from suits brought by plaintiffs not entitled to enforce the note, 4) to give trial courts greater authority to sanction plaintiffs who make false statements.

A verification made on "information and belief" frustrates these purposes and is therefore deficient.

5. The Plaintiff shall have 60 days from the date of this Order to amend its complaint to comply with the requirements articulated herein. (See *Muss v. Lennar Florida Partners*, 673 So.2d 84 [Fla.4th DCA 1996] and see *Ballinger v. Bay Gulf*, 51 So.3d 528 (Fla.App. 2 Dist. 2010))
6. The Defendant shall have 20 days from receipt of amended complaint to file its answer or responsive pleadings.

DONE AND ORDERED in chambers, Dade City, Pasco County, on this the _____ April 2011.

Done and Ordered
at Dade City,
Pasco County, Florida

Hon. Lynn Tepper **MAY 05 2011**

Copies to: Matthew Weidner, Esq.
Corey Lewis, Esq.

Lynn Tepper,
Circuit Judge