

REED SMITH LLP

Formed in the State of Delaware

Diane A. Bettino, Esquire
Princeton Forrestal Village
136 Main Street, Suite 250
Princeton, New Jersey 08540
Tel. (609) 987-0050

Attorneys for PHH Mortgage Corporation

)	SUPERIOR COURT OF NEW JERSEY
)	CHANCERY DIVISION
)	PASSAIC COUNTY
)	F -023912-13
)	DOCKET NO.: F-
)	<u>CIVIL ACTION</u>
)	VERIFIED COMPLAINT IN SUPPORT
)	OF SUMMARY ACTION
)	

PHH Mortgage Corporation ("PHH"), authorized to act on behalf of the Foreclosure Plaintiffs in pending, pre-judgment uncontested foreclosure actions, brings this action pursuant to the April 4, 2012, Order of the New Jersey Supreme Court (the "April 4th Order"), that was entered following the Court's decision in U.S. Bank, N.A. v. Guillaume, 209 N.J. 449 (2012), ("Guillaume"). PHH respectfully states as follows:

1. PHH is a corporation of the State of New Jersey.
2. PHH services mortgage loans for residential properties in New Jersey.
3. When PHH is the servicer of a loan, it undertakes payment collection, loss mitigation (modifications, short sales, deeds in lieu) and collection efforts, including foreclosure, with respect to a mortgage loan. If a loan is owned by another entity, PHH undertakes these efforts in accordance with the contracts that govern its relationship with the owner of the loan as

well as the loan documents, Rules of Court and any applicable laws. As the entity collecting and processing payments, PHH has the information relevant to the payments, escrows paid, amounts due and whether a loan is in default and by how much. This information is maintained on PHH's systems of record. In cases in which PHH is only the servicer (and not also the lender), the lender is not likely to have possession of the relevant servicing information, as was recognized by the Supreme Court when it revised the Court Rules governing foreclosures at R. 4:64-1 and R. 4:64-2 in June, 2011. PHH makes this application to the Court pursuant to the authority granted to PHH as the servicing agent of Foreclosure Plaintiffs in pending foreclosure cases.

4. The identities of the Foreclosure Plaintiffs in the foreclosure cases for which PHH is seeking to issue corrected Notices of Intent are identified alphabetically in the Counts 1 through 10. Attached as Exhibits 1 through 10 to each of those Counts are the current lists of the pending, uncontested foreclosure cases that require corrected NOIs (collectively referred to hereafter as the "Corrected NOI List").

5. One of the duties of a servicer on a defaulted mortgage loan in New Jersey is to prepare and serve the Notice of Intent to Foreclose ("NOI"), in accordance with the applicable contracts and as required by N.J.S.A. 2A:50-56 of the Fair Foreclosure Act. The NOI is prepared based on current loan information held by PHH and includes, among other data elements, information about the amount that is required to reinstate the loan and the date by which reinstatement must occur.

6. On February 27, 2012, the Supreme Court decided Guillaume and held that the Fair Foreclosure Act requires strict adherence to the notice requirements set forth in N.J.S.A. 2A:50-56(c) for all NOIs. The Court further held that a court adjudicating a foreclosure action in which the strict requirements of N.J.S.A. 2A:50-56 were not followed has the discretion to

choose the appropriate remedy, permitting a cure of the deficient NOI, or imposing such other remedy as may be appropriate to the specific case.

7. Following its decision in Guillaume, the Court entered the April 4th Order which authorizes the Hon. Margaret Mary McVeigh, P.J.Ch., Passaic Vicinage to entertain summary actions by Orders to Show Cause as to why Plaintiffs in any uncontested residential mortgage foreclosure actions filed on or before February 27, 2012, in which final judgment has not been entered, who caused NOIs to be served that are deficient under the Fair Foreclosure Act, N.J.S.A. 2A:50-56, should not be allowed to serve corrected NOIs on defendant/mortgagors and/or parties obligated on the debt (the "Foreclosure Defendants").

8. The April 4th Order further states that any corrected NOI must be accompanied by a letter to the Foreclosure Defendants setting forth the reasons why the corrected NOI is being served, the procedure to follow in the event a Foreclosure Defendant wishes to object to the NOI, the name of a person to contact with any questions, and that the receipt of the corrected NOI allows Foreclosure Defendants 30 days in which to object or to cure the default.

9. PHH reviewed its pending foreclosure cases with its counsel to identify those foreclosure cases which will require a corrected NOI and has recognized that there are two problems with the previously served NOIs – (1) the failure to include the name and address of the lender, and (2) the failure to include the list of financial counseling services provided by the Department of Banking and Insurance ("DOBI List").

10. The Corrected NOI List attached as Exhibits 1 through 10 includes the portfolio of loans that are pre-judgment, uncontested foreclosures that PHH is servicing and in which deficient NOIs were served by PHH. Specifically, as directed by the Supreme Court in Guillaume and the April 4, 2012 Order, the Corrected NOI List includes a listing of:

- a. foreclosures that were filed on or before February 27, 2012 and which PHH is servicing the loans and acting as agent for a Foreclosure Plaintiff,
- b. in which final judgment has not been entered, and
- c. in which PHH is seeking leave to file a corrected NOI to (1) include the identity of the lender and the lender's address and (2) attach the DOBI List.

11. The Corrected NOI List also identifies (1) the name of the lender on each loan which is listed as the Plaintiff in the foreclosure action, (2) the name of the first named Foreclosure Defendant, (3) the foreclosure docket number and, (4) the vicinage.¹ While PHH is not the Plaintiff in each of the foreclosure actions, it is the servicer of each such loan, maintains the records for each such loan, and is responsible for mailing the corrected NOI pursuant to the relevant contracts with the Foreclosure Plaintiffs.

12. To comply with the April 4th Order, attached as Exhibit "A" to the Verified Complaint is the proposed form of letter ("Explanatory Letter") that PHH intends to send to each Foreclosure Defendant. As instructed by the Supreme Court in the April 4th Order, the proposed form of Explanatory Letter:

- a. explains the reason why the corrected NOI is being served,
- b. the procedure to follow in the event a Foreclosure Defendant wishes to object to the NOI,
- c. identifies the individual(s) a Foreclosure Defendant should contact with any questions, and
- d. advises the Foreclosure Defendant of the right to object to the corrected NOI as well as the right to cure the default within 30 days of the date of the corrected NOI.

¹ Because considerable time has passed since NOIs were originally sent in the foreclosure actions, the Foreclosure Plaintiff initially identified in the caption may not be the current correct entity that will be listed in the corrected NOI. For sake of clarity, the corrected NOI will list the current lender and lender's address and PHH will require that foreclosure counsel take appropriate steps to change the plaintiff in affected foreclosure actions where required.

The corrected NOIs will exclude attorneys' fees and costs incurred in the pending foreclosure cases.

13. Attached as Exhibit "B" to the Verified Complaint is the proposed form of corrected NOI which PHH will send to each of the Foreclosure Defendants identified on the Corrected NOI List. Each Foreclosure Defendant will be served with a corrected NOI that includes, *inter alia*, the information specific to their mortgage loan, their default, the lender/holder's name and address and the amount to reinstate, as provided for in the Order to Show Cause.

COUNT 1 – 21ST MORTGAGE CORPORATION

14. PHH services residential mortgage loans in New Jersey for 21st Mortgage Corporation and some of its affiliates pursuant to an agreement between the parties.

15. Attached as Exhibit 1 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for 21st Mortgage Corporation and in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

COUNT 2 - BANK OF AMERICA, N.A.

16. PHH services residential mortgage loans in New Jersey for Bank of America, N.A. and some of its affiliates pursuant to an agreement between the parties.

17. Attached as Exhibit 2 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for Bank of America, N.A. and in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

COUNT 3 – CITIBANK, N.A.

18. PHH services residential mortgage loans in New Jersey for Citibank, N.A. and some of its affiliates pursuant to an agreement between the parties.

19. Attached as Exhibit 3 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for Citibank, N.A. and in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

COUNT 4 – DEUTSCHE BANK

20. PHH services residential mortgage loans in New Jersey for Deutsche Bank and some of its affiliates pursuant to an agreement between the parties.

21. Attached as Exhibit 4 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for Deutsche Bank and in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

COUNT 5 – HSBC BANK USA, N.A.

22. PHH services residential mortgage loans in New Jersey for HSBC Bank, USA, N.A. and some of its affiliates pursuant to an agreement between the parties.

23. Attached as Exhibit 5 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for HSBC Bank, USA, N.A. and in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

COUNT 6 – JP MORGAN CHASE BANK, N.A.

24. PHH services residential mortgage loans in New Jersey for JP Morgan Chase Bank, N.A. and some of its affiliates pursuant to an agreement between the parties.

25. Attached as Exhibit 6 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for JP Morgan Chase Bank, N.A. and in which PHH

previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

COUNT 7 - MERRILL LYNCH CREDIT CORPORATION

26. PHH services residential mortgage loan in New Jersey for Merrill Lynch Credit Corporation and some if its affiliates pursuant to an agreement between the parties.

27. Attached as Exhibit 7 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for Merrill Lynch Credit Corporation and in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

COUNT 8 – PHH MORTGAGE CORPORATION

28. PHH is the lender of residential mortgage loan in New Jersey.

29. Attached as Exhibit 8 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

COUNT 9 – U.S. BANK, N.A.

30. PHH services residential mortgage loan in New Jersey for U.S. Bank, N.A. and some if its affiliates pursuant to an agreement between the parties.

31. Attached as Exhibit 9 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for U.S. Bank, N.A. and in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

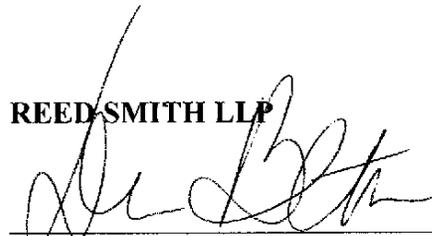
COUNT 10 – WELLS FARGO BANK, N.A.

32. PHH services residential mortgage loan in New Jersey for Wells Fargo Bank, N.A. and some if its affiliates pursuant to an agreement between the parties.

33. Attached as Exhibit 10 is a list of the pending, uncontested foreclosures in New Jersey that are being serviced by PHH for Wells Fargo Bank, N.A. and in which PHH previously served a NOI that did not include the name and address of the lender and/or the DOBI List.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order permitting PHH to issue corrected NOIs in an omnibus manner as permitted in the April 4, 2012 Order to include the name and address of the lender and include the DOBI List in the pending, uncontested foreclosure cases listed on the Corrected NOI List and for such other and further relief as this Court deems just and equitable.

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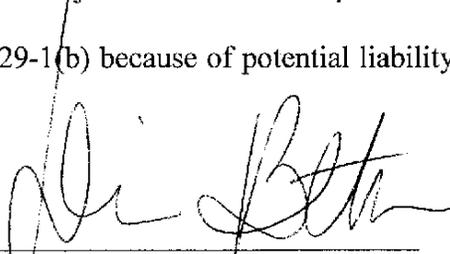


Diane A. Bettino, Esquire

Dated: July 10, 2013

CERTIFICATION

I certify pursuant to Rule 4:5-1 that, to the best of my knowledge, this matter is not the subject of any other action pending in any court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated, other than the pending foreclosure actions on the Corrected NOI List attached hereto and any pending, separate actions initiated outside of the uncontested foreclosure proceedings in which Foreclosure Defendants may have raised claims concerning, *inter alia*, their NOIs but which are not at issue in this application. I further certify that I am unaware of any non-party who should be joined in this action pursuant to Rule 4:28 or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party based on the same transactional facts.



Diane A. Bettino, Esquire

Dated: July 10, 2013

VERIFICATION

STATE OF *New Jersey* :

COUNTY OF *Burlington* :

1. *Shannon M. Tomasso*, being duly sworn states:

1. I am *Shannon M. Tomasso*, *Assistant Vice President* for *PHH Mortgage Corporation* the applicant named in the foregoing Verified Complaint.

2. The allegations in the Verified Complaint are true to the best of my knowledge and belief.

3. The Exhibits attached to the Verified Complaint are true and correct copies.

[Signature]
Shannon M. Tomasso
Assistant Vice President
PHH Mortgage Corporation

Sworn and subscribed before me
this *10th* day of *July* 2013

Andrea P. Finkel



Andrea P. Finkel
Notary Public
State of New Jersey
Expires August 28, 2014
Commission No. 2228920



CERTIFICATION
NOT
REQUIRED

REED SMITH LLP

Formed in the State of Delaware

Diane A. Bettino, Esquire
Princeton Forrestal Village
136 Main Street, Suite 250
Princeton, New Jersey 08540
Tel. (609) 987-0050

Attorneys for PHH Mortgage Corporation

<p style="text-align: center;">IN RE APPLICATION BY PHH MORTGAGE CORPORATION TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONTESTED CASES</p>	<p>) SUPERIOR COURT OF NEW JERSEY) CHANCERY DIVISION) PASSAIC COUNTY) DOCKET NO.: F-) <u>CIVIL ACTION</u>) CERTIFICATION OF SERVICE)))</p>
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I hereby certify that on this date, I caused the original and two (2) copies of the following documents to be sent for filing via on Jennifer Perez, Clerk of the Superior Court, Superior Court of New Jersey:

1. Order to Show Cause;
2. Verified Complaint with Exhibits;
3. Letter Brief in Support of Application;
4. Proposed Publication Notice; and
5. This Certification of Service.

The foregoing statements made by me are true and correct to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

A handwritten signature in black ink, appearing to read "Diane A. Bettino". The signature is written in a cursive style with a horizontal line underneath it.

Diane A. Bettino, Esquire

Dated: July 10, 2013

CERTIFICATION
NOT
REQUIRED

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