

FILED Nov 26, 2013

McCABE, WEISBERG & CONWAY, P.C.
 Andrew P. Carroll, Esq. ID#073722013
 216 Haddon Avenue - Suite 303
 Westmont, New Jersey 08108
 (856) 858-7080
 Attorneys for Plaintiff
 Matter No. 348-0152 - 19776

<p>IN RE NOTICES OF INTENTION TO FORECLOSE SERVED BY CAPITAL ONE, N.A.</p>	<p>SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION MERCER COUNTY</p> <p>Docket No.</p> <p>Civil Action F -044169-13</p> <p>VERIFIED COMPLAINT</p>
---	---

Plaintiff, Capital One, N.A., through their attorneys, McCabe, Weisberg & Conway, P.C., by way of Verified Complaint, hereby says as follows:

FACTS:

1. Capital One, N.A. (hereinafter "Capital One") is a mortgage lender and servicer headquartered in McLean, Virginia.
2. Capital One owns and services residential mortgage loans, including loans in the State of New Jersey.
3. When a borrower fails to meet his/her monthly mortgage obligation the loan becomes delinquent. During this time of default many steps are taken to contact the borrower to determine if an arrangement short of foreclosure can be reached, whether it is a short sale, deed in lieu, loan modification, or forbearance agreement. Foreclosure is not the first option and always chosen as a last resort.
4. If the borrower opts not to communicate with Capital One or does not otherwise resolve the default, a Notice of Intention to Foreclose (hereinafter "NOI"), as required by the Fair

Foreclosure Act, is sent by regular and certified mail to the borrower giving him/her at least thirty (30) days to cure the default and reinstate the loan.

5. If the default is not cured or other arrangements are not made to resolve the default, after the NOI expires, the loan is accelerated and foreclosure counsel will initiate the foreclosure by filing a complaint with the local county court.
6. On February 27, 2012, the New Jersey Supreme Court issued an opinion in U.S. Bank National Association v. Guillaume, 209 N.J. 449 (2012), requiring strict compliance with the requirements of the Fair Foreclosure Act, including identification of the name and address of the lender rather than the servicer contact information alone.
7. Based upon this ruling, Capital One completed a revision to its form NOI to bring it into complete compliance with the Fair Foreclosure Act as interpreted in U.S. Bank National Association v. Guillaume.
8. Attached as Exhibit "A" is a true and correct copy of the revised form NOI that Capital One intends to send to all borrowers affected by the outcome of this Order to Show Cause.
9. Attached as Exhibit "B" is the sample letter of explanation which will be served upon each individual borrower along with the revised NOI. This letter will clarify for the borrower the reason they are receiving a new NOI.
10. Subsequent to the Guillaume opinion, Chief Justice Stuart Rabner issued an Order on April 4, 2012, in furtherance of the Supreme Court's holding in U.S. Bank National Association v. Guillaume, authorizing the Honorable Margaret Mary McVeigh, P.J.Ch., Passaic Vicinage and the Honorable Paul Innes, P.J.Ch., Mercer Vicinage to entertain summary actions by Order to Show Cause as to why Plaintiffs in uncontested, pre-

judgment residential foreclosure matters, should not be allowed to re-serve corrected NOIs.

COUNT ONE:

CAPITAL ONE, N.A.

11. Plaintiff hereby incorporates by reference Paragraphs 1 through 10 as if set forth herein.
12. Attached as Exhibit "C" is a list of uncontested residential foreclosure actions in which Capital One, N.A. is the plaintiff and Plaintiff requests relief from this Court to issue an Order to Show Cause consistent with the Supreme Court's April 4, 2012 Order.

WHEREFORE, Capital One, N.A. respectfully requests judgment:

- (a) Deeming the form Notice of Intention to Foreclose attached as Exhibit "A" compliant with the requirements of the Fair Foreclosure Act;
- (b) Permitting Plaintiff to serve new Notices of Intention to Foreclose, in the form attached as Exhibit "A", to defendant mortgagors and/or parties obligated on the underlying debt, for pre-judgment foreclosure actions listed on Exhibit "C" in which Capital One, N.A. is the plaintiff; and
- (c) Any further relief the Court deems equitable and just.

McCabe, Weisberg & Conway, P.C.
Attorneys for Plaintiff, Capital One, N.A.

Dated: 4-25-13

By: _____

Andrew P. Carroll, Esq.

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 listed on Exhibit "C", 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. I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Andrew P. Carroll, Esq.

Dated: *11-25-13*

VERIFICATION

I, James Cox, of full age certify as follows:

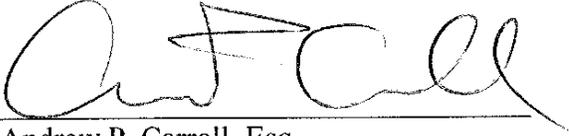
1. I am a Vice President of Capital One, N.A.
2. I have read the contents of the Verified Complaint and verify the statements contained therein are true to the best of my knowledge and personal information.
3. I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

By:  _____
James Cox

DATED: 11/19/13

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 listed on Exhibit "C", 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. I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Andrew P. Carroll, Esq.

Dated: *11-25-13*

Exhibit C

<u>Plaintiff</u>	<u>Borrowers</u>	<u>Docket Number</u>	<u>County</u>
Capital One, N.A.	Larry Guarino a/k/a Lawrence Guarino	F-006824-11	Union
Capital One, N.A.	Don Jenkins	F-50433-09	Sussex
Capital One, N.A.	Alice Cancassi	F-16924-10	Monmouth
Capital One, N.A.	Faith Y. Ross	F-26197-10	Middlesex
Capital One, N.A.	Frank A. Davolos & Tracy M. Davolos	F-33312-10	Gloucester
Capital One, N.A.	Robert D. Tatulli	F-004005-11	Monmouth
Capital One, N.A.	Joseph F. Timmons, III & Lori A. Timmons	F-005940-11	Sussex

Exhibit B

McCabe, Weisberg & Conway, P.C.
216 Haddon Avenue, Suite 303
Westmont, NJ 08108

November 7, 2013

[Borrower Name]
[Borrower Address]
[Borrower Address]

Re: Order to Show Cause - F-
Your Foreclosure Action-Capital One, N.A. v. [Defendants]

Dear Borrower:

Please be advised that the New Jersey Supreme Court recently held in *U.S. Bank N.A. v. Guillaume*, 209 N.J. 449 (2012), that mortgage lenders seeking to foreclose must comply with the New Jersey Fair Foreclosure Act's requirement that a Notice of Intention to Foreclose set forth the name and address of the lender.

Why You Are Receiving This Letter

You are receiving this letter because you are the defendant in a pending foreclosure action, and it is believed that the Notice of Intention to Foreclose served upon you prior to the commencement of the foreclosure action did not comply with the requirements of the Fair Foreclosure Act.

By the court's Order to Show Cause dated [date], and in compliance with the Supreme Court's opinion in *U.S. Bank N.A. v. Guillaume*, the Honorable Paul Innes, P.J.Ch., gave permission to *Capital One, N.A.* to serve, along with the Order to Show Cause and verified complaint, corrected Notices of Intention to Foreclose on all defendant mortgagors/parties obligated on the debt in pending foreclosure actions filed before February 28, 2012 in which one of the entities named below is the plaintiff.

Information about the Order to Show Cause and Verified Complaint

Enclosed with this letter are copies of the Order to Show Cause and Verified Complaint. The Verified Complaint lists the following lenders in the following counts of the Verified Complaint.

COUNT ONE: Capital One, N.A.

The attachments to the verified complaint, which list the foreclosure actions in which the above named lenders are the plaintiffs, will be made available on the New Jersey Courts website at <http://www.judiciary.state.nj.us/>. If you are unsure of the docket number for your foreclosure action, you can access that information on the court's website on the attached exhibits to the verified complaint by entering your name on the automatic search field on the court's website. If you do not have access to a computer or have trouble locating that information on the court's website you can

contact a representative at Capital One, N.A., 1-877-230-8516, who can assist you in locating the information about your foreclosure.

Information about the Corrected Notice of Intention to Foreclose

Also enclosed with this letter is the corrected Notice of Intention to Foreclose. It allows you an additional 30 days in which to cure the default without having to pay the plaintiff's court costs and attorneys' fees. It also sets forth important information about your loan, including information on how you can cure the default; the consequences of failing to cure the default; contact information for the plaintiff, and information about retaining counsel and borrower assistance. If you fail to cure the default by the date set forth in the corrected Notice of Intention to Foreclose, the foreclosure action against you will proceed.

With the passage of time since the foreclosure action was filed against you, the lender on your loan may have changed from the plaintiff in the foreclosure action. The corrected Notice of Intention to Foreclose lists the name and address of the current lender on your loan.

Questions about the Notice of Intention to Foreclose

Should you have questions with regard to your loan or the corrected Notice of Intention to Foreclose, please contact Capital One, N.A., 1-877-230-8516. Additional contact information is provided in the corrected Notice of Intention to Foreclose.

How to File an Objection

You have the right to object to the enclosed Order to Show Cause (the process by which the court gave the plaintiff permission to serve the corrected Notice of Intention to Foreclose). To do so, you must file a written objection under the docket number for the Order to Show Cause.

You also have the right to object to the enclosed corrected Notice of Intention to Foreclose. To do so, you must file a written objection under the docket number for the foreclosure action in your individual case.

For either type of objection, you must set forth with specificity the basis of the objection, and file the objection with the Superior Court Clerk's Office at the following address within 30 days.

Superior Court Clerk's Office, Foreclosure Processing Services
Attention: Objection to Notice of Intention to Foreclose
P. O. Box 971
Trenton, New Jersey 08625

You must also serve a copy of the objection on the plaintiff's attorney Andrew P. Carroll, Esq., at 216 Haddon Avenue, Suite 303, Westmont, NJ 08108, and mail a copy of the objection to the Honorable Paul Innes, P.J.Ch. at 175 South Broad Street, P.O. Box 8068, Trenton, NJ 08650-0068.

Your personal appearance at the Superior Court Clerk's Office or your local courthouse will not qualify as an objection. A telephone call will not protect your rights; you must file your objection and serve it on the plaintiff's attorney if you want the court to hear your objection to the relief the plaintiff is seeking. If you file a specific written objection, the case will be sent to a Judge for resolution. You will be informed by the Judge of the time and place of the hearing on your objection.

Questions about Filing an Objection

Should you have questions related to the procedure for filing an objection, please visit the New Jersey Courts On-Line Self-Help Center at <http://www.judiciary.state.nj.us/prose/index.htm>. You may also contact the Superior Court Clerk's Office at (609) 421-6100, or at SCCOForeclosureMailbox@judiciary.state.nj.us.

Exhibit A

**Capital One
Mortgage Payment 31063-1111
7933 Preston Road
Plano, TX 75024**

(Date)

Via Certified Mail, Return Receipt Requested & Regular Mail

(Borrowers Name)

(Property Address)

(Borrowers Name)

(Mailing Address, if different)

Re: Capital One, Mortgage Payment 31063-1111, 7933 Preston Road, Plano TX 75024
Attn: Loss Mitigation, 1-877-230-8516
Account Number *(Number)*
Mortgaged Property at *(Mortgaged Premises)*

**NOTICE OF INTENTION TO ACCELERATE AND FORECLOSE
(N.J.S.A. 2A:50-56)**

Dear Sir/Madam:

The Note you executed on *(Note Date)*, which is secured by a mortgage on the above referenced property dated *(Mortgage Date)*, in the amount of *(Original Loan Amount)* currently held by *(Lender)* is in default, because we have not received the installment in the amount of *(Default Amount)*, due from the months of *(Default Date)*.

RIGHT TO CURE DEFAULT

You may cure your default by paying or tendering *(past due amount/reinstatement amount good through 30 days from date of mailing including principal, interest, tax advances, hazard insurance, etc.)* within 30 days of the date of this notice. Plus any Mortgage payments and late charges, which become due during the Thirty (30) Day Period. Your payments must be mailed to Capital One, Mortgage Payment 31063-1111, 7933 Preston Road, Plano, TX 75024;

Attention: Loss Mitigation, 1-(877) 230-8516.

FAILURE TO CURE

If you do not cure the default by *(30 days from date of mailing)*, we may initiate foreclosure proceedings against you and take steps to terminate your ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction.

RIGHT TO CURE AFTER FORECLOSURE COMMENCED

In the event that we commence a foreclosure action against you, you will still have a right to cure the default prior to entry of the foreclosure judgment pursuant to Section 5 of the "Fair Foreclosure Act;" however, you will be responsible for our court costs and attorneys' fees in an amount not to exceed that amount permitted pursuant to the Rules Governing the Courts of the State of New Jersey.

RIGHT TO TRANSFER OWNERSHIP

In the event that you transfer the real estate to another person, the transfer is still subject to our rights in the mortgage covering the property. The new owner of the property may have the right to cure the default as provided in the "Fair Foreclosure Act," subject to the mortgage documents.

RIGHT TO SEEK LEGAL COUNSEL

You are advised to seek counsel from an attorney of your own choosing concerning your mortgage default situation. If you are unable to obtain an attorney, you may communicate with the New Jersey Bar Association or Lawyer Referral service in the county in which the mortgaged premises is located. If you are unable to afford an attorney, you may communicate with the Legal Services in the county in which the mortgaged premises is located. These numbers are listed on

the attached Schedule.

POSSIBLE FINANCIAL ASSISTANCE

You are advised that there may be the possible availability of financial assistance for curing a default from programs operated by the State or federal government or non-profit organizations, if any, as identified by the Commissioner of Banking. Section 5 of the "Fair Foreclosure Act" provides that this requirement may be satisfied by attaching a list of such programs promulgated by the commissioner. Such a list is attached.

IF YOU DISAGREE WITH US

If you disagree with our assertion that (1) a default has occurred or (2) the correctness of our calculation of the amount required to cure the default, you may contact Capital One, Mortgage Payment 31063-1111, 7933 Preston Road, Plano TX 75024, Attention: Loss Mitigation, 1-(877) 230-8516.

Very truly yours,

Capital One, N.A.

PUBLIC NOTICE

**BANKING
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING
THE COMMISSIONER**

Notice Under the Fair Foreclosure Act

List of Governmental and Non-Profit Entities That May Provide Financial Assistance or Counseling to Borrowers in Foreclosure

Take notice that the Fair Foreclosure Act, N.J.S.A. 2A:50-53 et seq., requires a creditor to give the debtor notice of intention to take action 30 days before commencing a foreclosure. The notice must clearly and conspicuously state the possible availability of financial assistance for curing a default through programs operated by the State or Federal government or non-profit organizations, if any, as identified by the Commissioner of Banking and Insurance. The Act further provides that this requirement may be satisfied by attaching a list of such programs promulgated by the Commissioner.

Following is a list of these programs. The Department intends to publish this list annually. If you have information regarding any necessary additions or changes to this list, please contact the following office:

Office of Consumer Finance
Department of Banking and Insurance
Division of Banking
P.O. Box 040 Trenton, NJ 08625

The following is a list of governmental and non-profit entities that may provide financial assistance or counseling to borrowers in foreclosure. It is recommended that you consult with your attorney.

Homelessness Prevention Program
New Jersey Department of Community Affairs
(609) 633-6204*

*Basic eligibility is limited to: (a) single family owner/occupied dwellings with all those on the deed and mortgage occupying the house; (b) no more than one mortgage or lien encumbrance on the property; (c) no initiated or ongoing bankruptcy. Assistance will be in the form of a loan, and a lien will be placed on the property. The family must document the financial reason for nonpayment. At the time of the eligibility decision, the household must have and document sufficient income to support the household and repay the loan. There is a fee for the credit check and property search.

American Credit Alliance, Inc.
26 South Warren Street
Trenton, NJ 08608
(609) 393-5400

Citizen Action (Offices statewide)
400 Main Street
Hackensack, NJ 07601
1-800-NJ OWNER
(201) 488-2804

Consumer Credit Counseling Service of New Jersey
185 Ridgedale Avenue
Cedar Knolls, NJ 07927-1812
(973) 267-4324

Garden State Consumer Credit Counseling, Inc.
225 Willowbrook Road
Freehold, NJ 07728
1-800-992-4557

Jersey Counseling & Housing Development, Inc.
29 South Blackhorse Pike
Blackwood, NJ 08012
(856) 227-3683

Mercer County Hispanic Association
200 E. State Street - 2nd Floor
Trenton, NJ 08607
(609) 392-2446

Monmouth County Human Services
Housing Services Unit
P.O. Box 3000 Freehold, NJ 07728
(732) 431-7998

Ocean Community Economic Action Now, Inc.
10 Washington Street
Toms River, NJ 08753-0773
(732) 244-2351, ext. 14

Paterson Task Force for Community Action, Inc.
155 Ellison Street
Paterson, NJ 07505
(973) 279-2333

Urban League for Bergen County
106 West Palisade Avenue
Englewood, NJ 07631
(201) 568-4988

Atlantic Human Resources, Inc.
1 South New York Avenue
Atlantic City, NJ 08401
(609) 348-4131

Consumer Credit Counseling Service of Central New Jersey
253 Nassau Street
Princeton, NJ 08540
(609) 924-2896

Fair Housing Council of Northern New Jersey
131 Main Street
Hackensack, NJ 07601
(201) 489-3552

Housing Coalition of Central Jersey
78 New Street
New Brunswick, NJ 08901
(732) 249-9700

Jersey Counseling & Housing Development, Inc.
1840 South Broadway
Camden, NJ 08104
(856) 541-1000

Middlesex County Economic Opportunities Corporation
1215 Livingston Avenue
North Brunswick, NJ 08902
(732) 846-6600, ext. 226

Morris County Fair Housing Council
65 Spring Street
Morristown, NJ 07963
(973) 538-2975

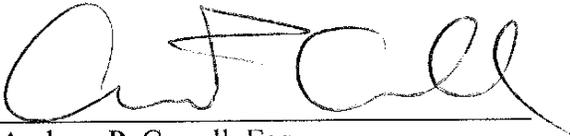
Paterson Coalition for Housing, Inc.
262 Main Street, 5th Floor
Paterson, NJ 07505
(973) 684-5998

Tri-County Community Action Agency, Inc.
110 Cohansey Street
Bridgeton, NJ 08302
(856) 451-6330

UNLESS YOU NOTIFY US IN WRITING WITHIN THIRTY (30) DAYS AFTER RECEIPT OF THIS LETTER THAT THE DEBT, OR ANY PART OF IT, IS DISPUTED, WE WILL ASSUME THAT THE DEBT IS VALID. IF YOU DO NOT NOTIFY US OF A DISPUTE, WE WILL OBTAIN VERIFICATION OF THE DEBT AND MAIL IT TO YOU. ALSO UPON YOUR WRITTEN REQUEST WITHIN THIRTY (30) DAYS, WE WILL PROVIDE YOU WITH THE NAME AND ADDRESS OF THE ORIGINAL CREDITOR IF DIFFERENT FROM THE CURRENT CREDITOR. THIS COMMUNICATION IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

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 listed on Exhibit "C", 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. I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

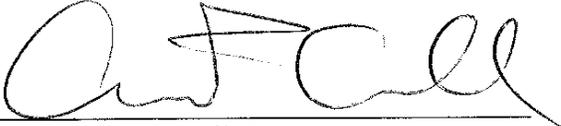


Andrew P. Carroll, Esq.

Dated: *11-25-13*

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 listed on Exhibit "C", 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. I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.

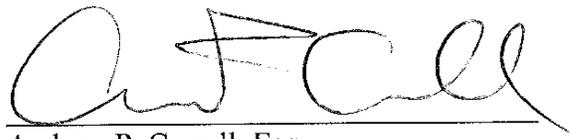


Andrew P. Carroll, Esq.

Dated: *11-25-13*

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 listed on Exhibit "C", 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. I certify that the foregoing statements made by me are true. I am aware that, if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Andrew P. Carroll, Esq.

Dated: *11-25-13*