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Please reply to our MOUNT LAUREL office

The Honorable Margaret Mary McVeigh, P.J. Ch.  
Superior Court of New Jersey  
Passaic County Courthouse, Chambers 100  
71 Hamilton Street  
Paterson, New Jersey 07505

Re: *In re Notices of Intention to Foreclose Sent by Valley National Bank*

Dear Judge McVeigh:

Valley National Bank, ("VNB " or "the Servicer"), by and through local counsel, Pluese, Becker & Saltzman, LLC, Rob Saltzman, Esquire, appearing, respectfully submits this letter memorandum in lieu of a more formal submission in support of the within Order To Show Cause (the "OTSC") seeking authorization to remediate pre-foreclosure Notice(s) of Intent to Foreclose (the "NOI" or "NOIs") in various residential mortgage foreclosure actions (the "Foreclosure" or "Foreclosures") pending in the Superior Court of New Jersey. The Order of the Supreme Court of New Jersey entered on April 4, 2012 (The "April 4 Order") empowers this Honorable Court to entertain summary actions to consider authorizing remediation of NOIs consistent with the Supreme Court's Opinion in *U.S. Bank, N.A. v. Guillaume*, 209 N.J. 449 (2012) ("Guillaume"), where such NOIs were not strictly compliant with the notice provisions of the Fair Foreclosure Act of 1995 (The "FFA"), N.J.S.A. 2A:50-56 et seq.

Mortgage Servicers like VNB are uniquely situated to seek and effectuate relief of the kind requested by this OTSC. The contents of the within Verified Complaint are respectfully incorporated herein by reference, including defined terms therein. Briefly summarized and as described more specifically in the within Verified Complaint, in their capacity as Servicer, VNB undertakes payment collection/application, loss mitigation and various collection efforts, including referrals to and management of foreclosure actions referred to local counsel for prosecution, pursuant to the contracts that govern its relationship with the owners of the subject mortgage loans (the "Loan" or "Loans"), the Loan documents, Rules of Court and applicable law.

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As the entity collecting and processing payments, Servicers like VNB possess the information regarding payments tendered/applied, escrow subaccount deposits/disbursements, payments that are due, whether a loan is in default and, if so, the extent of any delinquency. The foregoing information is maintained in contemporaneous business records of Servicers like VNB (the "Loan Records") and Plaintiffs rarely maintain such "loan level" data where their loans are being serviced by another.

Among the responsibilities of a Servicer like VNB is to issue the NOI when a mortgage (the "Mortgage" or "Mortgages") encumbering property located in this jurisdiction (the "Mortgaged Property" or "Mortgaged Properties") is in default and foreclosure is contemplated, VNB issued the NOIs that are the subject of this OTSC. Accordingly, if granted, the Servicer is uniquely situated to effectuate the relief sought by this OTSC.

Applicable authority guides the Court in the sound exercise of discretion to grant the relief requested in the within OTSC. On February 27, 2012, the New Jersey Supreme Court released their Opinion in Guillaume, and held that, while strict compliance of the notice provisions of the FFA is generally required, a Court adjudicating a foreclosure action has the discretion to determine the appropriate remedy for an NOI that is not strictly statutorily compliant, including allowing a remediated NOI to be sent to those persons (the "Foreclosure Defendants") to whom the FAA requires that a NOI be sent. The Supreme Court's April 4 Order, in furtherance of Guillaume, provides that any remediated NOI must be accompanied by a letter (the "Explanatory Letter") to each Foreclosure Defendant explaining

- The reasons why the Remediated NOI is being served;
- The procedure if a Foreclosure Defendant wishes to object to the relief requested;
- The name of the person to contact with questions; and
- That the receipt of the Remediated NOI allows the Foreclosure Defendant 30 days in which to object to or cure the default without attorneys' fees or costs incurred in the pending Foreclosure.

Pursuant to the foregoing authorities, VNB has identified a population of Foreclosures in which the previously served NOIs were not strictly statutorily compliant and respectfully requests that an Order be entered allowing VNB to send Remediated NOIs to such Foreclosure Defendants. VNB has communicated with various local counsel prosecuting the Foreclosures to compile the information incorporated into the attached list (the "Remediated NOI List"), including, the abbreviated Caption, Docket Number, County of venue and the nature of the noncompliant aspect of the NOI, as well as other available and relevant information.

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The role of Government Sponsored Entities (the “GSEs”) has also been considered. Regarding Foreclosures involving Mortgages related to the Federal National Mortgage Association (“Fannie Mae”), the GSE at issue in this OTSC, VNB seeks to issue Remediated NOIs in the cases in which Fannie Mae is the Foreclosure Plaintiff. By way of explanation as applicable, if the Servicer of a Fannie Mae loan also holds a subordinate lien encumbering the subject property (e.g. a second mortgage lien), applicable Fannie Mae Servicing Guidelines allow the Servicer to institute foreclosure in the name of the GSE entity. In such cases, identified on the Remediated NOI List if applicable, Fannie Mae's interest should have been identified in the original NOI, because in such cases, Fannie Mae is the Holder of the subject residential Mortgage. The FAA defines a “Lender” as “any person, corporation, or other entity which makes or holds a residential mortgage, and any person corporation or other entity to which such residential mortgage is assigned.” N.J.S.A. 2A:50-55. Therefore, as the “Holder” of the mortgages, the GSE should have been described as the “Lender” in the previously served NOIs. Not included in this OTSC are other uncontested Foreclosure in which Fannie Mae is not the Plaintiff because Fannie Mae does not hold the subject Mortgage. In those actions, a GSE such as Fannie Mae retains a beneficial interest in the Loan but is not the Holder of the subject Mortgage and therefore, not the “Residential Mortgage Lender” as defined by the FFA.

Previously contested matters are also included in the Remediated NOI List if remanded to the Office of Foreclosure after resolution of the contested issue(s), pursuant to N.J.Ct R. 4:64(1)(c)(3). Foreclosures in this posture, if any, are included in this OTSC to afford an additional benefit to these Foreclosure Defendants and because excluding them could result in an unresolved issue that could be detrimental to the Parties, the Court and the communities in which the properties at issue therein are located.

In the exercise of this Honorable Court’s sound discretion to fashion an appropriate equitable remedy for a NOI that does not strictly comply with the FAA as construed by applicable authorities, the Supreme Court provided the following guidance:

In determining an appropriate remedy for a violation of N.J.S.A. 2A:50-56(c) (11), trial courts should consider the express purpose of the provision: to provide notice makes “the debtor aware of the situation”, and to enable the homeowner to attempt to cure the default. N.J.S.A. 2A:50-56(c); Statement to Assembly Bill No. 1064, *supra*, at 8. Accordingly, a trial court fashioning an equitable remedy for a violation of N.J.S.A. 2A:50-56(c) (11) should consider the impact of the defect in the notice of intention upon the homeowner’s information about the status of the loan, and on his or her opportunity to cure the default.

US Bank v. Guillaume, *supra*.

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The original NOIs at issue herein contained incomplete contact information for the Lender, and/or otherwise deviated from strict compliance with the FFA as recently interpreted by our Courts. It is the mortgage loan Servicer to whom the Lender delegated all responsibility regarding “loan-level” matters, including addressing Borrower’s inquiries regarding, *inter alia*, delinquency and foreclosure issues. Notwithstanding any technical noncompliance in the NOI, the Borrower was fully informed of the identity of and the contact information for the entity with whom any inquiries regarding the “status of the loan” and/or “his or her opportunity to cure the default” within the meaning of Guillaume. The original NOIs were consistent with and effectuated the salutary goal of the FFA to provide Borrowers with contact information for the entity with whom they may discuss, dispute, and/or otherwise address their default. Any information absent from the original NOI, e.g., complete contact information for the “Lender” or any counseling agency, etc., was readily obtainable via the simple expedient of contacting the Servicer, whose complete contact information was provided in the NOI.

Further, during the pendency of the subject Foreclosures, each Borrower received various Notices, pleadings, documents and other communications from counsel for the Plaintiff/Mortgagee, all of which contained information regarding the status of the loan, opportunities to cure the default (e.g., the materials regarding the Court sponsored Mediation Program served upon the Borrower with the Summons and Complaint), and contact information for counsel. Each such Pleading, Notice or other document constituted a source of information and invitation to initiate contact with authorized representatives in a position to provide further information or assistance.

If any Borrower had the inclination to contact a responsible representative of the Plaintiff/Lender for the purpose of understanding the “status of the loan” or any available “opportunity to cure the default” then such Borrower was provided ample opportunities and means to initiate such contact. If no such contact was made notwithstanding all the foregoing communications, then VNB respectfully submits that the inference can reasonably be drawn that the deviation from strict statutory compliance at issue herein was immaterial and had no adverse impact upon the Borrower’s ability to understand and/or address the default. In the alternative, if the Borrower contacted the Servicer or foreclosure counsel, or availed him/herself of the benefits of the Court sponsored Mediation Program or other available options for an amicable resolution to the Foreclosure, then the inference may be reasonably drawn that the deviation from strict statutory compliance at issue herein was immaterial because the purpose of the NOI was fulfilled.

Either way, the deviation in the original NOIs at issue herein from strict statutory compliance had no adverse impact upon the Borrowers’ ability to obtain information regarding the status of the loan or any opportunities to cure the default. Accordingly, the criterion for determining whether an equitable alternative to the harsh sanction of dismissal is appropriate is the extent, if any, that the deficiency in the subject NOI adversely impacted the Borrower’s ability to understand and address the mortgage default. VNB respectfully submits that the harsh sanction of dismissal is inappropriate in the context of the subject Foreclosures and that, for the reasons articulated herein, this Honorable Court should exercise its discretion to fashion a more equitable remedy that allows

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the Foreclosure to proceed while preserving the Borrower's statutory rights and opportunity to resolve the default upon which the Foreclosure is predicated.

VNB respectfully submits that the deviation from strict statutory compliance is readily amenable to remediation and that an appropriate equitable remedy would be to authorize the Servicer to send a "remediated" NOI (the "Remediated NOI") to each Foreclosure Defendant, without intervening expenses related to the pending Foreclosure. The foregoing equitable remedy vitiates any adverse impact and restores the Parties to the same positions they would have occupied if the original NOIs were strictly statutorily compliant. If the Foreclosure Defendant is either unwilling or unable to cure the delinquency within the time provided for by the Court, then the Foreclosure should proceed.

Further, VNB respectfully submits that to promote economy, avoid waste, and to afford Foreclosure Defendants the earliest opportunity to cure their defaults by providing the amount due before more monthly payments and other charges accrue, VNB is contemporaneously sending to each of the Foreclosure Defendants identified on the Remediated NOI List a complete package (the "OTSC Package") consisting of the Verified Complaint, OTSC, Supporting Certification and this Letter Memorandum, Explanatory Letter and Remediated NOI in the form of the Remediated NOI Template containing substantive information pertaining to the subject Loan in each Foreclosure derived from the Loan Records. VNB will produce to this Court proof of service of such Remediated NOIs upon the Foreclosure Defendants at the Mortgaged Property or their last known address, if different. It is VNB's request that this Honorable Court find that the foregoing procedure accomplishes the salutary purpose of applicable authorities while avoiding the necessity to send duplicate mailings to all Foreclosure Defendants after a Final Order/Judgment is entered herein. VNB requests authorization to send the Final Order/Judgment herein only to those Foreclosure Defendants who have filed an Objection or otherwise appeared in these proceedings as directed by the Court and also to any Foreclosure Defendant who had not already been sent an OTSC Package.

VNB understands that the "single mailing" procedure described above (the "Single Mailing Procedure") was approved by the Court in In re Notices of Intention to Foreclose Served by MidFirst Bank, Docket No. F-12399-12 (the "MidFirst Matter") and VNB respectfully submits that the Single Mailing Procedure is also appropriate herein because it balances the goals of affording Foreclosure Defendants the earliest possible opportunity to cure their default, reinstate their Mortgage(s) and resolve their Foreclosure(s) while avoiding duplicative effort, waste and delay. In the alternative, if the Court is not inclined to the foregoing, then VNB requests leave to send the OTSC Package again upon entry of a Final Order/Judgment or as otherwise directed by the Court.

VNB is concerned that service of the Verified Complaint, OTSC, Explanatory Letter and Remediated NOI as a complete package upon entry of the OTSC (i.e., the Single Mailing Procedure authorized by the Court in the MidFirst Matter) may be inconsistent with certain

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portions of the Explanatory Letter created by the Court before the Single Mailing Procedure was developed, and to the extent that such an inconsistency exists in this regard only, VNB requests that the provisions of the OTSC and Pleadings herein shall be deemed to amend and supersede the Explanatory Letter.

By reason of the foregoing, VNB respectfully request entry of the within Order To Show Cause permitting remediation of the original NOIs at issue in the Foreclosures by sending a OTSC Package to the Foreclosure Defendants consisting of the OTSC, Supporting Certification and this Letter Memorandum, Explanatory Letter and Remediated NOI (without expenses incurred in the pending Foreclosure) to the Mortgaged Property or last known address of each Foreclosure Defendant, if different. VNB further requests that insofar as service of the Verified Complaint, OTSC, Explanatory Letter and Remediated NOI as a complete package may be inconsistent with certain provisions contained in the Explanatory Letter created by the Court before conception of the Single Mailing Procedure authorized by the Court in the MidFirst matter to the extent that such an inconsistency exists in this regard only, the provisions of the OTSC be deemed to amend and supersede the Explanatory Letter

By reason of the foregoing, VNB respectfully submits that good cause exists and has been demonstrated for the relief requested in this Application.

Thank you for your Honor's consideration of this matter.

Respectfully Submitted,

Pluese, Becker & Saltzman, LLC

By: \_\_\_\_\_

Rob Saltzman

