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Ira J. Metrick

ATTORNEY AT LAW, LLC

57 WEST MAIN STREET
FREEHOLD, NJ 07728
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*Of Counsel
CHRISTINE M. FRIEDMAN
Member of NJ & DE Bars

February 21, 2013

Via Overnight Mail

Clerk, Superior Court of New Jersey
Foreclosure Processing Services
Attn: Objection to Notice of Intention to Foreclose
25 W. Market Street
P.O. Box 971
Trenton, NJ 08625

IN RE: Application by GMAC Mortgage, LLC, to Issue Corrected Notices of Intent to
Foreclose on Behalf of Indentified Foreclosure Plaintiffs
Docket No. F-025354-12

Dear Sir/Madam:

Please be advised that this office represents, Defendant, Michael E. McConlogue, with regard to the above captioned matter. Enclosed herewith please find the original of Defendant's objection to the Order to Show Cause.

Kindly file same and return a filed copy via email to Ira@metricksq.com.

Thank you for your attention in this matter.

Very truly yours,

IRA J. METRICK

IJM:af
Enc.
Cc: Client
The Honorable Paul Innes, P J Ch.
D. Brian O'Dell, Esq.
Phelan, Hallinan & Diamond, PC.

RECEIVED

FEB 22 2013

SUPERIOR COURT
CLERK'S OFFICE

Ira J. Metrick, Esquire
 57 West Main Street
 Freehold, New Jersey 07728
 Attorney for Defendant Michael E. McConlogue

IN RE APPLICATION BY GMAC
 MORTGAGE, LLC, TO ISSUE
 CORRECTED NOTICES OF INTENT TO
 FORECLOSE ON BEHALF OF IDENTIFIED
 FORECLOSURE PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
 CHANCERY DIVISION
 OCEAN COUNTY

DOCKET NO. F-025354-12

Civil Action

OBJECTION TO ORDER
 TO SHOW CAUSE

Defendants, Michael E. McConlogue and his wife Sharon A. McConlogue, subject of applicant's Order to Show Cause and defendant in Docket No. F-053214-10, object to GMAC Mortgage, LLC's Order to Show Cause for the following reasons:

Objection: The corrected Notice of Intent to Foreclose served on Defendants dated January 10, 2013 is still defective.

The Notice of Intent to Foreclose dated January 10, 2013 and served on Michael E McConlogue¹, improperly spelled MCClonogue, states that the mortgage loan on defendants' property, located at 534 Holmes Avenue North is "held by GMAC Mortgage, LLC." ("GMACM"). The fair Foreclosure Act requires that the Notice of Intent to Foreclose specifically list the name of the lender. A "holder" of the note is a Uniform Commercial Code term. It is not the equivalent of the name of the lender. Therefore, Plaintiff's corrective Notice of Intent to Foreclose is defect and fails to fulfill the requirements of the Fair Foreclosure Act and the Guillaume case.

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FEB 22 2013

SUPERIOR COURT
 CLERK'S OFFICE

¹ A copy was not served on his wife, although the Order permits only one party to the marriage be served

Objection: GMAC Mortgage, LLC is not the lender.

Plaintiff's corrective Notice of Intent to Foreclose states that Defendants loan is "held by GMAC Mortgage, LLC " It further states that GMACM is also "the servicer of this mortgage." This is incorrect and untruthful. This loan was sold to and is currently held by Fannie Mae. (See Attached Exhibit A). GMACM is not the holder of the loan and, for all intents and purposes, may not be the rightful servicer of the loan as no service agreement is provided. The OTSC does not mention, refer or reference Fannie Mae as the owner or holder of any loan included in GMACM's application. Ignoring momentarily the blatant standing issue, it is clear that the corrective NOI filed by GMACM and served on Defendant January 10, 2013 is still completely deficient and noncompliant with the Fair Foreclosure Act and the court's ruling in *Guillaume*. *Guillaume* states that strict compliance with the requirements of the Fair Foreclosure Act is necessary and that substantial compliance is insufficient. Plaintiff's "corrected NOI" still fails to provide defendant with the name of the actual owner of the loan. The holding in *US Bank, N.A.v. Guillaume*, 209 N.J. 449 (2012) agreed with the decision in *Laks* that the FFA requires the NOI to list the name and address of the Lender (defined to mean the original mortgagee or its assigns) in addition to providing contact information for the loan servicer. Plaintiff corrective NOI fails to comply with this requirement.

Objection: Plaintiff's OTSC and corrective Notices of Intent to Foreclose continue to be defective by naming the improper party as Plaintiff.

According to facts found in Plaintiff's complaint in foreclosure GMACM is wholly owned by Ally Financial Inc., and therefore this OTSC and the underlying foreclosures should have been filed in the name of Ally Financial Inc. Plaintiff's foreclosure complaint dated December 7, 2010 is filed in the name of GMAC Mortgage, LLC. In its first count, 5c(i)(1) in

relation to a separate loan, Plaintiff states “GMAC is now Ally Bank.” According to the GMAC Mortgage website, GMAC Mortgage LLC is a *wholly owned* subsidiary of Ally Financial Inc. (See Exhibit B). A wholly owned subsidiary is known as the parent company or holding company because the parent company *owns* all of the stock and assets of the wholly-owned subsidiary. Therefore, the parent company controls all of its activities. Moreover, under GAAP, all of the *financial transactions* of a wholly-owned subsidiary are consolidated with those of the parent company. Thus, all of the activities of the wholly-owned subsidiary are part and parcel of the parent company for both operating and reporting purposes. As such Ally Financial, Inc., as parent of GMAC Mortgage LLC, would be the proper party to file the OTSC as well as the underlying foreclosure complaints, assuming there was a proper transfer of interest.

Objection: GMACM has no standing to include Defendant in this massive and sweeping OTSC to serve corrected NOI's

According to Plaintiff's complaint in foreclosure, this loan originated with First Hallmark Mortgage Corp., on January 9, 2006. The *mortgage* was assigned to MERS on January 6, 2006.² A corrective assignment took place October 19, 2010. On this same date MERS allegedly assigned the mortgage to GMACM.³ Meanwhile, Fannie Mae purchased the loan three years *earlier* on February 1, 2006 from First Hallmark Mortgage Corp., as is evidenced by the Federal Government sponsored Fannie Mae loan look-up website. There is no evidence that GMACM has any rights title or interest in this loan, even as servicer and therefore has no right to include defendant in its OTSC application.

Objection: Notice of Intent deficiency issues have been raised in applications filed under the various individual foreclosure dockets.

² It is assumed that the date is a typo and the assignment took place January 9, 2006. However, without copies of the assignments counsel cannot be sure this is simply a typo

³ It is unclear if these assignments are recorded

Certain homeowners have properly brought the issue before the Chancery Judges involved in the foreclosure arena. The Courts and litigants have been searching for a remedy appropriate to the circumstances of each case. To permit GMACM to correct the Notices of Intent at this point would be fundamentally unfair to all homeowners. The more proper approach should be to either discontinue the foreclosures where NOI problems exist or have them proceed with the problem addressed by the chancery court judges handling these matters. In the present case no default has been entered and Defendant has the right to contest the foreclosure, including an objection to the admittedly defective NOI. The corrected form of the NOI should only be permitted to be used going forward for actions yet to be filed.

Objection: The language of the proposed Notice of Intent to Foreclose is misleading.

The mortgagors identified in the Order to Show Cause are defendants in active foreclosure litigation with the debt accelerated as due in full. However, the proposed corrective NOI indicates that the mortgagor is in a pre-foreclosure status, that the debt may be accelerated, and that the servicer will start a mortgage foreclosure action upon the failure to forward the amount indicated. The NOI provides that if the default is not cured by February 14, 2013 GMACM "...intends to exercise its right to accelerate the mortgage payments .." It later says "[E]ven if a foreclosure is started; you have the right to reinstate your account until a judgment in foreclosure is entered." However, because the foreclosure is commenced, the amount to reinstate would increase to include counsel fees and costs associated with the foreclosure litigation.

These notices are not tailored to the situation at hand and are written in a manner that is confusing to the mortgagor. The majority of the persons affected by the Order to Show Cause have not retained counsel and will be misled and seriously prejudiced by the language in the

corrected NOI's. It appears that the moving party is merely attempting to use judicial resources to approve a proposed form for future notices without regard for the deficiencies they are currently encountering. As the Court is aware the foreclosure process has been full of improperly processed foreclosures including improper service of process and the fact that Plaintiff does not even own the loan. To allow a broad and sweeping corrected NOI without regarding to standing and service issues would unduly prejudice homeowners.

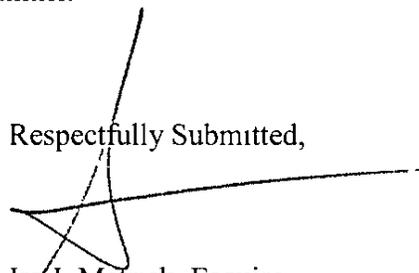
Objection: To allow a sweeping corrected NOI filed by parties who have failed to prove any legal right to the mortgage or note by its very act violates the Fair Foreclosure Act.

The Fair Foreclosure Act contains specific language indicating that the Notice of Intent must be mailed to defaulting homeowners *prior* to the filing of the foreclosure complaint. The Act uses the word "*shall* " It does not provide for exceptions or alternative options. As the court is aware, he who seeks equity must do equity. However, GMACM seeks to file a massive sweeping corrected NOI which by its own submission proves it violated the Fair Foreclosure Act because it seeks to have the NOI apply to both active foreclosures and post judgment foreclosures. To allow such an act to occur completely defeats the purpose, intent and protections provided to homeowners through the Fair Foreclosure Act

For the reasons stated above and for those reasons that may be raised in any additional objections, it is respectfully requested that GMAC Mortgage LLC's Order to Show Cause be denied in its entirety and/or denied as to the specifically identified homeowner, Michael E. McConlogue. It is also respectfully requested the counsel fees be awarded in favor of the identified homeowners for bringing this action against parties not appropriately within the defined class or to which Plaintiff has no cause of action under the law due to lack of standing.

Finally, GMAC is no longer doing business and the servicing of the Defendants' loan has been transferred to new Green Tree Servicing, LLC as of February 1, 2013. (Attached as Exhibit C is the notice from GMAC to the Defendants regarding the change in servicer.). Pursuant to BAC v. Durelli, a servicer with who has been properly authorized by the GSE to pursue foreclosure, and who received a properly authenticated assignment of mortgage is permitted to act as a Plaintiff in a residential foreclosure. However, now that GMAC is no longer the servicer, and there is no assignment of mortgage to Green Tree, the question arises as to who is the proper party to attempt to enforce the obligations under the mortgage loan. While the Defendants disagree with the Court's decision in BAC v. Durelli, if the Court chooses to agree with the findings, GMAC should not be permitted to issue a corrective NOI and remain as the Plaintiff, if they will not continue as the Servicer in the Defendants' foreclosure action. At a minimum, the new NOI should be in the name of Fannie Mae and the Complaint should be amended to reflect that Green Tree is the Plaintiff.

Respectfully Submitted,



Ira J. Metrick, Esquire

Dated: February 21, 2013

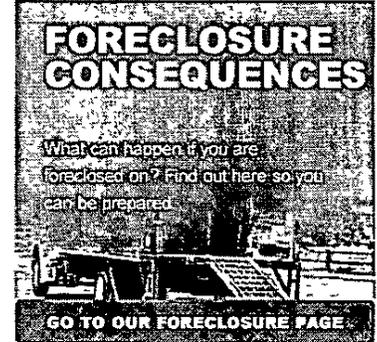
EXHIBIT A

[Home](#)

Fannie Mae Loan Lookup Results: Match Found

It appears that Fannie Mae owns your loan, based on the information you entered.

MICHAEL MCCONLOGUE
534 HOLMES AVE. N.
FORKED RIVER, NJ 08731
Last 4 Digits of Social Security Number: *****
Fannie Mae Loan Acquisition Date: **02-01-2006**
Mortgage Company: **GMAC MORTGAGE, LLC**



Results—Our Records Indicate

- Your loan was acquired by Fannie Mae on or before May 31, 2009. Knowing the Fannie Mae Loan Acquisition Date is important because some programs, such as HARP, are available only on loans acquired by Fannie Mae on or before May 31, 2009.
- Your mortgage company is **GMAC MORTGAGE, LLC**.
- You may be eligible for the [Home Affordable Refinance Program \(HARP\)](#) or the [Home Affordable Modification Program \(HAMP\)](#)—or other programs available exclusively for Fannie Mae borrowers.

Next Steps.

To help you find the option(s) that might be best for your situation, please answer the questions below.

Have you been delinquent on your mortgage in the past 12 months? Yes No

Note: In this case, "delinquent" means you have paid your mortgage payment late by 30 days or more at any time in the last 6 months. Or, that you had more than one late payment or made a payment more than 30 days late in the 6-month period prior to the last 6 months.

Do you anticipate having difficulty paying your mortgage in the near future (next 2-3 months)? Yes No

Get Options

Other Steps You Can Take:

Get Help Now

Contact a Fannie Mae Mortgage Help Center for free housing counseling and assistance with your mortgage.

Explore [KnowYourOptions.com](#)

Review the useful information and tools on this site to learn more about your options.

EXHIBIT B

GMAC Mortgage

GMAC Mortgage

About Us Your home loan is one of the most important decisions you'll make. That's why our team of dedicated specialists will be with you every step of the way to make sure you get the loan that's right for you.

As one of the nation's largest home mortgage originators, we're proud to offer:

Access to low, competitive rates

Loan Specialists licensed in your state

Access to a variety of loan programs - Fixed, Variable, FHA/VA, Jumbo and more

Experience you can depend on - we've been providing home loans for more than 25 years

[View all homebuying programs »](#)

[View all refinancing programs »](#)

GMAC Mortgage, LLC is an indirect, wholly owned subsidiary of Ally Financial Inc. 

GMAC Mortgage Corporate Headquarters

1100 Virginia Drive
Fort Washington, PA19034
(215) 734-8899
www.gmacmortgage.com

NMLS #1045 - [NMLS Consumer Access Page](#)

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EXHIBIT C

Telephone Inquiries/Correspondence: Prior to February 1, 2013, any questions relating to the transfer of servicing should be directed to GMAC Mortgage. After February 1, 2013, you should contact Green Tree. Please use the telephone numbers and addresses, listed below, when contacting GMAC Mortgage or Green Tree.

GMAC Mortgage
PO Box 780
Waterloo, IA 50704-0780
800-766-4622
6:00 a.m. - 10:00 p.m. CT M-F and 8:00 a.m. - 2:00 p.m. Sat

Green Tree
Attn: Customer Service
PO Box 6172
Rapid City, SD 57709-6172
1-800-643-0202 (call collect if not toll-free)
7:00 AM - 8:00 PM CST M-F, 7:00 AM - 1:00 PM CST Saturday

Notice Regarding Payments: The date GMAC Mortgage will stop accepting payments from you is January 31, 2013. The date that Green Tree will start accepting payments from you is February 1, 2013. Send all payments due on or after that date to Green Tree's Payment Processing Department at the address below:

Green Tree Servicing LLC
PO Box 94710
Palatine, IL 60094-4710



Optional Insurance: The transfer of servicing rights may affect the term or the continued availability of mortgage life or disability or any other type of optional insurance. If you have taken advantage of any of our optional insurance plans or optional products, this service will not transfer to Green Tree. You will receive a letter under separate cover providing further direction.

January 23, 2013

GMACM Account Number 0601449520

Page Two

RESPA Notice: You should be aware of the following information, which is set out in more detail in Section 6 of the Real Estate Settlement Procedures Act (RESPA) (12 U.S.C. 2605):

During the 60-day period following the effective date of the transfer of the loan servicing, a loan payment received by your old servicer before its due date may not be treated by the new loan servicer as late, and a late fee may not be imposed on you.

Section 6 of RESPA (12 U.S.C. 2605) gives you certain consumer rights. If you send a qualified written request to your loan servicer concerning the servicing of your loan, your servicer must provide you with a written acknowledgement within 20 Business Days of receipt of your request. A "qualified written request" is a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, which includes your name and account number and your reasons for the request.

Not later than 60 Business Days after receiving your request, your servicer must make any appropriate corrections to your account and must provide you with a written clarification regarding any dispute. During this 60-Business Day period, your servicer may not provide information to a consumer reporting agency concerning any overdue payment related to such period or qualified written request. However, this does not prevent the servicer from initiating foreclosure if proper grounds exist under the mortgage documents.

A Business Day is a day on which the offices of the business entity are open to the public for carrying on substantially all of its business functions.

Section 6 of RESPA also provides for damages and costs for individuals or classes of individuals in circumstances where servicers are shown to have violated the requirements of that section. You should seek legal advice if you believe your rights have been violated.

Additional Information:

As of January 15, 2013, the current principal balance is \$319,702.46, the current escrow balance is -\$20,829.57, the current interest rate is 6.750%, the total monthly payment is \$2,341.87 (does not include optional products) and the next due date is 11/1/2009.

Electronic Payments: If your monthly payment is currently being automatically deducted through any of GMAC Mortgage's electronic payment programs, this service will most likely continue. If your program will be continued, a confirmation letter will be sent to you under separate cover.

a government allotment or a bank's bill pay service), please advise them of your new account number and change the payee to Green Tree. In the event of payee or payment changes, it is your responsibility to notify the third-party of the new payee and/or new payment amount.

GMAC Mortgage's Website Payment Program: If you have been using the pay on demand services on GMAC Mortgage's website, this service will be deactivated on February 1, 2013. Additional payment services available through Green Tree can be found at www.gt servicing.com.

Escrow Account: If you have an escrow account, GMAC Mortgage will send you an escrow history statement within 45 days. The statement will reflect escrow deposits, disbursements and balances for the period of time we serviced your account since the last escrow analysis. The transferring escrow balance with our company will be reflected on this statement.

Year-End Statement. You will receive a year-end statement for 2013 from GMAC Mortgage reflecting the account activity for the time we serviced your account this year. Green Tree should provide their own statement for the period of time they serviced your account this year. You will need to combine these two statements for income tax purposes.

If you are currently involved in a bankruptcy proceeding or have been discharged of your personal liability for the repayment of this debt, this notice is being provided for informational purpose only. It is not an attempt to hold you personally responsible for the debt and applies only to the lien on your property and not to you personally.

It has been our pleasure to service your account. We wish you a successful relationship with Green Tree.

Customer Care

Loan Servicing
GMAC Mortgage

Ira J. Metrick, Esquire
57 West Main Street
Freehold, New Jersey 07728
Attorney for Defendant Michael E. McConlogue

IN RE APPLICATION BY GMAC
MORTGAGE, LLC, TO ISSUE
CORRECTED NOTICES OF INTENT TO
FORECLOSE ON BEHALF OF IDENTIFIED
FORECLOSURE PLAINTIFFS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
OCEAN COUNTY

DOCKET NO F-025354-12

Civil Action

CERTIFICATION OF SERVICE

Ira J. Metrick, of full age, hereby certifies as follows:

1. I am the attorney for the Defendant, Michael McConlogue, in the above captioned matter.

2. On February 21, 2013, I caused the original of the within documents to be sent to the Clerk, Superior Court of New Jersey, Foreclosure Processing Services, Attention: Objection to Notice of Intention to Foreclose, PO Box 971, Trenton, New Jersey; and simultaneously sent a copy via priority mail to:

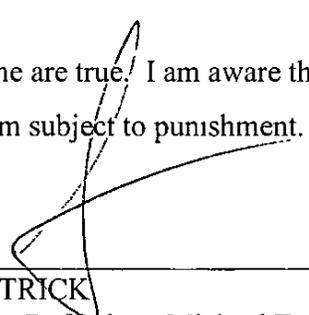
Honorable Paul Innes, P.J.Ch.
Superior Court of New Jersey
Mercer County Courthouse, First Floor
175 South Broad Street
Trenton, NJ 08650

D. Brian O'Dell, Esq.
Bradley Arant Boult Cummings LLP
1819 Fifth Avenue North
Birmingham, AL 35203
Attorney for Plaintiff

Phelan, Hallinan & Diamond, PC
400 Fellowship Road, Suite 100
Mt. Laurel, NJ 08054

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.

DATED: 2/21/12



IRA J. METRICK
Attorney for Defendant, Michael E. McConlogue