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Formed in the State of Delaware

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)	SUPERIOR COURT OF NEW JERSEY
)	CHANCERY DIVISION
IN RE APPLICATION BY PHH)	_____ COUNTY
MORTGAGE CORPORATION TO)	
ISSUE CORRECTED NOTICES OF)	DOCKET NO.: F-
INTENT TO FORECLOSE ON BEHALF)	
OF IDENTIFIED FORECLOSURE)	<u>CIVIL ACTION</u>
PLAINTIFFS IN UNCONTESTED)	
CASES)	
)	ORDER TO SHOW CAUSE
)	
)	

THIS MATTER being brought before the Court by Reed Smith LLP, attorneys for PHH Mortgage Corporation (“PHH”), authorized to act on behalf of Foreclosure Plaintiffs in pending foreclosure cases in New Jersey, seeking relief by way of summary action for an Order permitting PHH to issue corrected Notices of Intent to Foreclose (“NOI”) to the defendant mortgagor and/or parties obligated on the debt (“Foreclosure Defendants”) in the pending, pre-judgment, uncontested foreclosure cases listed on the Exhibits 1 through 22 to the Verified Complaint (“Corrected NOI List”) to (1) include the name and address of the lender, and (2) include the list of financial counseling services provided by the Department of Banking and Insurance (“DOBI List”), and based upon the New Jersey Supreme Court’s decision in US Bank, N.A. v. Guillaume, 209 N.J. 449 (2012), the implementing Order of the New Jersey Supreme Court dated April 4, 2012, and for good cause shown;

It is on this ____ day of _____, 2013 **ORDERED** that the Foreclosure Defendants listed in Exhibits 1 to 22 of the Verified Complaint may appear before the Superior Court at the _____ County Courthouse, _____, New Jersey at ____ o'clock, on the _____ day of _____, 2013 to show cause why judgment should not be entered as follows:

- A. Declaring Plaintiff's Form Notice of Intention to Foreclosure to be compliant with the requirements of the Fair Foreclosure Act;
- B. Allowing PHH to send new Notices of Intention to Foreclose, giving the borrower(s) at least thirty days from the date the letter is mailed to cure the default on the mortgage without having to pay legal fees or costs; and
- C. Granting such relief as the court deems equitable and just.

IT IS FURTHER ORDERED that:

1. Plaintiff shall serve a copy of this Order to Show Cause and Verified Complaint (without exhibits) upon all individuals obligated on the Note secured by a Mortgage on residential property that is the borrower's, or their immediate family's principal residence. Service shall be effectuated by certified mail, return receipt requested, simultaneously with regular mail, addressed to the property address and the last known address (if different) in Plaintiff's records.
2. A copy of this Order to Show Cause and Verified Complaint shall be posted on the Judiciary Web Page at <http://www.judiciary.state.nj.us>.
3. A true copy of this order to Show Cause and Verified Complaint shall be served upon the borrowers listed in Exhibits 1 through 22 to the Verified Complaint, by certified mail,

return receipt requested (or by registered mail, with respect to any borrowers listed in Exhibit 1 through 22 to the Verified Complaint who reside outside the United States) simultaneously with regular mail. All other interested parties shall be served by publication as outlined in this order.

4. Along with this Order to Show Cause, Plaintiff may serve the corrective Notice of Intention to Foreclose allowing the borrower at least thirty days to cure the default on the subject Mortgage without having to pay attorneys' fees or costs.
 - a. For any borrower in an active bankruptcy case where the provisions of the automatic stay are still in place, Plaintiff may serve a copy of this Order to Show Cause and Verified Complaint but may choose to delay serving a corrective Notice of Intention to Foreclose until such time that the stay is vacated, if it believes that doing so will violate the automatic stay.
 - b. If the court grants final relief on the return date of this Order to Show Cause and Plaintiff has not already sent a corrective Notice of Intention to Foreclose, Plaintiff shall serve the corrective Notice of Intention to Foreclose once the provisions of the automatic stay in the bankruptcy case are no longer in place. In the alternative, Plaintiff may apply to the United States Bankruptcy Court for relief from the provisions of the automatic stay to effectuate service of the corrective Notice of Intention to Foreclose pursuant to this Order.
 - c. In the event that Plaintiff does not serve a corrective Notice of Intention to Foreclose with this Order to Show Cause, Plaintiff may not proceed with a foreclosure action until such Notice of Intention is served as authorized by this Court's Order.

- d. If Plaintiff believes that service of this application will be a violation of the provisions of the automatic stay, once the stay is vacated, Plaintiff may file a motion with the Chancery Judge in the vicinage where their property lies requesting permission to send the corrective NOI. Plaintiff shall not be required to file a new Order to Show Cause for cases currently in bankruptcy.
5. Plaintiff shall publish the legal notice of this action at least two days prior to _____, 2013 in the following papers:
- a. The Star-Ledger
 - b. The Bergen Record
 - c. The Press of Atlantic City
 - d. The Courier Post
6. The Court will only entertain objections to the process outlined in the Supreme Court's April 4, 2012 Order. Any party who wishes to object to the process shall file the objection under the docket number for this Order to Show Cause, in writing, with the:

Clerk of the Superior Court
Foreclosure Processing Services
Attn: Objections to Notice of Intention to Foreclose
25 Market Street
P.O. Box 971
Trenton, New Jersey 08625-0971

A copy of the objection to the Order to Show Cause must also be sent to:

Hon. _____

A copy of the objection to the Order to Show Cause must also be served upon the attorney for the Plaintiff at:

Diane A. Bettino, Esq.
Reed Smith LLP
Princeton Forrestal Village
136 Main Street, Suite 250
Princeton, New Jersey 08540

Objections to this Order to Show Cause must state with specificity the basis for the objection and must be filed no later than _____.

7. In the event a timely objection is not filed, the matter may proceed to judgment in accordance with the Rules of Court.
8. Any objection in regard to a specific corrective Notice of Intention in a specific foreclosure case must be filed in writing **under the docket number of the individual foreclosure action, NOT this Order to Show Cause**. Any objection must state the basis for the objection with specificity and be filed and served as set forth in Paragraph 6 above. Objections to a specific NOI will be referred to the Chancery Judge in the vicinage in which the property lies for resolution.
9. Parties in interest are hereby advised that a telephone call to the Plaintiff, to the Plaintiff's attorney, to the Superior Court Clerk's Office, or to the Court, will not protect your rights, you must file and serve your written objection as outlined in this Order.
10. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. If you do not have an attorney or are not eligible for free legal assistance through the Legal Services office (or such office does not provide services for this particular type of proceeding), you may obtain a referral to an attorney by calling one of the Lawyer Referral Services.
11. In the event no party in interest files and serves a timely objection to this Order to Show Cause, as provided for above, then the application may be decided by the Court on the

date this matter is scheduled to be heard, provided that the Plaintiff has filed a proof of service and a proposed form of judgment as required by this Order to Show Cause.

12. In the event a written objection to this Order to Show Cause is filed, Plaintiff's written reply brief shall be filed and served by _____. A copy of the reply, if any, shall be served upon the Clerk of Superior Court, with a courtesy copy directly to the Honorable _____, P.J. Ch. Plaintiff is only required to serve its response upon any party or parties who have filed written objections to this Order to Show Cause.
13. Plaintiff shall submit to the court an original and two copies of a proposed form of judgment addressing the relief sought on the date this matter is scheduled to be heard no later than ____ days before the date this matter is scheduled to be heard.
14. The Plaintiff shall file proof of service of the Verified Complaint, this Order to Show Cause and all supporting documents with the Clerk of Superior Court no later than nine (9) days before the return date of this matter.
15. The court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the court advised to the contrary no later than _____ days before the return date.

J.S.C.

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March 11, 2013

Via JEFIS

Superior Court Clerk's Office
Superior Court of New Jersey
25 Market Street
Trenton, New Jersey 08611

Re: *In re Application by PHH Mortgage Corporation to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases*
Docket Number F-

Your Honor:

This firm represents PHH Mortgage Corporation ("PHH"). As is set forth in the Verified Complaint, PHH makes this application on behalf of Foreclosure Plaintiffs pursuant to the authority granted to PHH by those Foreclosure Plaintiffs. PHH seeks an Order from this Court permitting it to issue corrected Notices of Intent to Foreclose ("NOI") as set forth in the New Jersey Supreme Court Order dated April 4, 2012, that was entered following the Court's decision in U.S. Bank, N.A. v. Guillaume, 209 N.J. 449 (2012), ("Guillaume").

PHH services mortgage loans for residential properties in New Jersey. *Ver. Comp.*, ¶ 2. As the servicer of mortgage loans, PHH undertakes payment collection, loss mitigation and collection efforts, including foreclosure. *Id.*, ¶ 3. PHH undertakes those tasks in accordance with the contracts that govern its relationship with the owners of the loans as well as the loan documents, Rules of Court and any applicable laws. *Id.* As the entity collecting and processing payments, PHH possesses the information relevant to the payments made, escrows, payments that are due and whether a loan is in default and by how much. *Id.* This information is maintained on PHH's systems of record. *Id.* The Foreclosure Plaintiff is not likely to have possession of the relevant servicing information in cases in which the servicing of the loan is being handled by PHH. *Id.*

One of PHH's duties as a servicer on a defaulted mortgage is to issue the NOI, in accordance with the Fair Foreclosure Act ("FFA") at N.J.S.A. 2A:50-56. The NOI is prepared based upon current loan information held by PHH. *Id.*, ¶ 4.

On February 27, 2012, the New Jersey Supreme Court decided Guillaume and held that the FFA requires strict adherence to the notice requirements set forth at N.J.S.A. 2A:50-56(c) for all NOIs. The

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Court also held that a court adjudicating a foreclosure action in which the strict requirements of N.J.S.A. 2A:50-56(c) were not met has the discretion to choose the appropriate remedy, including allowing a corrected NOI to be served.

Following its decision in Guillaume, the Supreme Court issued an Order on April 4, 2012 which authorizes this Court to entertain summary actions by Order to Show Cause as to why Plaintiffs who caused deficient NOIs to be served should not be allowed to issue corrected NOIs to defendant/mortgagors and/or parties obligated on the debt ("Foreclosure Defendants") in pending, pre-judgment uncontested foreclosures filed prior to February 27, 2012 in which final judgment has not yet been entered. The April 4th Order also instructed that any corrected NOI must be accompanied by a letter to each Foreclosure Defendant 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 corrected NOI;
- the name of a person to contact with any questions; and
- that the receipt of the corrected NOI allows the Foreclosure Defendant 30 days in which to object to or cure the default.

In accordance with the decision in Guillaume, PHH has identified a small population of foreclosure cases in which the previously served NOIs failed to (1) include the name and address of the lender, as required by N.J.S.A. 2A:50-56(c)(11) and (2) failed to include the list of financial counseling services provided by the Department of Banking and Insurance ("DOBI List"). PHH seeks an Order from this Court allowing PHH to serve corrected NOIs that will include (1) the name and address of the current lender, and (2) the DOBI List so that Certifications of Due Diligence can be signed and the uncontested foreclosures can proceed to final judgment.

PHH has worked with its New Jersey foreclosure attorneys to compile a list of all pending, uncontested foreclosures in New Jersey in which final judgment has not been entered and in which PHH served technically deficient NOIs prior to February 12, 2012 as noted above ("Corrected NOI List"). For each pending case at issue in this application, the Corrected NOI List includes the Named Plaintiff, the Docket Number, the first named Foreclosure Defendant and the County.¹ The Corrected NOI List, attached as Exhibits 1 through 22 to the Verified Complaint, is broken down by each Named Plaintiff. There are a total of 22 Named Plaintiffs for which PHH seeks to correct previously served NOIs. Those Named Plaintiffs (and their affiliated entities) are the following:

¹ Because considerable time has passed since NOIs were originally served for the foreclosure actions, the lender initially identified in the foreclosure action as the plaintiff may not be the current lender 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 its counsel take the appropriate steps to change the plaintiff in affected foreclosure actions where required.

- Count 1 - Ameriquest Mortgage Company;
- Count 2 - Bank of America, N.A.;
- Count 3 - Citibank, N.A.
- Count 4 - Deutsche Bank, N.A.;
- Count 5 - Dollar Bank, FSB;
- Count 6 - Everbank;
- Count 7 - HSBC Bank, USA, N.A.;
- Count 8 - ING Bank FSB;
- Count 9 - JP Morgan Chase;
- Count 10 - Land Holding LLC;
- Count 11 - Merrill Lynch Credit Corporation;
- Count 12 - New York Life Insurance and Annuity Corporation;
- Count 13 - PHH Mortgage Corporation;
- Count 14 - PNC Bank, N.A.;
- Count 15 - Sovereign Bank;
- Count 16 - State Street Bank
- Count 17 - Sun East FCU
- Count 18 - The Bank of New York Mellon Trust Company, N.A.
- Count 19 - Tri Co FCU;
- Count 20 - U.S. Bank, N.A.; and
- Count 21 - United Teletch Financial Credit Union
- Count 22 - Wells Fargo Bank, N.A.

Also included with the Corrected NOI List are foreclosure cases that may have at one point been contested cases that were sent back to the Office of Foreclosure after resolution of the contesting issues, pursuant to N.J. Court Rule 4:64(1)(c)(3). PHH has included all cases within this application because the current application offers an additional benefit to any of these Foreclosure Defendants and will allow them to raise whatever objections they have to the process allowing the issuance of the corrected NOI or to the NOI itself, which can be asserted in their individual foreclosure action. Excluding such Foreclosure Defendants from this process will only leave those cases in a limbo state, which is not beneficial for the Parties or the Court.

In accordance with the April 4th Order, in conjunction with this Court's guidance, PHH will also send a form of letter ("Explanatory Letter") to each Foreclosure Defendant on the Corrected NOI List. Attached as Exhibit A to the Verified Complaint is a form of Explanatory Letter that will:

- explain the reason why the corrected NOI is being served;
- the procedure to follow in the event that a Foreclosure Defendant wishes to object to the corrected NOI;
- identifies a contact person for any questions; and

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- advises the Foreclosure Defendant of their 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.²

In further support of this application, PHH has also supplied the proposed form of corrected NOI as Exhibit B to the Verified Complaint which PHH will serve on each Foreclosure Defendant identified on the Corrected NOI List. The corrected NOI will include, *inter alia*, information specific to their loan, their default and the lender name and address. In addition, the corrected NOI will also exclude attorneys' fees and costs incurred in the pending foreclosure actions. Permitting PHH to issue corrected NOIs will provide the Foreclosure Defendants with yet another opportunity to cure their default and reinstate their loans, without the incursion of attorneys' fees and costs that are permitted to be charged after a foreclosure case has been filed. Provision of another opportunity to cure provides a benefit to the Foreclosure Defendants.

Notice will also be provided via publication notice in four newspapers as set forth in the Order to Show Cause. PHH will publish the proposed Publication Notice provided with these papers two times in each of the four papers, thereby providing additional notice to Foreclosure Defendants.

Allowing PHH to cure the deficient NOIs as requested in this application is the correct remedy. In Guillaume, the Supreme Court held that when faced with a deficient NOI, the trial court can determine the appropriate remedy and should consider the express purpose of the NOI provision: "to provide notice that makes 'the debtor aware of the situation' and to enable the homeowner to attempt to cure the default." 209 N.J. at 479. The Court stated that in fashioning a remedy, the trial court 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." *Id.* In determining that a cure was the appropriate remedy, the trial court in Guillaume took such considerations into account when fashioning the remedy, including the nature of the deficiency. *Id.* at 480.

As in Guillaume, in this application, PHH seeks an Order allowing it to issue corrected NOIs to include the name and address of the lender in uncontested foreclosure actions. The trial court in Guillaume determined that the nature of that deficiency would allow a cure of the NOI, as opposed to some other remedy, even in the context of a contested foreclosure. In the application before this Court, PHH seeks to correct the same deficiency but in uncontested foreclosures. PHH also seeks to attach the DOBI List. The Foreclosure Defendants have already received numerous forms of notice concerning their foreclosure case during their cases and, with the issuance of a corrected NOI, will receive yet another opportunity to cure their defaults and reinstate their loans. Further, there is no indication of prejudice nor could there be because PHH will waive the attorneys' fees and costs that have been

² The Explanatory Letter will inform the Foreclosure Defendants that if they are unsure of their individual foreclosure docket numbers, they may access that information on the Court's website by using the search function and entering their names. In addition, the Explanatory Letter will provide the contact information for a PHH representative who can assist with providing the docket number for the foreclosure actions. Thus, the Explanatory Letter will include all of the elements required by the Supreme Court's April 4, 2012 Order and will be consumer friendly in the ways required by this Court.

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incurred in the foreclosures for purposes of the corrected NOI and possible reinstatement pursuant to this application. Furthermore, as the proposed Explanatory Letter makes clear, to the extent that a Foreclosure Defendant wants to object to the information contained in the corrected NOI itself, the Foreclosure Defendant will have the opportunity to raise and voice those objections in their individual foreclosure cases. Moreover, the Order to Show Cause provides a mechanism and process whereby the Foreclosure Defendants can raise directly with this Court any concern, objection or potential prejudice that they believe results from allowing PHH to correct the deficient NOIs.

For the reasons set forth in PHH's application, the Supreme Court has issued an Order that is faithful to the decision in Guillaume, and provides a mechanism to cure deficient NOIs so that Foreclosure Defendants will receive the notice that they should have received under the FFA and will also allow for the orderly judicial administration in the pending, uncontested foreclosures. For these reasons, it is respectfully requested that this Court:

- (a) Approve the form of Explanatory Letter at Exhibit A to the Verified Complaint;
- (b) Approve the form of corrected NOI at Exhibit B to the Verified Complaint; and
- (c) Allow PHH to serve corrected NOIs to the Foreclosure Defendants on the Corrected NOI List.

Undersigned counsel appreciates the Court's attention to this application and will be available to the Court to respond to any questions that may arise after review of the material filed today.

Respectfully submitted,



Diane A. Bettino

cc: Jennifer Perez, Superior Court Clerk (via Overnight Mail)

Plaintiff's attorney in the foreclosure case. 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 in the PHH Order to Show Cause case or you can contact the PHH representative identified in the documents you may receive pursuant to the Court's order.

If You Have Any Questions: 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 SCCOForeclosure.Mailbox.judiciary.state.nj.us.