

REED SMITH LLP

Formed in the State of Delaware

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Attorneys for Wells Fargo Bank, N.A.

)	SUPERIOR COURT OF NEW JERSEY
)	CHANCERY DIVISION
IN RE APPLICATION BY WELLS	)	PASSAIC COUNTY
FARGO BANK, N.A. TO ISSUE)	
CORRECTED NOTICES OF INTENT	)	DOCKET NO.: F^F -009564-12
TO FORECLOSE ON BEHALF OF)	
IDENTIFIED FORECLOSURE	)	<u>CIVIL ACTION</u>
PLAINTIFFS IN UNCONTESTED)	
CASES)	
	)	VERIFIED COMPLAINT IN SUPPORT
	)	OF ORDER TO SHOW CAUSE
)	

Wells Fargo Bank, N A , (“Wells Fargo”), 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"). Wells Fargo respectfully states as follows:

1. Wells Fargo is a national banking association and a wholly-owned subsidiary of Wells Fargo & Company, a bank holding company.
2. Wells Fargo services mortgage loans for residential properties in New Jersey either through its division, Wells Fargo Home Mortgage or its trade name, America’s Servicing

Company¹

3. When Wells Fargo 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, Wells Fargo 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, Wells Fargo 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 Wells Fargo's systems of record. In cases in which Wells Fargo 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. Wells Fargo makes this application to the Court pursuant to the authority granted to Wells Fargo as the servicing agent of Foreclosure Plaintiffs in pending foreclosure cases.

4. 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 N.J.S.A. 2A:50-56 of the Fair Foreclosure Act. The NOI is prepared based on current loan information held by Wells Fargo 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.

5. 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.

¹ Wells Fargo also appears as a plaintiff in foreclosure proceedings in its capacity as a trustee for the owners of securitized loans. Where Wells Fargo is only the trustee and not the servicer, Wells Fargo plays no role in servicing these loans. This current application to the Court does not include those cases in which Wells Fargo acts only as a trustee.

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.

6 Following its decision in Guillaume, the Court entered the April 4th Order which authorizes the Hon. Margaret Mary McVeigh, P.J.Ch., Passaic Vicinage, and the Hon. Paul Innes, P J.Ch., Mercer 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").

7 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

8. Wells Fargo is in the process of reviewing its pending foreclosure cases to identify those foreclosure cases which will require a corrected NOI because the lender and the lender's address were not included in the previously served NOIs. Wells Fargo is compiling a list of all pending foreclosure cases in which a corrected NOI is required to be served, for submission to the Court ("Corrected NOI List"). That List is being reviewed for accuracy, to identify pending foreclosure cases in which a bankruptcy stay is in force and to identify

Foreclosure Defendants who may have passed away since the issuance of the original NOI.

9. The Corrected NOI List will include the portfolio of loans that are pre-judgment uncontested foreclosures that Wells Fargo is servicing and in which deficient NOIs were served. Specifically, as directed by the Supreme Court in Guillaume and the April 4, 2012 Order, the Corrected NOI List will include a listing of:

- a. foreclosures that were filed on or before February 27, 2012 and which Wells Fargo 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 Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

10. The Corrected NOI List will also identify (1) the name of the lender on each loan which is listed as the plaintiff in the foreclosure action, and (2) the foreclosure docket number.² While Wells Fargo 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.

11. To comply with the April 4th Order, attached as Exhibit "A" to the Verified Complaint is the proposed form of letter ("Explanatory Letter") that Wells Fargo 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,

² Because considerable time has passed since NOIs were originally sent in the foreclosure actions, the lender initially identified in the foreclosure action as 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 Wells Fargo will require that foreclosure counsel take appropriate steps to change the plaintiff in affected foreclosure actions where required.

- 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.

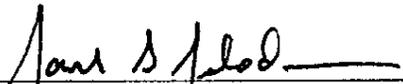
The corrected NOIs will exclude attorneys' fees and costs incurred in the pending foreclosure cases.

12. Attached as Exhibit "B" to the Verified Complaint is the proposed form of corrected NOI which Wells Fargo 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's name and address and the amount to reinstate, as provided for in the Order to Show Cause.

13. On June 9, 2011, the New Jersey Supreme Court promulgated amendments to Court Rules 4:64-1 and 4:64-2 concerning, among other things, the Affidavit of Diligent Inquiry to be signed by counsel for the plaintiffs in foreclosure actions in cases pending final judgment as of June 9, 2011. One of the delays in processing uncontested foreclosures is the uncertainty caused by court decisions concerning deficient NOIs and the effect that a previously served deficient NOI in a pre-judgment uncontested foreclosure could have on the ability of a lawyer to sign an Affidavit of Diligent Inquiry later in the case. Attached as Exhibit C to the Verified Complaint is a proposed Affidavit of Diligent Inquiry that is tailored to the current situation before the Court in which a corrected NOI has been served to include the name and address of the lender. This form of Affidavit, which comports in all respects with Rule 4:64-2(d), will allow counsel for the plaintiffs in foreclosure actions to sign the Affidavits so that foreclosures can begin to move forward in New Jersey.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order permitting Wells Fargo 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 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.

REED SMITH LLP

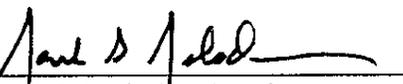


Mark S. Melodia, Esquire

Dated: May 29, 2012

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 to be submitted to the Court 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



Mark S. Melodia, Esquire

Dated: May 29, 2012

VERIFICATION

STATE OF .

COUNTY OF .

I, Timothy P O'Brien, being duly sworn states:

1 I am Senior Vice President, Manager of Default Operations for Wells Fargo, 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



Timothy P. O'Brien

Sworn and subscribed before me
this 27th day of May 2012

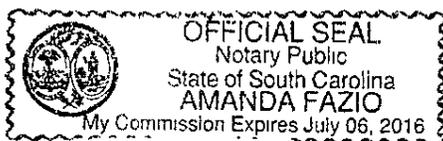
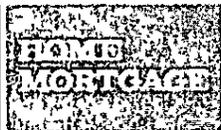


Exhibit A



P.O. Box 1225
Charlotte, NC 28201-1225

**Please read this letter and the enclosed documents carefully,
as they contain important information concerning your rights.**

Dear Borrower:

Wells Fargo Home Mortgage (“Wells Fargo”) is the servicer of your mortgage loan. Our records show that your loan is in default and you have breached the terms of the note and mortgage, deed of trust, or other security agreement securing your loan.

You were previously sent a Notice of Intent to Foreclose pursuant to the New Jersey Fair Foreclosure Act (the “Act”), and judicial foreclosure proceedings are pending against you.

On February 27, 2012, the Supreme Court of New Jersey issued an opinion in the matter of *US Bank, NA v Guillaume*, interpreting the requirements of the Notice of Intent to Foreclose under the Act. For you, this means that the Notice of Intent to Foreclose previously sent to you may not have complied with all applicable provisions of the Act. Specifically, the Notice of Intent to Foreclose may not have included the name and address of the lender.

Wells Fargo has obtained an order from a Judge of the Superior Court (the “Order”) authorizing Wells Fargo to send you a corrected Notice of Intent to Foreclose. A copy of the Order and the corrected Notice of Intent to Foreclose are enclosed. Please read these documents carefully.

The corrected Notice of Intent to Foreclose 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 Wells Fargo, and information about retaining counsel and borrower assistance. With the passage of time since the foreclosure action was filed against you, the lender on your loan may have changed from the named Plaintiff in the foreclosure action. The corrected NOI will list the name and address of the current lender on your loan. As set forth in the corrected Notice of Intent to Foreclose, the default may be cured on or before the date indicated therein. If you fail to cure the default by the date set forth in the corrected Notice of Intent to Foreclose, the foreclosure action against you will proceed.

If you wish to object to the issuance of the corrected Notice of Intent to Foreclose or if you wish to object to the content of the corrected Notice of Intent to Foreclose, you will have until _____ in which to object. Any objections to the Order to Show Cause shall be made in writing and the original documents must be filed with the Clerk of the Superior Court in Mercer County, New Jersey at 175 S Broad Street, Trenton, New Jersey 08650. You must also send a copy of your opposition papers directly to Judge Margaret Mary McVeigh, whose address is Passaic County Courthouse, Chambers 100, 71 Hamilton Street, Paterson, New Jersey 07505 and to Wells Fargo’s attorneys, Mark Melodia, Esquire, Reed Smith, LLP, Princeton Forrestal Village, 136 Main Street, Princeton, New Jersey 08540. A telephone call will not protect your rights; you must file

your opposition and serve your opposition on Wells Fargo's attorneys, if you want the Court to hear your opposition to the relief that Wells Fargo is seeking.

If you have questions concerning your loan, please call [**individual listed in NOI**] at XXX-XXX-XXXX. Additional contact information is provided in the corrected Notice of Intent to Foreclose.

Sincerely,

Wells Fargo
PHONE NUMBERS

Enclosures

- Corrected Notice of Intent to Foreclose
- Order of the Superior Court

Exhibit B



P.O. Box 1225
Charlotte, NC 28201-1225

Date

Customer's First Name | Last Name
Co-Borrower First Name | Last Name
Mailing Address
City, State | Zip Code

RE Wells Fargo Home Mortgage | Loan Number
Mortgagor(s) Customer's First Name | Last Name
Co-Borrower First Name | Last Name
Mortgaged Premises | Property Address
Property City
Property State
Zip Code

NOTICE OF INTENTION TO FORECLOSE

Dear Borrower(s):

Wells Fargo Home Mortgage (hereafter, "Wells Fargo") services a mortgage (hereafter, the "Mortgage") in the original principal amount of \$ 0 00 on the residential property commonly known as (Property Address) (hereafter, the "Property"), which Mortgage was made on (Origination Date)

Your Mortgage is now in default because you have not made the required payments. The total amount required to cure this default, in other words, the amount required to bring your mortgage current as of (30 days from the date of letter) is as follows.

Monthly payments (principal, interest, and escrow) from (dates of default) are as follows.

Payments- Totaling	\$ 0 00
Total Accrued Unpaid Late Charges (Monthly Late Charge \$ 0.00)	\$ 0 00
Unapplied Funds -	\$ 0 00
Miscellaneous Fees	\$ 0 00
Total Delinquency as of (date of letter)	\$ 0 00

Your Pre-Foreclosure Action Right to cure this Default

To avoid the possibility of acceleration, you must pay this amount plus any additional monthly payments, late charges and other charges that may be due under applicable law after the date of this notice and on or before (30 days from date of letter) in CERTIFIED funds, to

Payments only address:

Wells Fargo Home Mortgage
1200 W 7th Street
Suite L2-200
Los Angeles, CA 90017

Correspondence only address:

Gwendolyn Nesbit
Wells Fargo Home Mortgage
Address 3480 State view Boulevard
MAC X7802-03H
Fort Mill, SC 29715
Phone Number. 1-800-416-1472

Please be advised that Wells Fargo Home Mortgage cannot guarantee that payments received at the "correspondence only address" will be applied within the required timeframes

If you do not cure this default and bring your account current by (date of letter), then Wells Fargo may take steps to terminate your ownership of the Property by starting a mortgage foreclosure action against you

If you cure this default before the filing of the foreclosure action, Wells Fargo may not institute a foreclosure action against you for that default; your Mortgage will be reinstated to the same position as if the default had not occurred, and any acceleration of any obligation under the Mortgage or Note will be nullified as of the date of cure

You have the right to transfer the property to another person subject to the Mortgage, that person will have the right to cure this default, subject to the Mortgage and the Note, and this Notice

Your Post-Foreclosure Action Right to cure this Default

Even if Wells Fargo starts a mortgage foreclosure action against you, you shall still have the right to cure this default, de-accelerate and reinstate your Mortgage up to the time when a final judgment for foreclosure is entered To do so, you must pay Wells Fargo, at the address specified above, by cashier's check or certified check. all sums which would have been due in the absence of default and which are due at the time of payment including principal and interest payments, escrow payments and other necessary charges which come due prior to the date of payment and you must perform any other obligation which you would have been bound to perform in the absence of default or the exercise of an acceleration clause, if any In addition you must pay court costs, if any, and attorney(s) fees in an amount which shall not exceed the amount permitted under the Rules governing the Courts of the State of New Jersey, plus all contractual late charges, as provided for in the Note and Mortgage You shall not be required to pay any separate charge, fee or penalty attributable to the exercise of your right to cure this default This right to cure your default, de-accelerate and reinstate the Mortgage after a foreclosure action has been started may only be exercised by you once every 18 months You have the right to bring a court action to assert the non-existence of a default or any other defense you may have to acceleration and sale

If you cure the default after a foreclosure action has been started, Wells Fargo shall give written notice of the cure to the Court and, upon such notice, the Court shall dismiss the foreclosure action, without prejudice Your Mortgage will be reinstated to the same position as if the default had not occurred and any acceleration of any obligation under the Mortgage and Note arising from the default will be nullified as of the cure date

We urge you to immediately seek the advice of an attorney(s) of your own choosing concerning this residential mortgage default If you are unable to obtain an attorney(s), you may communicate with the New Jersey Bar Association or the Lawyers Referral Service of the county where the property is located If you are unable to afford an attorney(s), you may communicate with the Legal Services Office in the county where the property is located These telephone numbers are listed on the attached sheet, they can also be found in the local telephone directory

There may be available to you 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 and Insurance A list of such governmental and non-profit entities is enclosed You may also wish to call the following numbers to ascertain whether you qualify for such assistance

* HUD Housing Counseling Service	1-800-569-4287
* Veterans Affairs	1-800-827-1000
* New Jersey Commissioner of Banking	1-609-292-7272
*New Jersey Commissioner of Banking Hotline	1-800-446-7467

If you disagree with Wells Fargo's assertion that a default has occurred, or if you disagree with the correctness of Wells Fargo's calculation of the amount required to cure this default, you may contact Wells Fargo at the following:

Gwendolyn Nesbit
Wells Fargo Home Mortgage
Address 3480 Stateview Boulevard
MAC X7802-03H
Fort Mill, SC 29715
Phone Number 1-800-416-1472

The lender of your loan is.

(Investor Name 1) position 1184-1383 (10 digit) position 1181-1380 (7 digit)
(Investor Address 1) position 1384-1633 (10 digit) position 1381-1630 (7 digit)
(Investor City 1) position 1634-1654 (120 digit) position 1631-1651 (7 digit)
(Investor State 1) position 1655-1656 (10 digit) position 1652-1653 (7 digit)
(Investor Zip1) position 1657-1661 (10 digit) position 1654-1658 (7 digit)

Your right to cure this default, as provided in this Notice, is independent of any right of redemption or any other right or remedy under the common law, principles of equity, state or federal statute or rule of court. Financial Assistance for curing your default may be available. Attached you will find a list of possible programs.

Very truly yours,

Wells Fargo Home Mortgage
Default Management Department

This communication is an attempt to collect a debt and any information obtained will be used for that purpose. However, if you have received a discharge of this debt in bankruptcy or are currently in a bankruptcy case, this notice is not intended as an attempt to collect a debt and, this company has a security interest in the property and will only exercise its rights as against the property.

Exhibit C

Name of Law firm

PLAINTIFF,
V.
DEFENDANT.

) SUPERIOR COURT OF NEW JERSEY
) CHANCERY DIVISION
) _____ COUNTY
)
) DOCKET NO.: F-_____
)
) CIVIL ACTION
)
) RULE 4:64-2(d) AFFIDAVIT OF
) DILIGENT INQUIRY AND ACCURACY
) OF FORECLOSURE DOCUMENTS
) AND FACTUAL ASSERTIONS

_____, Esq., of full age, being duly sworn according to law, depose and say.

1. I am an attorney at law duly licensed to practice in the state of New Jersey and am affiliated with the law firm of *[insert law firm name]*, attorneys of record for the plaintiff in the above-captioned residential mortgage foreclosure action. I am responsible for this mortgage foreclosure action and am fully familiar with the pleadings and documents filed in this action and the facts set forth in this affidavit.

2. On *[insert date(s)]*, I communicated by *[insert mode of communication]* with the following named employee(s) of *[insert the name of the plaintiff or the name of the plaintiff's mortgage loan servicer]*, who informed me that he/she personally reviewed the affidavit of amount due and the original or true copy of the note, mortgage and recorded assignments, if any, about to be submitted to the court, and that he/she confirmed the accuracy of those documents:

Name of the employee(s):

Title of the employee(s):

Responsibilities of the employee(s):

3. In accordance with the Supreme Court's decision in US Bank, N.A. v Guillaume and the April 4, 2012 Order of the Supreme Court, a corrected NOI was served in this case on the Defendants pursuant to the Order of the Court in the matter In re Application by Wells Fargo Bank, N A. to Issue Corrected Notices of Intent to Foreclosure on Behalf of Identified Foreclosure Defendants, Docket Number F- _____-12. Based on my communication with the above-named employee(s) of the plaintiff or the plaintiff's mortgage loan servicer, the Defendant did not reinstate or cure the default within the permitted time period,

4 Based on my communication with the above-named employee(s) of the plaintiff or the plaintiff's mortgage loan servicer, as well as my own inspection of the documents about to be filed with the court and other diligent inquiry, I execute this affidavit to comply with the requirements of Rule 4-64-2(d) and Rule 1 4-8(a).

5. I am aware that I have a continuing obligation under Rule 1 4-8 to amend this affidavit if a reasonable opportunity for further investigation or discovery indicates insufficient evidentiary support for any factual assertion proffered by the plaintiff in any court filings and documents in this case

[Insert Name of Law Firm]

By: _____
Attorney sign above and type/print name below

Sworn and Subscribed before me, this

_____ day of _____, 20__

Notary Public of the State of _____
My Commission Expires: _____

[NOTARY SEAL]

REED SMITH LLP

Formed in the State of Delaware

Mark S Melodia, Esquire

Diane A. Bettino, Esquire

Princeton Forrestal Village

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Princeton, New Jersey 08540

Tel (609) 987-0050

Attorneys for Wells Fargo Bank, N.A

)	SUPERIOR COURT OF NEW JERSEY
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CORRECTED NOTICES OF INTENT)	DOCKET NO.: F-_____
TO FORECLOSE ON BEHALF OF)	
IDENTIFIED FORECLOSURE)	<u>CIVIL ACTION</u>
PLAINTIFFS IN UNCONTESTED)	
CASES)	
)	ATTORNEY CERTIFICATION OF PDF
)	SIGNATURE
)	

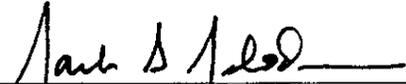
I, MARK S MELODIA, of full age, hereby certifies as follows:

1. I am an attorney licensed to practice in the State of New Jersey, and a partner with the law firm Reed Smith LLP, attorneys for Plaintiff Wells Fargo Bank, N A (“Wells Fargo”) in this matter.

2. Annexed hereto is a PDF signature of Timothy P. O’Brien Our client has acknowledged the genuineness of his signature.

3. I am filing this Certification pursuant to R 1 4-4(c), so that the Court may accept Timothy P. O’Brien’s PDF signature on his Verification to the Verified Complaint An original signature will be filed if requested by the Court.

I hereby 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



Mark S. Melodia, Esquire

Dated. May 29, 2012

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Email mmelodia@reedsmith.com

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May 29, 2012

Via Hand Delivery

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 Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases Docket Number F- To be Assigned*

Dear Judge McVeigh

This firm represents Wells Fargo Bank, N A ("Wells Fargo"). As is set forth in the Verified Complaint, Wells Fargo makes this application on behalf of Foreclosure Plaintiffs pursuant to the authority granted to Wells Fargo by those Foreclosure Plaintiffs. Wells Fargo seeks an Order from this Court permitting Wells Fargo 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")

Wells Fargo services mortgage loans for residential properties in New Jersey. *Ver Comp*, ¶ 2.¹ As the servicer of mortgage loans, Wells Fargo undertakes payment collection, loss mitigation and collection efforts, including foreclosure. *Id.*, ¶ 3. Wells Fargo 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, Wells Fargo has 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 Wells Fargo'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 Wells Fargo. *Id.*

¹ Wells Fargo also appears as a Foreclosure Plaintiff in foreclosure cases in its capacity as a trustee for the owners of securitized loans. Where Wells Fargo is acting as the trustee and not the servicer, Wells Fargo plays no role in the servicing of the loans. This current application to the Court does not include those foreclosure cases in which Wells Fargo is the trustee. *Id.*, *fn 1*

May 29, 2012

Page 2

One of Wells Fargo'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 Wells Fargo. *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 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, Wells Fargo has identified a population of foreclosure cases in which the previously served NOIs failed to include the name and address of the lender, as required by N.J.S.A. 2A:50-56(c)(11).² Wells Fargo seeks an Order from this Court allowing Wells Fargo to serve corrected NOIs that will include the name and address of the current lender so that Certifications of Due Diligence can be signed and the uncontested foreclosures can proceed to final judgment.

² Other servicers seeking to proceed by summary action to issue corrected NOIs may have additional deficiencies in the NOIs previously issued in their pending, pre-judgment foreclosure actions. The Supreme Court's April 4, 2012 Order contemplates that other NOI deficiencies could be raised in the summary actions because the Order indicates that the explanatory letter to the Foreclosure Defendants should identify the "reasons" that the corrected NOI is being issued. However, for Wells Fargo, the only deficiency in the NOIs is the failure to include the name and address of the lender, which is the very issue that Wells Fargo took to the Supreme Court in Guillaume.

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Wells Fargo is in the process of working 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 Wells Fargo served technically deficient NOIs prior to February 12, 2012 that failed to identify the lender and the lender's address ("Corrected NOI List")³ The Corrected NOI List will be supplied to the Court within the timeframe set forth in the Order to Show Cause. The Corrected NOI List will include the name of the Foreclosure Plaintiff, the Foreclosure Defendant and the Docket Number.⁴

In accordance with the April 4th Order, Wells Fargo has also drafted a proposed form of letter ("Explanatory Letter") that Wells Fargo proposes to send 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
- 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

In further support of this application, Wells Fargo has also supplied the proposed form of corrected NOI as Exhibit B to the Verified Complaint which Wells Fargo 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 Wells Fargo 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.

³ The Corrected NOI List is also being scrubbed to identify actions in which the bankruptcy stay might apply as well as to identify any Foreclosure Defendants who may have passed away since the original NOIs were sent Ver Comp , ¶ 8

⁴ 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 Wells Fargo will require that its counsel take the appropriate steps to change the plaintiff in affected foreclosure actions where required

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Allowing Wells Fargo 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, Wells Fargo 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, Wells Fargo seeks to correct the same deficiency but in uncontested foreclosures. The Foreclosure Defendants have already received numerous forms of notice concerning their foreclosure case along the way 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 Wells Fargo will waive the attorneys’ fees and costs that have been incurred in the foreclosures for purposes of the corrected NOI and possible reinstatement. 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, the Foreclosure Defendant will have the opportunity to raise and voice those objections in this process. The Order to Show Cause provides a mechanism and process whereby the Foreclosure Defendants can raise any concern, objection or potential prejudice with this Court.

If this Court permits Wells Fargo to issue corrected NOIs and the Foreclosure Defendants fail to cure their default, those cases should proceed to final judgment along with the necessary supporting documentation, including Certifications of Diligent Inquiry (“CODIs”) that counsel for Foreclosure Plaintiffs are required to sign under the recent amendments to the Court Rules. For the pending, pre-judgment foreclosures, counsel are required to submit CODIs attesting that the pleadings up to that point in the cases were correct and adhered to applicable law. In cases in which deficient NOIs were served, counsel understandably believe that they are unable to sign CODIs later in the cases and therefore, foreclosures cannot move forward without (1) a corrected NOI being served, and (2) a signed CODI. The uncertainty created by the combination of technically deficient NOIs and the new CODI requirement is one cause of the delay New Jersey is experiencing in moving uncontested foreclosures to final judgment. In order to help resolve this impasse, Wells Fargo has also proposed a form of CODI that is tailored to the situation before the Court in which corrected NOIs will be served to include the name and address of the lender. Attached as Exhibit C to the Verified Complaint is a form of CODI which comports in all respects to the requirements of Rule 4:64-2(d) and, if approved by this Court, will allow counsel to sign CODIs so that the pending, uncontested foreclosures can move forward. Such a slightly modified CODI which sets forth the steps that were taken with regard to a non-compliant NOI is provided for in the Supreme Court’s Order dated April 4, 2012. Specifically, that Order provides:

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It is FURTHER ORDERED that any Rule 4:64-1(a) or Rule 4:64-2(d) Certification of Diligent Inquiry filed by a plaintiff who has served a corrected Notice of Intention to Foreclose pursuant to an order issued as a result of such summary action shall list therein with specificity the steps taken to cure the deficient Notice of Intention to Foreclose.

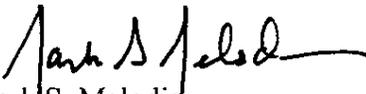
Pursuant to that Order, Wells Fargo has drafted a form of CODI that is based on the form CODI issued by the New Jersey Supreme Court in June, 2011 that specifically lists the steps that were taken to issue a corrected NOI and increases the transparency in the foreclosure system.

For the reasons set forth in Wells Fargo'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;
- (c) Allow Wells Fargo to serve corrected NOIs to each Foreclosure Defendant on the Corrected NOI List to be supplied to the Court;
- (d) Approve the form of CODI at Exhibit C to the Verified Complaint

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,


Mark S. Melodia

cc: Jennifer Perez, Superior Court Clerk (via Hand Delivery)
Kevin Wolfe (via Hand Delivery)

REED SMITH LLP

Formed in the State of Delaware

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Diane A. Bettino, Esquire

Princeton Forrestal Village

136 Main Street, Suite 250

Princeton, New Jersey 08540

Tel. (609) 987-0050

Attorneys for Wells Fargo Bank, N.A.

	)	SUPERIOR COURT OF NEW JERSEY
IN RE APPLICATION BY WELLS	)	CHANCERY DIVISION
FARGO BANK, N.A. TO ISSUE	)	PASSAIC COUNTY
CORRECTED NOTICES OF INTENT	)	DOCKET NO.: F-_____
TO FORECLOSE ON BEHALF OF)	
IDENTIFIED FORECLOSURE	)	<u>CIVIL ACTION</u>
PLAINTIFFS IN UNCONTESTED)	
CASES	)	CERTIFICATION OF SERVICE
)	
)	

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 Hand-Delivery Jennifer Perez, Clerk of the Superior Court, Superior Court of New Jersey, 25 West Market Street, 6th Floor North Wing, Trenton, New Jersey 08625:

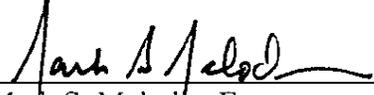
1. Order to Show Cause,
2. Verified Complaint;
3. Attorney Certification of PDF Signature;
4. Letter Brief in Support of Application; and
5. This Certification of Service.

I further certify that on this date, I caused copies of the foregoing documents to be served via hand-delivery on.

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

Kevin Wolfe
Superior Court of New Jersey
25 West Market Street
6th Floor North Wing
Trenton, New Jersey 08625

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.



Mark S Melodia, Esquire

Dated: May 29, 2012

Mark S. Melodia
Direct Phone +1 609 520 6015
Email mmelodia@reedsmith.com

May 29, 2012

Via Hand-Delivery

Jennifer Perez, Clerk of the Superior Court
Superior Court of New Jersey
25 West Market Street
6th Floor North Wing
Trenton, New Jersey 08625

RECEIVED

MAY 29 2012

SUPERIOR COURT
CLERK'S OFFICE

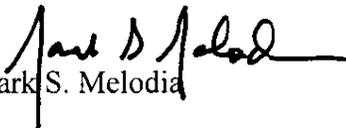
Re: *In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases*
Docket Number F- To be Assigned

This firm represents Wells Fargo Bank, N.A. in the above-referenced matter. Enclosed for filing, please find the original and two copies of the following documents:

1. Order to Show Cause;
2. Verified Complaint,
3. Attorney Certification of PDF Signature;
4. Letter Brief in Support of Application; and
5. Certification of Service.

Please charge our Superior Court Account 141013 for any filing charges. We understand that this matter is being assigned to Judge McVeigh. We are providing Judge McVeigh with a courtesy copy of our papers. Please call if you have any questions.

Very truly yours,


Mark S. Melodia

MSM/kc
Enclosures

cc. The Hon. Margaret Mary McVeigh, P.J. Ch. (*Via Hand-Delivery*)
Kevin Wolfe (*Via Hand-Delivery*)