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By: Margaret Lambe Jurow

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.

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: PASSAIC COUNTY
: Docket No. F-09564-12
: Civil Action
: **NOTICE OF MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE**

TO: REED SMITH LLP
ATTN: Mark S. Melodia, Esq.
Princeton Forrestal Village
136 Main Street, Suite 250
Princeton, New Jersey 08540-7839

PLEASE TAKE NOTICE THAT pursuant to R. 1:13-9, Legal Services of New Jersey (“LSNJ”) applies for leave to appear as *amicus curiae* in the above matter, to file a brief and to participate in oral argument.

Identity of Applicant

LSNJ is a non-profit corporation that supports and coordinates New Jersey’s Legal Services system, consisting of a network of six regional Legal Services programs in addition to LSNJ. The Legal Services system is New Jersey’s primary provider of free legal assistance to low-income people in civil matters. LSNJ frequently participates as *amicus curiae* in cases involving issues of major significance to the State’s low-income population. In so doing, it

presents perspectives of low-income people as a group rather than the views or interests of the individual litigants.

Issues To Be Addressed

The issue to be addressed in this case is: whether the application for the entry of an Order to Show Cause filed by Wells Fargo Bank, N.A. in this matter is inconsistent with the New Jersey Supreme Court decision in the matter of U.S. Bank, N.A. v. Guillaume, 209 N.J. 449 (2012) and with the April 4, 2012 order of the New Jersey Supreme Court in furtherance of its holding, which authorized certain summary actions before this court by a plaintiff that has served a Notice of Intention to Foreclose deficient under the Fair Foreclosure Act, N.J.S.A. 2A:50-56, when such a plaintiff seeks an Order permitting it to serve a corrected Notice of Intention to Foreclose.

Public Interest

This matter represents the first application to this Court pursuant to the New Jersey Supreme Court's April 4, 2012 order, and as such it is likely to set a precedent for future applications. This matter and those that are certain to follow directly involve tens of thousands of families facing foreclosure. Thousands of these families have sought the assistance of LSNJ with their pending foreclosure actions, and will be directly affected by this application but have been denied the opportunity to be heard because Wells Fargo failed to identify them.

Special Expertise and Interest

LSNJ has substantial expertise in consumer matters and has participated in state level advocacy on consumer issues for over thirty years, including participation in the cases of Olive v. Graceland Sales Corp., 61 N.J. 182 (1972), Riley v. New Rapids Carpet Center, 61 N.J. 218 (1972), Lemelledo v. Beneficial Mgmt. Corp., 150 N.J. 255 (1997), Glukowsky v. Equity One,

Inc., 180 N.J. 49 (2004), Perez v. Rent-A-Center ,186 N.J. 188 (2006), Hodges v. Sasil Corp., 189 N.J. 210 (2007); Gonzalez v. Wilshire Credit, 207 N.J. 557 (2010)

LSNJ initiated an Anti-Predatory Lending Project in 2002 with the specific mission of defending foreclosure matters and addressing issues that arise in subprime mortgages. Since that time LSNJ has counseled thousands of homeowners with mortgage problems like the ones presented in this case. In addition, LSNJ operates the statewide Mortgage Foreclosure Mediation Program hotline. The hotline is the first stop for homeowners seeking to participate in this Court's mortgage mediation program which was initiated in order to facilitate mortgage loan modification efforts.

The Anti-Predatory Lending Project at LSNJ is dedicated to saving homes from foreclosure, protecting home equity and eliminating predatory lending practices. The Anti-Predatory Lending Project assists homeowners who are facing foreclosure who may be at an increased risk of foreclosure because they were deceived or treated unfairly by a mortgage broker, mortgage lender or mortgage servicer.

Rebecca Schore, Margaret Jurow and David McMillin are senior attorneys coordinating, litigating and formulating policy positions with regard to mortgage foreclosure matters and in consumer fraud. Each of them contributed substantially to Legal Services of New Jersey's Report and Recommendations to the New Jersey Supreme Court Concerning False Statements and Swearing in Foreclosure Proceedings, November 4th, 2010.

No undue prejudice will result to the parties from LSNJ's participation as *amicus curiae*. LSNJ's participation makes available our expertise in having reviewed and counseled hundreds of homeowners with similar issues to the matter before the Court.

Request To Present Oral Argument In Addition To Filing A Brief

For more than three decades LSNJ traditionally has been granted permission to present oral argument to the New Jersey Supreme Court in cases where it has been granted *amicus* status, as a representative of the perspectives of low-income people and the public interest generally. LSNJ has found that oral argument frequently affords an opportunity to assist the Court by offering both information and legal perspective on questions members of the Court may have after their review of the record and brief. Since many of these questions do not become apparent until oral argument, it is not possible for LSNJ to anticipate and address them fully in a brief. LSNJ believes oral argument will be especially important in this case, given the novelty of the application before the court.

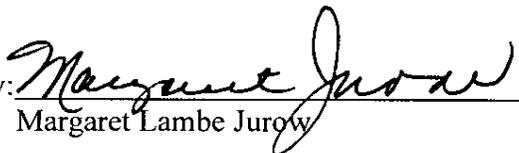
Conclusion

For the foregoing reasons, LSNJ requests that it be permitted leave to appear as *amicus curiae* in this appeal by filing the accompanying brief and participating in oral argument.

DATED: 6-6-2012

Respectfully submitted,

MELVILLE D MILLER, JR.
LEGAL SERVICES OF NEW JERSEY, INC.

By: 
Margaret Lambe Jurow



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Librarian and Attorney
Rebecca R. Pressman

*Pursuant to R 1-21-3(c)

June 6, 2012

Hon. Margaret Mary McVeigh, J.S.C.
Chief Judge, General Equity Division
Passaic County Superior Court
Old Courthouse, Chambers 100
71 Hamilton Street
Paterson, NJ 07505

**Re: IN RE APPLICATION BY WELLS FARGO BANK, N.A.
TO ISSUE CORRECTED NOTICES OF INTENT TO
FORECLOSE ON BEHALF OF IDENTIFIED [SIC]
FORECLOSURE PLAINTIFFS IN UNCONTESTED
MATTERS.
DOCKET NO.: F-09564-12
Hearing Date: Thursday June 7, 2012 at 10:00 a.m.**

Dear Judge McVeigh:

Please accept this letter brief in lieu of a more formal pleading on behalf of Legal Services of New Jersey ("LSNJ") as Amicus Curiae in the above matter. Thank you for directing Wells Fargo to provide LSNJ with notice of its application and of the scheduling of this preliminary hearing. We respectfully request that Your Honor allow us to be heard orally. We urge the Court not to execute the Order to Show Cause as presented and to require additional information and notice before executing any Order to Show Cause pursuant to Justice Rabner's April 4, 2012 Order.

POINT I

THE APPLICATION BEFORE THE COURT IS DEFICIENT UNDER THE APRIL 4, 2012 ORDER AND R. 4:67 BECAUSE IT IS NOT BROUGHT BY A PLAINTIFF, DOES NOT IDENTIFY THE AFFECTED HOMEOWNERS, AND DOES NOT PRESENT ANY FACTS FROM WHICH THE COURT MIGHT DETERMINE WHETHER THE REQUESTED RELIEF IS APPROPRIATE.

Justice Rabner's order dated April 4, 2012 authorized this Court 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 yet been entered, who served Notices of Intention to

Foreclose that are deficient under the Fair Foreclosure Act, N.J.S.A. 2A:50-56 should not be allowed to serve corrected Notices of Intention to Foreclose on defendant mortgagors and/or parties obligated on the debt.”

Summary actions are governed by R. 4:67-1 to R. 4:67 - 5. There is nothing in the Court’s order of April 4, 2012 which suggests that homeowner defendants in cases in which the plaintiff acknowledges that it has not complied with the Fair Foreclosure Act are entitled to any less due process than any other defendant in connection with any case in which a summary action is permitted.

The application presented by Wells Fargo does not comport with the April 4, 2012 Order or R. 4:67. The application is not presented by a plaintiff or any group of plaintiffs whose cases have been consolidated; rather it is advanced by Wells Fargo as an alleged “servicer” of loans in a vast number of unidentified pending cases. The application does not identify the plaintiffs on whose behalf it is seeking relief nor does it identify the homeowner defendants who will be affected by the ultimate action or state why the relief is appropriate under the facts of the affected cases. No order should be entered allowing Wells Fargo to take action on behalf of unidentified plaintiffs, affecting unidentified homeowners without the production of any evidence of its authority to act. Granting this application as presented would violate fundamental due process of homeowner defendants.

“A trial court adjudicating a foreclosure complaint in which the notice of intention does not comply with N.J.S.A. 2A:50-56(c)(11) may dismiss the action without prejudice, order the service of a corrected notice or impose another remedy appropriate to the circumstances of the case.” U.S. Bank, NA v. Guillaume, 209 N.J. 449, 476 (2012). The New Jersey Supreme Court in *Guillaume* instructed the trial court to consider “the impact of the defect in the Notice of Intention upon the homeowner’s information about the status of the loan and his or her opportunity to cure the default” when considering what relief to grant in the face of a violation of the Fair Foreclosure Act. 209 N.J. at 480. There, the court noted that the NOI the homeowners received identified the proper contact person, that the homeowners were engaged in active loan negotiations, were represented by a housing counselor and were financially unable to cure or qualify for a loan modification of any sort and held that a corrective notice was an appropriate remedy.. Id.

Here, Wells Fargo has not presented any evidence whatsoever which would allow a court to find sufficient facts to support a remedy for the admitted violation of the Fair Foreclosure Act. If, as Wells Fargo alleges, it has been the servicer with full authority and control over the loan and the default mitigation processes at all times for the loans at issue here, the types of information the *Guillaume* Court indicated the trial court should consider in issuing a remedy for a violation of the Fair Foreclosure Act should be readily available to it and presented to the Court and affected homeowners.

Here, Wells Fargo makes the bald assertion that it never issued a Notice of Intention to Foreclose that contained any error other than failure to identify the lender name and address. Yet, Wells Fargo has produced no evidence to this effect. It is hard to imagine that there is not a single NOI with other errors given the reports of Wells Fargo’s poor mortgage servicing practices in general

and its lack of cooperation with investigators over these past months. See e.g., *Report of Inspector General, U.S. Department Of Housing And Urban Development*, issued March 12, 2012.

Wells Fargo's claim that it could not provide a list of affected parties with this application is dubious given its contention that it has been the servicer with full authority and control of the loans on behalf of its principals, the lenders, at all times from the issuance of the defective NOI to the present even when the lender has transferred the loan in that time.

To the extent that this Court requires that Wells Fargo produce a list of cases in this action, we respectfully request that Your Honor require that the list be presented in a searchable format and organized in a manner that will be accessible to homeowners and their representatives and that contains adequate information to balance the Guillaume factors.¹

POINT II

THIS COURT SHOULD SET A BRIEFING SCHEDULE ON NOTICE TO AFFECTED HOMEOWNER DEFENDANTS RELATED TO FURTHER PROCEEDINGS

At this early juncture, LSNJ anticipates that when plaintiffs permitted to do so by the April 4, 2012 Order make an application to this Court there will be at least three types of substantive concerns which merit briefing and oral argument prior to the entry of an order:

- 1) The substance of the amended or corrected notices of intention and the explanation letter;
- 2) Procedures to be followed when a homeowner defendant objects to the entry of a corrective NOI as a remedy in his or her case;
- 3) The substantive evaluation the court should undertake, when a homeowner objects to the requested relief.

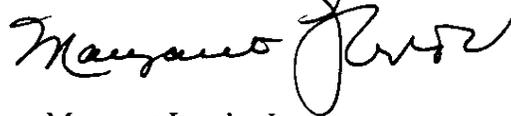
This Court should set a briefing schedule which provides a time for plaintiffs to file a new application, provide notice to affected parties and adequate time for those opposed to the entry or form of the order to file opposing briefs and certifications and present oral argument.

¹ The Fair Foreclosure Act itself provides that a cure may be effectuated through Bankruptcy. N.J.S.A. 2A:50-59; N.J.S.A. 2A:50-57(f). Thus, homeowners who have sought Bankruptcy protection are still entitled to a proper statement of who owns their loan and how much they owe. The list of cases in which Wells Fargo issued non-compliant or false NOIs should not exclude borrowers who have filed for bankruptcy.

CONCLUSION

For the foregoing reasons, LSNJ respectfully request that the Court deny the application for an Order to Show Cause in this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Margaret Lambe Jurow". The signature is written in a cursive style with a large, looping initial "M".

Margaret Lambe Jurow

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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

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: PASSAIC COUNTY
: Docket No. F- 9564-12
: Civil Action
:
: **CERTIFICATION OF SERVICE**

Margaret Lambe Jurow, of full age, hereby certifies as follows:

1. I am employed by Legal Services of New Jersey
2. On June 6, 2012, I caused an original and one copy of a Notice of Motion for Leave to Appear as *Amicus Curiae*, Letter Brief, proposed Order and Certification of Service delivered by Lawyers Service to:

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

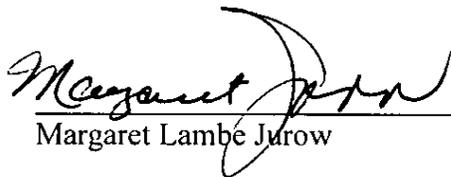
3. I also caused a copy of the foregoing to be electronically filed on JEFIS and email to her judicial assistant:

Honorable Margaret Mary McVeigh, J.S.C.
Chief Judge, General Equity Division
Passaic County Superior Court
Old Courthouse
71 Hamilton Street, Chambers 100
Paterson, New Jersey 07505

4. I also caused a copy of the foregoing to be delivered via email attachment to:

Mark S. Melodia, Esq.
Reed Smith LLP
Princeton Forrestal Village
136 Main Street
Princeton, New Jersey 08540-7839

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



Margaret Lambé Jurow

DATED: June 6, 2012

LEGAL SERVICES OF NEW JERSEY, INC.
Melville D. Miller, Jr., President
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Attorneys for *Amicus Curiae* Legal Services of New Jersey
By: Margaret Lambe Jurow

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. : : : :	.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY Docket No F- 9564-12 Civil Action
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ORDER GRANTING LEAVE FOR TO APPEAR AS AMICUS CURIAE

THIS MATTER, having been opened to the Court by Legal Services of New Jersey for leave to appear as amicus curiae in this matter; and the Court having considered the papers and for good cause shown,

IT IS on this day of June _____, 2012,

ORDERED, that Legal Services New Jersey is hereby granted leave to appear as amicus curiae,

IT IS FURTHER ORDERED, that a copy of this Order be served on all counsel of record within days of the date hereof.

HON. MARGARET MARY MCVEIGH



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*Pursuant to R 1-21-3(c)

June 6, 2012

Jennifer Perez, Clerk
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**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 No. F-09564-12**

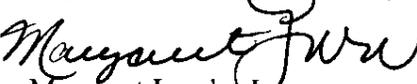
Dear Ms. Perez:

Enclosed for filing are an original and two copies of Notice of Motion of Legal Services of New Jersey for Leave to Appear as *Amicus Curiae*, Letter Brief, proposed Order and Certification of Service.

Kindly file and return a copy marked "filed" in the enclosed self-addressed, stamped envelope. Thank you for your assistance.

Please note that pursuant to R. 1:13 no filing fees may be charged because the defendant is represented by a legal services office.

Very truly yours,
Legal Services of New Jersey


Margaret Lambe Jurow

Enclosures

cc: Mark S. Melodia (encls. sent by email)