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July 17, 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- 009564-12***

Dear Judge McVeigh:

This firm represents Wells Fargo Bank, N.A. ("Wells Fargo"). In accordance with the direction provided by the Court at the hearing held on June 7, 2012, Wells Fargo is providing these amended papers in support of its application to proceed in a Summary Action. As is set forth in the Amended 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. *Am. Ver. Comp.*, ¶ 2.<sup>1</sup> 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 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

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<sup>1</sup> 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.*

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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.*

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 4<sup>th</sup> 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).<sup>2</sup> Wells Fargo seeks an Order from this Court allowing

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<sup>2</sup> 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 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.

Wells Fargo 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 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").<sup>3</sup> 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.<sup>4</sup> The Corrected NOI List, attached as Exhibits 1 through 34 to the Amended Verified Complaint, is broken down by each Named Plaintiff. There are a total of 34 Named Plaintiffs for which Wells Fargo seeks to correct previously served NOIs. Those Named Plaintiffs (and their affiliated entities) are the following:

1. Bank of America, N.A.
2. Bank of New York Mellon
3. Bank Atlantic
4. Bayview Financial
5. CitiBank, N.A.
6. Commerce Bank
7. Copperfield Investments
8. Deutsche Bank
9. DLJ Mortgage Capital Inc.
10. E\*Trade
11. EMC Mortgage
12. Federal Deposit Insurance Corporation
13. Federal Home Loan Mortgage Corporation
14. Federal National Mortgage Association
15. Federal Home Loan Bank of Chicago
16. FTN Financial
17. GE Capital Mortgage Services, Inc.
18. GMAC Bank
19. HSBC Bank, N.A.
20. Hudson City Savings Bank
21. Investors Savings Bank

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<sup>3</sup> The Corrected NOI List also identifies actions in which the bankruptcy stay might apply. Am. Ver. Comp., ¶ 86, *Exh. 35*.

<sup>4</sup> 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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22. JP Morgan Chase Bank
23. LaSalle Bank, N.A.
24. Lehman Brothers
25. Lex Special Assets
26. MidFirst Bank
27. New York Life Insurance and Annuity Corporation
28. PNC Bank
29. Residential Accredited Loans, Inc.
30. Riggs Real Estate Investment Corporation
31. UBS Bank
32. United States Department of Housing and Urban Development
33. US Bank, N.A.
34. Wilmington Trust Company<sup>5</sup>

For Fannie Mae and Freddie Mac, the Government Sponsored Entities (“GSE”) at issue in this application, Wells Fargo seeks to issue corrected NOIs in the cases in which Fannie Mae and Freddie Mac are the Foreclosure Plaintiffs. If the servicer of a Fannie Mae or Freddie Mac loan also holds a secondary lien on the same property, the Fannie Mae and Freddie Mac servicing guidelines allow the servicer to file the foreclosure in the name of the GSE entity. In such cases, such as the cases listed on Exhibits 13 & 14 to the Amended Verified Complaint, Fannie Mae and Freddie Mac should have been identified as the lender in the original NOI, because in such cases, Fannie Mae and Freddie Mac are the holders of the residential mortgages. The FFA defines a “lender” as “any person, corporation, or other entity which makes or holds a residential mortgage, and any person corporation or other entity to which such residential mortgage is assigned.” N.J.S.A. 2A:50-55. Therefore, as the “holder” of the mortgages, the GSEs should have been identified in the previously served NOIs.

Not included in this application are the other uncontested foreclosure cases in which Fannie Mae and Freddie Mac are not the Named Plaintiffs and not the holders of the residential mortgages. In such cases, the GSEs retain a beneficial interest in the loan but are not the holders of the mortgage and therefore, not the “lender” under the FFA. The previously served NOIs in these cases that identified Wells Fargo as the “lender” were correct because Wells Fargo is the “holder” of the residential mortgages and thus, falls within the definition of a “lender” under the FFA. Further, as the holder of the Mortgage and the Note endorsed in blank, Wells Fargo is the party that is entitled to foreclose. Under the Uniform Commercial Code (“UCC”), the party in possession of the note, endorsed directly to it or in blank, qualifies as the holder or a party with the rights of the holder. N.J.S.A. 12A:3-301(1) and (2). Therefore, pursuant to the FFA and the UCC, for the cases in which the GSEs hold a beneficial interest but not the Note and Mortgage, Wells Fargo’s prior NOIs were correct and are not at issue in this application.

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<sup>5</sup> Count 35 of the Amended Verified Complaint and the corresponding Exhibit 35 reference to the pending foreclosure actions that are currently impacted by the Bankruptcy Stay. Wells Fargo will be seeking to issue corrected NOIs in those cases at the appropriate time and in accordance with the procedures set forth in the Order to Show Cause.

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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). Wells Fargo has included those cases within this application because the current application offers an additional benefit to 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 these 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 4<sup>th</sup> Order, in conjunction with this Court's guidance, Wells Fargo 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
- 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.<sup>6</sup>

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.

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<sup>6</sup> 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 Wells Fargo 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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Notice will also be provided via publication notice in four newspapers to be chosen by this Court. Wells Fargo 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 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 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 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 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 Wells Fargo to correct the deficient NOIs.

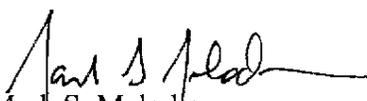
For the reasons set forth in Wells Fargo’s application, the Supreme Court has issued an Order that is faithful to the decision in Guillaume, and provides a mechanism to cure deficient NOIs so that Foreclosure Defendants will receive the notice that they should have received under the FFA and will also 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; and
- (c) Allow Wells Fargo to serve corrected NOIs to the Foreclosure Defendants on the Corrected NOI List.

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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 JEFIS)  
Margaret Lambe Jurow, Esquire (via Hand Delivery)