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SUPERIOR COURT
CLERK'S OFFICE

TODD MURPHY LAW

Attorneys at Law

90 WASHINGTON VALLEY ROAD
BEDMINSTER, NEW JERSEY 07921

TODD MURPHY
DIRECT DIAL 908-413-6144
E-MAIL TMURPHY@TODDMURPHYLAW.COM

TELECOPIER
419-793-1351

800-285-1925

A MEMBER N. J. BAR

September 20, 2012

Superior Court Clerk's Office
Foreclosure Processing Services
P.O. Box 971
Trenton, NJ 08625

ATTN: Objection to Notice of Intention to Foreclose

**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-9564-12**

AND

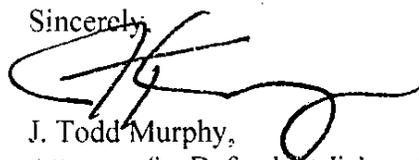
**HSBC Bank USA, National Association, As Trustee For The Holders of The Certificates
Issued By Deutsche ALT-A Securities Mortgage Loan Trust Series 2007-1 v. Jishan
Ahmad et al
DOCKET No. F042976-09.**

Dear Madam Clerk:

Enclosed are two copies of a letter brief in response to Wells Fargo's Order to Show Cause in the above referenced matter. This letter brief is responsive in two ways: (i) as an overall response to Wells Fargo's summary application to issue corrected NOIs, and (ii) as an individual response on behalf of Jishan Ahmad to issuing a corrected NOI specifically in his matter as also captioned above.

I have also attached a copy of the first page of the letter brief, kindly mark that page "filed" and return to this office in the enclosed post-paid return envelope.

Sincerely,



J. Todd Murphy,
Attorney for Defendant Jishan Ahmad

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CERTIFIED MAIL, RRR

September 20, 2012

Superior Court Clerk's Office
Foreclosure Processing Services
Attention: Objection to Notice of Intention to Foreclose
P.O. Box 971
Trenton, NJ 08625

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 FORECLOSURE PLAINTIFFS IN UNCONTESTED CASES
DOCKET No. F-9564-12**

AND

**HSBC Bank USA, National Association, As Trustee For The
Holders of The Certificates Issued By Deutsche ALT-A Securities
Mortgage Loan Trust Series 2007-1 v. Jishan Ahmad et al
DOCKET No. F042976-09.**

Dear Judge McVeigh:

Please accept this letter brief in response to Wells Fargo's application in the above matters in lieu of a more formal pleading responding, on behalf of Jishan Ahmad, Defendant in a previously contested and now uncontested foreclosure action

docketed as F-042976-09 listed in Exhibit 1 through 34 attached to Wells Fargo's Verified Complaint in Support of Order To Show Cause. Arguments are presented below in opposition of summarily disposing of Plaintiff's application followed by arguments specifically related to Defendant Jishan Ahmad's case.

BACKGROUND

This response to Wells Fargo's Order To Show Cause is made by Jishan Ahmad and his wife Munmun Chowdhury residing at 46-52 Lexington Ave., Patterson, NJ who have been fighting to save their home for some three years. In late 2008 Jishan Ahmad lost his job like many Americans and couldn't pay his bills which included a first mortgage and second mortgage loans as well as consumer credit card debt. The terms of the first and second mortgage loans included an interest-only feature with an interest rate of 8% which reset to 14% after five years which together give the effect of a five year interest only loan. However, the current interest is accruing under the 14% rate rapidly increasing the arrears owed on the loan.

On April 1, 2009, the loans went into default and on August 12, 2009, Plaintiff filed a foreclosure action. Shortly thereafter, Jishan filed an Answer and Counterclaim claiming, *inter alia*, that the Notice of Intent To Foreclose was defective.

Soon after the complaint and answer were filed, Jishan was able to regain his employment and, after consulting with counsel, made a plan to enable himself to qualify for a modification. Jishan *wants* to pay his loan and keep his family in their home.

Jishan learned there was a very strict formula which determined whether or not he would qualify for a modification. The formula includes certain ratios between income and expenses which Jishan realized he could not meet. Even though the current value of his home is significantly less than what he owes on both loans, Jishan was and is committed to entering into a modification and to pay the loan he was given and is doing everything he can to qualify for a modification because he wants to keep his family in their home.

The first thing Jishan did was to contact the lender and begin the long, and, he was soon to find out, very long, process of obtaining a modification to his loan. He submitted, and re-submitted, forms and documents. Often, he was told the forms or documents were lost or weren't received. So, he submitted, and re-submitted, again and again the same forms over and over. As time went on, he was told certain forms were out-of-date and had to be re-submitted. He did so, again. Day after day, week after week, Jishan Ahmad contacted his lender to discuss his modification. Each time, talking to a new person, having to educate every new person on his situation before being able to have an intelligent discussion with the representative of the lender. But he kept at it because he wants to pay his loan.

Jishan set out to improve his employment situation in order to increase his income. Then, he set out to reduce and eventually eliminate his debts. Tasks that don't just happen overnight but require constant effort on his part. After much negotiating, Jishan, was able to reduce the balance of his consumer credit card debt and then finally to pay-off that debt. In addition, he has been discussing a settlement with his second mortgage lender and is just now, after two long years of negotiating, about to enter into an agreement which allows him to pay a significantly reduced amount to completely pay-off the second mortgage. Jishan was able to increase his income and lower his expenses which has now put him in a position of being able to fit into the very strict criteria to qualify for a loan modification.

On January 25, 2011, Jishan attended a home preservation workshop presented by ASC the loan servicer where he met with a representative who stated that he would qualify for a loan modification, however, there was no follow-up by the lender after that workshop. On December 14, 2011, Jishan participated in the foreclosure mediation program which was the first time he actually got any real answers about his situation from his lender who attended the mediation by telephone. Unfortunately, the foreclosure action was not resolved at the mediation. Jishan's income was just a little bit too low and his credit balances just a little bit too high to fit into the very narrow formula required to obtain a mortgage modification. But, Jishan forged on.

As stated above, after the mediation, Jishan was able to improve his income and is now about to enter into a settlement eliminating his second mortgage. At this point, Jishan should qualify, and in fact he was recently told by a representative of the lender within the last few weeks that he should qualify for a mortgage modification. However, the lender, despite a directive in the Attorneys General settlement agreement of April 2012, continues to follow a dual track of pursuing a foreclosure action while continuing to discuss with Mr. Ahmad, a mortgage modification. Mr. Ahmad requested a second foreclosure mediation but Wells Fargo refused to mediate a second time.

Plaintiff now brings an Order To Show Cause claiming that the ruling in US Bank N.A. v. Guillaume permits the re-issuance of what Plaintiff Wells Fargo admits was a defective notice of intention to foreclose and that such re-issuance is the proper remedy to the deficient NOIs issued in the listed matters.

Counsel for Wells Fargo, Mark Melodia, Esq. filed an Order To Show Cause seeking relief by summary action for an Order permitting Wells Fargo to issue corrected Notices of Intent To Foreclose ("NOI") to 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 34 to the Amended Verified Complaint ("Corrected NOI List") to include the name and address of the lender, and based upon the New Jersey Supreme Court's decision in US Bank N.A. v. Guillaume, 209 N.J. 449 (2012).

I. Under US Bank National Association v. Guillaume, Remedy For Defective Notice of Intent To Foreclose Should Be Decided on a Case-By-Case Basis and not decided in a Summary Action.

Wells Fargo seeks an Order from this Court permitting Wells Fargo to issue, on a summary basis for all uncontested cases it is pursuing, corrected Notices of Intent To Foreclose ("NOI"). The right to seek such an Order, and only the right to seek the Order, not the right to actually issue the corrected NOIs, was set forth in a New Jersey Supreme Court Order dated April 4, 2012 which was entered following and in an attempt to comply with the Court's decision in US Bank N.A. v. Guillaume, 209 N.J. 449 (2012) ("Guillaume").

The facts in Guillaume were specific to the situation where a default judgment had already been entered and Guillaume attempted to vacate the default judgment based upon, among other things, a defective NOI where the Plaintiff, upon direction by the trial Court issued a corrected NOI. The Guillaume Court therefore analyzed the facts in that case and whether the issuance of a corrected NOI was a sufficient remedy in the specific context where a default judgment had already been entered and Defendant Guillaume attempted to vacate such judgment. A rather harsh environment one might say for analyzing the remedy for a non-conforming NOI.

The facts in this summary action brought by Wells Fargo are not in the situation where default judgment has been entered, rather, it is specific to uncontested foreclosure actions prior to entering judgment but knowing that judgments cannot be entered because Wells Fargo has admitted that the NOIs are deficient. In light of the difference in facts, the analysis in this action should be a somewhat more lenient reading of the Fair Foreclosure Act and focused on (1) whether or not a summary action can be appropriate; (2) if a summary action is appropriate, whether or not permitting the issuance of corrected NOIs is the correct remedy.

(1) Summary action permitting issuance of corrected NOIs in each and every case is not appropriate.

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 foreclosure 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. Wells Fargo states without any supporting evidence whatsoever that all of the NOIs were deficient for the very same reason: the name of the bank was omitted. It seems unreasonable to think, given the large number of foreclosure matters that this action covers, that each and every NOI would have precisely the same error.

However, even if each and every NOI had the exact same error, are the circumstances of each case in which the defective NOI was issued exactly the same? In deciding appropriate remedies, the Guillaume Court guided trial courts deciding the appropriate remedy that "a trial court should consider the impact of the effect upon the homeowners information about the loan's status and the opportunity to cure the default." Without analyzing each case on its unique merits, how can this Court, in this summary action, consider the impact of the effect upon the homeowners information about the loan's status and the opportunity to cure the default?

The Guillaume Court spends considerable effort in its opinion to discuss various remedies in its analysis of the facts specific to Guillaume. The Court noted specifically that courts in equity "... have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case." Further, the Court stated "... the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties."

In light of this flexibility noted by the Guillaume Court, it seems unlikely that a summary action to allow wholesale the issuance of corrected NOIs could be the proper remedy in this case. Rather, each case should be decided on its own merits.

This Court may be tempted by the lure of expediently breaking the log jam created by Plaintiff's error and summarily allow corrected NOIs to issue and move all of those cases to final judgment, certainly Plaintiff has been. However, the Court must bear in mind that it has an obligation in such uncontested actions to ensure that Defendant has been given all of the rights and protections that due process provide for despite the fact that these Defendants have elected not to contest the matter. That due process can only be given if each and every case is heard on an individual basis.

Clearly, a summary action permitting the issuance of corrected NOIs in every single foreclosure matter listed in Wells Fargo's exhibits, because in each case the court cannot consider the impact of the effect upon the homeowners information about the loan's status and the opportunity to cure default, is not the correct method of resolving the deficient NOIs and ultimately resolving those uncontested foreclosure cases.

(2) If a summary action is appropriate, permitting the issuance of corrected NOIs is not the correct remedy.

The Guillaume Court held that "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) ("Fair Foreclosure Act" of "FFA") may dismiss the action without prejudice,

order the service of a corrected notice, or impose other appropriate remedies.” In deciding appropriate remedies, the Guillaume Court goes on to guide a trial court that “a trial court should consider the impact of the effect upon the homeowners information about the loan’s status and the opportunity to cure the default.”

It should be noted that Wells Fargo, in its letters to this Court supporting its application dated July 17, 2012 and May 29, 2012 quietly omitted the option of dismissing the action without prejudice for this Court to consider. The Guillaume Court clearly outlined three remedies, each of which are appropriate for a summary action: dismissal without prejudice, the issuance of a corrected NOI, or other appropriate remedies.

Dismissal without prejudice is an expedient and fair remedy in this situation. It clears the docket of a log jam of cases and allows Plaintiff to re-file each of its cases with all of the necessary documentation and certifications that have evolved during these last couple of years of processing an unprecedented number of foreclosures. It properly allows for due process at each step of the process starting with proper notice, a newly drafted complaint with the proper certifications and the ability for Defendant to contest the matter if each requirement of the process is not met. This is a much more transparent way to handle all of the changes in the process that have evolved and will ensure proper handling of each and every case.

Alternatively, summarily permitting the issuance of corrected NOIs, while an option, is not a good option on a summary basis. As discussed above, the unique circumstances provided for by the guidance issued by the Guillaume Court cannot possibly be taken into consideration when making a summary decision. This option has the least amount of transparency thus providing for the least amount of due process.

For the foregoing reasons, the summary issuance of corrected NOIs is not an appropriate remedy, rather, summarily dismissing without prejudice thereby ensuring that each defendant’s right to due process is preserved is an appropriate remedy.

II. Issuance of a Corrected Notice of Intention To Foreclose Is Not An Appropriate Remedy In The Ahmad Case.

Whether or not the Court decides summary action in this matter is appropriate, Plaintiff in its Order To Show Cause has provided for individual consideration in the event a Defendant objects to the issuance of a corrected NOI. Mr. Ahmad believes the issuance of the corrected NOI is not an appropriate remedy in his specific situation.

a. Issuing a corrected NOI is not consistent with Guillaume.

The Guillaume Court held that “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) (“Fair Foreclosure Act” of “FFA”) may dismiss the action without prejudice, order the service of a corrected notice, or impose other appropriate remedies.” In deciding appropriate remedies, the Guillaume Court goes on to guide a trial court that “a trial court should consider the impact of the effect upon the homeowners information about the loan’s status and the opportunity to cure the default.”

Similar to the Guillaume case, Mr. Ahmad has been actively discussing with representatives of the lender obtaining a loan modification. However, one thing that has always confused him was who he was actually talking to, what decision-making power they had, and what flexibility they had in making decisions that may enable Mr. Ahmad to obtain a loan modification. Mr. Ahmad has always dealt with America Service Corp. (“ASC”) the loan servicer and never actually knew for sure who the lender was. Mr. Ahmad still does not know who MERS is and he certainly doesn’t know who the Plaintiff HSBC Bank USA, National Association, As Trustee For The Holders of The Certificates Issued By Deutsche ALT-A Securities Mortgage Loan Trust Series 2007-1 is either.

Given the confusing names and representatives of a lender, it should come as no surprise then that the legislature, in creating the Fair Foreclosure Act, decided to provide for a NOI that included eleven points, one being the name of the lender to be specified on its face.

The Guillaume Court spends considerable effort in its opinion to discuss various remedies in its analysis of the facts specific to Guillaume. The Court noted specifically that courts in equity “... have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case.” Further, the Court stated “... the court of equity has the power of devising its remedy and shaping it so as to fit the changing circumstances of every case and the complex relations of all the parties.”

Here, Mr. Ahmad has indeed had a complex relationship with Wells Fargo. There have been ongoing discussions with the lender by telephone, in a workshop, in mediation and through written communication. At the same time, the rules governing the processing of foreclosure actions have evolved as has the process of obtaining a modification. In addition, the government has intervened, both through the attorneys general settlement and also through the White House continuing to encourage lenders to modify rather than foreclose.

Despite the fact that his loan is and will continue to be underwater when modified, Mr. Ahmad continues to want to pay his mortgage loan rather than lose his home. The lender, should it foreclose, would no doubt sell the property

for less than the amount due on the loan due to the drop of value in the property and the excessive loan amount.

Mr. Ahmad has worked tirelessly to reduce his other debts and increase his income situation so that he can meet the strict standards required by the lender to obtain a loan modification. Mr. Ahmad continues to discuss with Wells Fargo obtaining a loan but has not been able to focus the lender on coming to a final decision on his application for modification. Mr. Ahmad has requested a second foreclosure mediation which Wells Fargo refused to agree to.

In light of the Guillaume Court's advice to be flexible in crafting a remedy in situations, pre-judgment, Mr. Ahmad's situation cries-out for just such a remedy. He has worked tirelessly to improve his situation and has continually engaged the lender in discussions regarding a modification. At the same time however, Wells Fargo has pursued a dual track in discussing the modification with Mr. Ahmad and pursuing the foreclosure action in Court.

In this particular case, a fair remedy for Mr. Ahmad and Wells Fargo would be to order the parties to come together to mediate the case a second time and to determine once and for all whether or not Mr. Ahmad can now qualify for a modification and, during such time, stay the foreclosure proceedings including the right to issue a corrected NOI until such determination is made.

b. The Attorneys General Consent Judgment provides for certain features which are not being followed.

Wells Fargo and four other large mortgage servicers entered into agreements with the Attorney General of New Jersey and other states addressing mortgage servicing foreclosure issues. The agreement provides for expansion of modification and refinance criteria for customers with Wells Fargo-owned loans. The features of the settlement that apply to Mr. Ahmad's loan are:

- **Dual Track Prohibited:** If borrower submits a complete loan modification at any time after 30 days following the mailing of the attorney letter but prior to 37 days before a scheduled foreclosure sale, the servicer must complete its review of the application before going to a foreclosure sale.
- **Single Point of Contact:** The bank/servicer shall establish an easily accessible person assigned to each homeowner.

Consent Judgment April 2012.

In applying these criteria to Mr. Ahmad's case, Wells Fargo, in pursuing this action against Mr. Ahmad, is not honoring the prohibition on dual-track processing. By seeking leave to issue a corrected NOI, Wells Fargo is pursuing,

rather than staying, a foreclosure sale at the same time as it is discussing a modification with him.

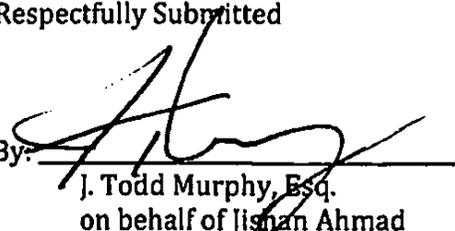
Wells Fargo has not established a single point of contact for Mr. Ahmad as required by the Consent Judgment and therefore, Mr. Ahmad cannot obtain a timely answer from Wells Fargo whether or not he qualifies for a modification.

In light of Wells Fargo not honoring its agreement under the five-bank Consent Judgment, Mr. Ahmad should be provided with a single point of contact and Mr. Ahmad's foreclosure action should be stayed, including the right to issue a corrected NOI until a final decision is reached on his application for modification.

CONCLUSION

First, for all of the reasons stated above herein, Wells Fargo should not be permitted summarily to issue corrected NOIs to all defendants listed on its Exhibits 1 – 34. And, Second, specifically for Mr. Ahmad, the issuing of a corrected NOI is not an appropriate remedy in this particular situation, rather, this Court should order a stay of all proceedings further ordering that Wells Fargo specify a single point of contact and further ordering that a second foreclosure mediation proceeding to determine whether or not Mr. Ahmad indeed qualifies for a modification.

Respectfully Submitted

By: 

J. Todd Murphy, Esq.

on behalf of Jisran Ahmad

Todd Murphy Law
J. Todd Murphy, Esq.
90 Washington Valley Rd.
Bedminster, NJ 07921
800-285-1925
Attorney for Defendant

HSBC BANK USA, NATIONAL	:	SUPERIOR COURT OF NEW JERSEY
ASSOCIATION, AS TRUSTEE FOR THE	:	CHANCERY DIVISION
HOLDERS OF THE CERTIFICATES	:	PASSAIC COUNTY
ISSUED BY DEUTSCHE ALT-A	:	
SECURITIES MORTGAGE LAN TRUST,	:	
SERIES 2007-1,	:	
	:	
	:	
PLAINTIFF	:	
	:	
v.	:	DOCKET No. F-42976-09
	:	
JISHAN AHMAD;	:	CIVIL ACTION
MRS. JISHAN AHMAD, HIS WIFE;	:	
MORTGAGE ELECTRONIC	:	CERTIFICATION OF SERVICE
REGISTRATION SYSTEMS, INC. AS A	:	
NOMINEE FOR NJ LENDERS	:	
CORPORATION, ITS SUCCESSORS AND	:	
ASSIGNS,	:	
	:	
	:	
DEFENDANTS	:	

J. Todd Murphy, of full age, hereby certifies as follows:

1. On September 20, 2012, I caused an original and one copy of the within Letter Brief, proposed Order and Certification of Service delivered by US Postal Service Certified Mail, Return Receipt Requested to:

Superior Court Clerk's Office
Foreclosure Processing Services
Attention: Objection to Notice of Intention to Foreclose
P.O. Box 971
Trenton, NJ 08625

2. I also caused two copies of the foregoing to be delivered by US Postal Service Certified Mail, Return Receipt Requested to:

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

3. I also caused a copy of the foregoing to be delivered by US Postal Service Certified Mail, Return Receipt Requested to:

Mark S. Melodia, Esq.
Reed Smith LLP
Princeton Forrestal Village
136 Main Street
Princeton, NJ 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.



J. Todd Murphy, Esq.

Dated September 20, 2012

Todd Murphy Law
J. Todd Murphy, Esq.
90 Washington Valley Rd.
Bedminster, NJ 07921
800-285-1925
Attorney for Defendant

HSBC BANK USA, NATIONAL	:	SUPERIOR COURT OF NEW JERSEY
ASSOCIATION, AS TRUSTEE FOR THE	:	CHANCERY DIVISION
HOLDERS OF THE CERTIFICATES	:	PASSAIC COUNTY
ISSUED BY DEUTSCHE ALT-A	:	
SECURITIES MORTGAGE LAN TRUST,	:	
SERIES 2007-1,	:	
	:	
	:	
PLAINTIFF	:	
	:	
v.	:	DOCKET No. F-42976-09
	:	
JISHAN AHMAD;	:	CIVIL ACTION
MRS. JISHAN AHMAD, HIS WIFE;	:	
MORTGAGE ELECTRONIC	:	ORDER
REGISTRATION SYSTEMS, INC. AS A	:	
NOMINEE FOR NJ LENDERS	:	
CORPORATION, ITS SUCCESSORS AND	:	
ASSIGNS,	:	
	:	
	:	
DEFENDANTS	:	

THIS MATTER, having been opened to the Court by Mark Melodia, Esq. of Reed Smith on behalf of Wells Fargo for an Order to issue corrected Notice of Intention To Foreclose on Behalf of Identified Plaintiffs in Uncontested Cases; and the Court having considered the papers and for good cause shown,

IT IS on this day of October, 2012,

ORDERED, that Wells Fargo is denied the right to issue a corrected Notice of Intention to Foreclose in a certain foreclosure action entitled HSBC Bank USA, National Association, As Trustee For The Holders of The Certificates Issued By Deutsche ALT-A Securities Mortgage Loan Trust Series 2007-1 v Ahmad docket no. F-042976-09.

IT IS FURTHER ORDERED that Wells Fargo

- (1) appoint a single point of contact to finalize Jishan Ahmad's application for modification;**
- (2) Stay all foreclosure proceedings in this matter; and,**
- (3) Submit to a second foreclosure mediation to determine whether or not Jishan Ahmad is qualified for a mortgage modification.**

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