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SUPERIOR COURT
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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-009564-12

A Civil Action

Federal Home Loan Mortgage Corporation

Plaintiff,

Vs.

David L. Ferwerda, et als.,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY

DOCKET NO.: F-5166-10

A Civil Action

**BRIEF OBJECTING TO THE ORDER TO SHOW CAUSE AND PLAINTIFF'S
PROPOSED CORRECTIVE NOTICE OF INTENTION TO FORECLOSE**

STATEMENT OF FACTS

Plaintiff has acknowledged this action as a contested matter. On October 2, 2012, by way of application to the Superior Court of Bergen County, Plaintiff specifically requested that the

trial court “allow Plaintiff to remediate and issue a new Notice of Intent to Foreclose”. [Exhibit 1: p6] Plaintiff is presently seeking identical relief before two different Courts in New Jersey.

Legal Argument

1. Plaintiff’s Application Must be Denied as it Seeks Relief Far Beyond that Authorized by the April 2012 Judge Rabner Order.

On April 4, 2012 New Jersey Supreme Court Chief Justice Rabner executed an order with the following directive:

Hon. Paul Innes, P.J.Ch., Mercer Vicinage, and Hon. Margaret Mary McVeigh, P.J.Ch., Passaic Vicinage, are each authorized 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.”

[Exhibit 2: April 4 Order, *emphasis added*]

The scope of Judge Rabner’s Order is undeniably clear. Foreclosure Plaintiffs can apply for a summary action seeking approval of corrective Notice of Intent to Foreclose (“NOI”) documents for uncontested foreclosures. There is no authority for this Court to hear a summary action to approve the issuance of corrective NOI documents in contested cases and cases which have been closed by dismissal or withdrawal of the complaint.

Plaintiff has even acknowledged the narrow scope of Judge Rabner’s Order. In its July 17 letter to this Court, Wells Fargo’ counsel Mr. Mark Melodia wrote:

Wells Fargo seeks an Order from this Court permitting Wells Fargo to issue corrected Notices of Intent to Foreclose 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)

.....
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 in *pending, pre-judgment uncontested foreclosures* filed prior to February 27, 2012 in which final judgment has not yet been entered.

[**Exhibit 3:** Mark Melodia July 17 letter p1 & 2; emphasis added]

Mr. Melodia's letter goes on to discuss the great pains the plaintiff's foreclosure bar has gone 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." [**Exhibit 3:** Mark Melodia July 17 letter p3]

Knowing about the Order to Show Cause, and Mr. Melodia's application, this law office was initially surprised to find that several of our clients were receiving correspondence relating to the pending motion. Each article of correspondence contained a "corrective NOI." Even more alarming than clients in contesting actions receiving the notice, were the several clients who received corrective NOI notices where the complaint has been dismissed or withdrawn in its entirety.

With regard to Mr. Ferwerda, the Plaintiff has not only acknowledged the underlying foreclosure action to be a contested matter, but it has simultaneously asked the Superior Court of Bergen County to enter an Order permitting remediation of the otherwise invalid Notice of Intention to Foreclose. Plaintiff's attempt to seek identical relief before two different Courts must be rejected. Plaintiff must be estopped from seeking the same relief here as the danger of conflicting resolutions is very real.

2. If the Court Allows this OSC Petition to be Heard a Special Master Should Be Appointed.

In 2010, when the Supreme Court of New Jersey issued its Order to Show Cause regarding document irregularities in foreclosure matters, retired Superior Court Judge Walter R. Barisonek was appointed as a Special Master. Once again, the Courts should appoint a special master to review all of Plaintiff's submissions in connection with the motion before the Court. By appointing a special master, the Court can continue its goal of expediency while at the same time balancing due process and notions of substantial justice.

Defendant Lezaron is only one homeowner wrongly identified in this action. Counsel for Defendant has identified additional homeowners wrongly made part of this action. [Certification of Adam Deutsch] Unfortunately, the Plaintiff banks simply cannot be trusted to submit reliable information to the Courts. This is likely not a product of poor legal representation as much disorganization within the banks and their servicers. It is within this Court's power to appoint a special master, and once again the power must be utilized as it was during 2010. [Exhibit 4: Special Master Appointment]

The Court previously noted that "94 percent of foreclosure cases proceed in the absence of any meaningful adversarial proceeding. The significance of this disparity is even more striking because many of the contested proceedings are defended pro se. Because these actions frequently lack an aggressive defense, the Office of Foreclosure and our General Equity judges are tasked with the responsibility of ensuring that justice is done for absent and pro se parties." [Exhibit 4: Special Master Appointment p3]

Mr. Ferwerda is a perfect example of the present danger. The Court previously identified uncontested actions as being subject to heightened risk of fraud from the banks. In this matter,

the defendant is known to be represented by counsel. Plaintiff has acknowledge the action to be contested and currently is seeking identical relief before the Superior Court in Bergen County. Accordingly, Plaintiff misrepresented that Mr. Ferwerda is among the 94% of foreclosures that are reportedly uncontested. The Court has acknowledged that said cases are given less attention due to the absence of advocacy. It would be prudent to appoint a special master to ensure that Plaintiff banks do not misrepresent to the Court when advocacy is absent from the proceeding.

3. Plaintiff's Application Highlights the Problem With the Bifurcated Foreclosure Process and the Definition of Uncontested Action.

A significant dilemma faced by this Court is to determine what exactly is an uncontested foreclosure action. Even in Mr. Ferwerda's case where the Plaintiff admits he is represented, there is confusion on the issue. Plaintiff's errors are likely to be exacerbated by the uncertainty as to whether a defendant homeowner is represented by counsel, whether the action is contested, and whether counsel the homeowner or both are to be served with court documents. Defense counsel notes that in this instance, Mr. Ferwerda was served the Plaintiff's application, but counsel did not receive the motion papers. [Certification of Adam Deutsch]

There is a disconnect in the court rule definition of "uncontested" whereby a homeowner defendant may be precluded from waging meaningful opposition to material issues and be inappropriately categorized as uncontested. The rules are clear as written but confusing as implemented. Foreclosure proceedings have their own dedicated section of codified laws and court rules found under N.J.S.A. 2A:50 et al, and R. 4:64-1 respectively. The legislative and judicial rules work in unison to promote a common process for the enforcement of mortgages and their underlying debt, the promissory note.

Under the statutory code the legislature established a process whereby enforceability of a mortgage is determined apart from liability under the corresponding promissory note. The legislature specifically resolved that any alleged defaulted debt obligation secured by a mortgage must first be collected by enforcement of the mortgage. If a mortgagor successfully obtains a foreclosure judgment, sells the home, and still has a deficiency claim on the promissory note, a second action can be filed setting the mortgagee's liability on the promissory note. The statute reads clearly:

Except as otherwise provided, all proceedings to collect any debt secured by a mortgage on real property shall be as follows:

First, a foreclosure of the mortgage; and

Second, an action on the bond or note for any deficiency, if, at the sale in the foreclosure proceeding, the mortgaged premises do not bring an amount sufficient to satisfy the debt, interest and costs.

N.J.S.A. 2A:50-2¹

The only issue in question and the only relief that may be afforded in foreclosure matters cannot exceed the scope of the mortgage. N.J.S.A. 2A:50-1; see Asher v. Hart, 128 N.J. Eq. 1 (N.J. Super. Ct. 1940) (explaining that a mortgage holder was not entitled to a lien on the premises for the amount of a deficiency arising upon the sale by sheriff of a mortgage premises, because foreclosure proceedings did not constitute an adjudication of the amount of the deficiency nor liability for the deficiency).

When viewed with the applicable court rules, it is clear that the judiciary and legislature have created an alternative set of rules and laws intended to streamline the foreclosure process. The best evidence of this intention is the establishment of a bifurcated process whereby the Chancery Division's jurisdiction in foreclosure actions is greatly limited and shared with the

¹ "Otherwise provided" provisions are within N.J.S.A. 2A:50-2.3

quasi-judicial Administrative Office of Foreclosure. Under R. 4:64-1, the Chancery Division is directed only to determine whether the execution of a mortgage occurred and whether Plaintiff is the mortgagee. Once these two determinations are made, the same rule directs that the action be transferred to the Administrative Office of Foreclosure as an “uncontested” foreclosure.

The judiciary has provided a remarkably narrow definition of what constitutes a contested foreclosure. Foreclosures are uncontested when:

(c) **Definition of Uncontested Action.** An action to foreclosure a mortgage or to foreclose a condominium lien for unpaid assessments pursuant to N.J.S.A. 46:8B-21 shall be deemed uncontested if, as to all defendants,

- (1) a default has been entered as the result of **failure to plead** or otherwise defend; or
- (2) **none of the pleadings** responsive to the complaint either **contest the validity or priority of the mortgage** or lien being foreclosed or create an issue with respect to plaintiff’s right to foreclose it;
- (3) all the **contesting pleadings have been stricken** or otherwise rendered noncontesting

An allegation in an answer that a party is without knowledge or information sufficient to form a belief as to the truth of an allegation in the complaint shall not have the effect of a denial but rather of leaving the plaintiff to its proofs, and such an allegation in an answer shall be deemed noncontesting to the allegation of the complaint to which it is responsive.

R. 4:64-1(c) (emphasis added)

Subsection 2 is the only portion of the rule unique to foreclosure actions. And it is subsection 2 that Defendant believes to be the best case scenario for foreclosure plaintiffs continued false representations to the courts. The judiciary’s view of foreclosure proceedings limits the issues of dispute to the execution of the mortgage and the enforceability of that document. Bolstering this interpretation of the rule is further supported by Comment 3.1 to the

2012 publication of R. 4:64-1 stating “A challenge by the mortgagor to the asserted amount due does **not constitute a contesting answer for the purposes of R. 4:64-1(c).**” See Metlife v. Washington Ave. Assoc., 159 N.J. 484 (1999) (discussing that disputes as to the valuation of fees, penalties, and terms of the debt instrument do not constitute a contesting matter as to foreclosure and enforcement of the mortgage). The judiciary has enforced R. 4:64 to ask only whether a mortgage was executed. Thus, it is clear from the rule that if a homeowner acknowledges execution of a note and mortgage, and contests the terms of the note but not the mortgage, the homeowner may be precluded from raising the issue in contest to a foreclosure action.

The key problem with the narrow view of the rule is that it fails to consider that foreclosure litigation by necessity results in adjudication of issues not limited to the mortgage. An obvious example in this matter would be the determination of whether Plaintiff complied with the Fair Foreclosure Act. Additionally is the relevant question of whether Plaintiff can enforce the promissory note, and what the value of the promissory note is. In following the Court rules, litigants and county vicinages may be confused as to where the proper judicial fact finding should occur.

In an attempt to clarify the role of the judiciary and The Office of Foreclosure to foreclosure litigants, the judiciary has provided the following guideline on its website:

The foreclosure process in New Jersey is a two tiered system involving both Superior court General Equity judges and the staff of the Office of Foreclosure. The Office of Foreclosure is a unit in the Administrative Office of the Courts, Civil Practice Division.

.....

The office’s attorneys review complaints for compliance with statutory, case law and court rule requirements; review filed answers to determine whether an answer is uncontestable or contestable; review service of process and recommend entry of default; process routine motions and orders; review final

uncontested judgment packages for completeness and confirm the computation of the amount due on the underlying debt.

If a pleading creates a dispute requiring a judicial decision, the foreclosure file is sent to the General Equity judge in the county of venue... After the dispute is resolved by the General Equity judge, the case file is returned to the Office of Foreclosure for handling as an uncontested foreclosure action.

An answer is considered **uncontesting when it does not dispute the validity of the mortgage**, the priority of the mortgage or create an issue with respect to the plaintiff's right to foreclose. An uncontesting answer also may recite that the party is without knowledge or information sufficient to form a belief as to the allegations and to leave the plaintiff to its proofs.

<http://www.judiciary.state.nj.us/civil/foreclosure/overview.html> [emphasis added]

A foreclosing Plaintiff obtains final judgment by making an application to the Administrative office of Foreclosure per R. 4:64-1(d). Under that rule, the foreclosing entity submits proof of the amount due on the note, however the Defendant has no right to a judicial hearing to dispute the facts presented by the bank. R. 4:64-1(d)(2) Pursuant to According to R. 4:64-2(c)

Throughout foreclosure litigation there is an inherent bias against affording due process to the homeowner. Even where the final judgment application contains false information as to the amount due on the note, there is no right to a hearing. The parallel to this action is uncanny. Each Defendant homeowner is having integral rights adjudicated without the right to a hearing. This is problematic where Plaintiff is acting under authority of Judge Rabner's Order. However, the problem is grossly exacerbated in light of Plaintiff's misrepresentations. In part because of the uncertainty of what constitutes an "uncontested action" Plaintiff may obtain relief it is not entitled to before this Court.

Defendant respectfully asks this Court to fully address the issue so that other homeowners are not subject to inappropriate adjudication of rights.

CONCLUSION

Plaintiff's relief must be denied in its entirety as this matter is contested and Plaintiff has sought identical relief before the Superior Court of Bergen County. Furthermore, this Court should take action to appoint a special master and/or impose sanctions upon Plaintiff for seeking relief it is not entitled to in a special summary action.

Dated: October 8, 2012

A handwritten signature in black ink, appearing to read "Adam Deutsch", written over a horizontal line.

Adam Deutsch, Esq.

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In re Application by Wells Fargo Bank, N.A.
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Plaintiffs in Uncontested Cases

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: PASSAIC COUNTY

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Federal Home Loan Mortgage Corporation

Plaintiff,

Vs.

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Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY

DOCKET NO.: F-5166-10

A Civil Action

CERTIFICATION OF ADAM DEUTSCH, ESQ

I Adam Deutsch, of full age hereby certify as truthful the following:

1. I am an associate attorney at the law firm of Denbeaux & Denbeaux, currently representing Defendant in foreclosure proceedings.
2. This certification is made in opposition to Plaintiff's Order to Show Cause and proposed corrective Notice of Intent to Foreclose.
3. In early October 2012, Plaintiff filed a motion brief before the Superior Court of Bergen County in which it specifically requested that the Court grant relief permitting Plaintiff to

issue a corrective NOI. The specific section of Plaintiff's brief occurs on page six of **Exhibit 1**.

4. There is significant risk that this Court may enter an order that conflicts with the order Plaintiff has requested from the Bergen County Superior Court.
5. On April 4, 2012 New Jersey Supreme Court Chief Justice Rabner executed an order permitting Plaintiff to file an Order to Show Cause seeking relief to serve Notices of Intention to Foreclose in open and non-contested foreclosure cases. A copy of the order is hereto attached as **Exhibit 2**.
6. Plaintiff's brief to the court seeking relief under the Order to Show Cause is hereto attached as **Exhibit 3**. Plaintiff specifically informed the court in its submission that relief is only being sought for active, pre-judgment uncontested foreclosures.
7. In connection with the 2010 Order to Show Cause, a special master was appointed by the Court to oversee Plaintiff's submissions. A copy of that directive is marked **Exhibit 4**. Defendant submits this document as it is being once again requested that a special master be appointed to oversee obvious errors in Plaintiff's representations.

The within statements are made truthfully. I understand that if any were made willfully false I may be subject to penalty under law.

Dated: October 8, 2012



Adam Deusch, Esq.

EXHIBIT 1

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AS ZUCKER & GOLDBERG

MAURICE J. ZUCKER (1918-1979)
LOUIS D. GOLDBERG (1923-1967)
LEONARD H. GOLDBERG (1929-1979)
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XWZ-122541

October 2, 2012

OCT 04 2012

Via JEFIS AND LAWYERS SERVICE

Hon. Harry G. Carroll, J.S.C.
Bergen County Justice Center
10 Main St., Room 340
Hackensack, NJ 07601

Re: Federal Home Loan Mortgage Corporation
vs. David L. Ferwerda, et al.
Premises: 11 Rolling Ridge Road
Montvale, NJ 07645
Docket No.: F-5166-10

Dear Judge Carroll:

We represent the Plaintiff, Federal Home Loan Mortgage Corporation, in the above-referenced matter. Please accept this letter brief in lieu of a more formal memorandum in opposition to Defendant, David Ferwerda's Notice of Motion to Vacate Default. Plaintiff respectfully requests oral argument on this matter.

Defendant has failed to show that good cause exists nor has he asserted a meritorious defense to the foreclosure action. Accordingly, Defendant's Notice of Motion to Vacate Default should be denied.

I. Defendant fails to provide a good cause reason for failing to answer the complaint.

Defendant here seeks to vacate default entered on June 11, 2012. See, Certification of Kacie Brown, Esq., (hereinafter "Brown Certification"), Exhibit A. A motion to set aside default is governed by R. 4:43-3, which states:

A Party's motions for the vacation of an entry of default shall be accompanied by (1) either an answer to the complaint and Case Information Statement or a dispositive motion pursuant to R. 4:6-2, and (2) the filing fee for an answer or dispositive motion, which shall be returned if the motion to vacate the entry of default is denied. For good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with R. 4:50.

Additionally, a defendant needs to show a meritorious defense to the action, although this showing is not required if the defendant was not properly served with process. Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988). Therefore, a defendant seeking to vacate default must meet both elements by showing not only a good cause reason for failure to file an answer but must additionally show that there is a meritorious defense to the action. In the present case, Defendant fails to meet either prong of the test.

Defendant took no action to file a timely response to the foreclosure complaint personally served on him on March 4, 2010. See, Brown Certification, Exhibit B. In a recent Appellate Division Case, the Appellate Court noted that the trial court properly denied defendant's motion to vacate default judgment finding that defendant had not demonstrated excusable neglect but rather willful disregard of the foreclosure matter, evidenced by the fact that defendant consciously chose to pursue bankruptcy rather than contest the foreclosure proceedings against him: Wells Fargo Bank, N.A. v. Hanna, 2011 WL 4388334, 2 (App.Div. Sept. 22, 2011).¹ Additionally, the trial court found defendant had not provided any evidence of any meritorious

¹ This unpublished case is attached as Exhibit C to the Brown Certification.

défense. The trial judge noted that defendant acknowledged the mortgage, note, and that he had defaulted in his payments. Ibid. In US Bank Nat. Ass'n v. Guillaume, the Supreme Court recent held that the borrowers' participation in mediation was no excuse for their failure to answer the foreclosure complaint. 209 N.J. 449, 468-69 (2012).

Like in Hanna, the defendant herein chose to pursue bankruptcy and ignore the pending foreclosure litigation. Defendant admits that he consulted his attorney upon receiving the complaint and willingly chose to not to file a timely answer for more than two years. Defendant's argument that he thought he erroneously received the complaint from Plaintiff and chose to ignore it on that basis is highly implausible. It is hard to believe that a prudent borrower, who knew he had defaulted on his mortgage and consulted an attorney upon receiving the complaint, would disregard something he knew seemed important without conducting any sort of research to verify the complaint was a mistake before merely disregarding it. Defendant took no steps to contact our firm, his loan servicer, or Plaintiff to verify his belated contention that he received the complaint by mistake. Moreover, had Defendant or his counsel waited to verify that Plaintiff owns Defendant's loan, basic internet research would have confirmed this fact.

This court should deny Defendant's Motion to Vacate Default for failure to show good cause. Defendant should not be permitted another bite at the apple by shopping various attorneys and returning to the court to challenge the litigation each time an attorney gives him different advice. This motion is nothing more than Defendant's attempt to delay Plaintiff's lawful right to foreclose.

II. Defendant fails to offer any meritorious defense to the foreclosure action.

Even if the Defendant had made a good cause showing as to why default should be vacated, which he has not, Defendant's motion must still be denied as he has failed to offer any

meritorious defense to the foreclosure. While Defendant's proposed answer raises affirmative defenses, none of these allegations rise to the level of a meritorious defense to the foreclosure.

A. Plaintiff has standing to proceed with the foreclosure action.

As Defendant admits, Plaintiff need not prove possession of the note at this stage. See, Defendant's Brief, p.11 ¶1. Plaintiff is not required to allege possession of the note in the complaint in order to establish standing to bring the foreclosure action. Rule 4:64-1(b) sets forth the requirements regarding what evidence must be included in a mortgage foreclosure complaint. None of the thirteen items required in the rule mention Plaintiff's obligation to prove possession of the note. See, R. 4:64-1(b). However, as the certification of Kimberly Mueggenberg, Vice President of Loan Documentation of Wells Fargo Bank, N.A. (hereinafter "Mueggenberg Certification"), makes clear, the sale of this loan to Plaintiff occurred on July 12, 2007. See, Mueggenberg Certification, Exhibit B. As of August 1, 2007, Plaintiff has had possession of the note long before this action commenced in 2010. See, Mueggenberg Certification.

Regardless of when Plaintiff obtained possession of the note, Plaintiff has established standing to proceed in this foreclosure action by pleading to the assignment of mortgage in its complaint. A plaintiff may establish standing in a foreclosure matter by presenting an assignment of mortgage to the plaintiff that predates the filing of the original complaint. See, Deutsche Bank Nat'l. Trust Co. v. Mitchell, 422 N.J.Super. 214 (App.Div. 2011). The plaintiff in Mitchell was required to prove possession of the note, or the ability to enforce it, at the time it filed its complaint because its assignment of mortgage postdated the filing of the complaint. Ibid. However, in the case at bar, as pled in paragraph 4a of the complaint, the assignment of mortgage was executed on January 11, 2010 assigning the mortgage from America's Mortgage Outsource Program to Plaintiff. See, Brown Certification, Exhibit B. Said assignment was duly

recorded in the Office of the Bergen County Clerk on February 2, 2010. See, Mueggenberg Certification, Exhibit D. Plaintiff's complaint was filed January 20, 2010, nine days after the assignment of mortgage was executed. Therefore, under the Court's ruling in Mitchell, Plaintiff has sufficiently established standing in this action.

B: *Defendant's contentions regarding the authenticity of the assignment of mortgage are misguided.*

Defendant's arguments regarding the authenticity and Defendant's knowledge of the assignment are irrelevant and untimely. An assignment of mortgage affects purchasers, mortgagees, and subsequent judgment creditors. See, Leonard v Leonia Heights Land Co., 81 N.J. Eq. 489 (E. & A. 1913) (finding that an assignment of mortgage is irrelevant to a mortgagor). A mortgagor pays the servicer of the mortgage, not the investor; therefore, an assignment of the mortgage does not affect the mortgagor. The Court of Errors and Appeals in Leonard stated:

What [the mortgagor] is concerned with is the mortgage, the question who owns it is of no moment to him until he comes to make a payment thereon either of principal or interest; and when he comes to that point he is concerned with the question who really and in fact owns the mortgage, not with the question whether any particular instrument that evidences the ownership is void or not. Id. at 494.

Defendant dwells on the evidence regarding the assignment that Plaintiff must provide when it applies for final judgment. Plaintiff has no need to authenticate the assignment, but regardless, Defendant's demand that Plaintiff prove the validity of the assignment is premature. The case law cited by Defendant pertains to cases at final judgment, not at default. Here, Plaintiff has only obtained default; thus, Plaintiff is not required to prove the validity of an assignment of mortgage at this time. Moreover, the assignment of mortgage was recorded with the Bergen County Clerk, which has made the document a matter of public record. Public records are presumed to be authentic. If Defendant had concerns about the authenticity or

validity of the assignment, he could have obtained a copy of the document from the clerk. Nevertheless, Kimberly Mueggenberg certifies to the assignment in her attached certification. See, Mueggenberg Certification, Exhibit D. Plaintiff has sufficiently demonstrated its standing to foreclose and such argument does not serve as a valid basis to vacate default.

C: Plaintiff respectfully request that this Court allow Plaintiff to remediate and issue a new Notice of Intent to Foreclose.

Defendant alleges that Plaintiff failed to comply with the Fair Foreclosure Act, N.J.S.A. 2A:50-56 (hereinafter "FFA") by failing to provide Defendant with a compliant Notice of Intent to Foreclose (hereinafter "NOI"). Plaintiff sent Defendant an NOI to the property address on or about October 18, 2009. See, Mueggenberg Certification, Exhibit F. Plaintiff concedes that the NOI it sent to Defendant on or about October 18, 2009 need to be remediated.

In fact, Plaintiff is following the process established by the Supreme Court for remediating NOIs in contested, pre-judgment foreclosures. This file is included as part of Wells Fargo's Order to Show Cause proceeding before Judge McVeigh in November. See, Brown Certification, Exhibit D. If Defendant wishes to challenge the NOI or Plaintiff's right to remediate it, the appropriate action for Defendant is to file an objection as part of the Order to Show Cause process before Judge McVeigh. Nevertheless, since Defendant improperly brought the matter before this court, we respectfully request that this Court enter an order allowing Plaintiff to remediate and issue a new NOI.

Conclusion

Ultimately, Defendant has failed to present a good cause showing as to why he did not file a timely responsive pleading to the complaint in this matter nor has he established a

EXHIBIT 2

SUPREME COURT OF NEW JERSEY

In furtherance of the Court's holding in U.S. Bank N.A. v. Guillaume, A-11-11 (February 27, 2012), it is ORDERED that Hon. Paul Innès, P.J.Ch., Mercer Vicinage, and Hon. Margaret Mary McVeigh, P.J.Ch., Passaic Vicinage, are each authorized 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. Such summary actions should be filed with the Clerk of the Superior Court and assigned to each judge upon filing.

It is FURTHER ORDERED that, if approved by the court, any corrected Notice of Intention to Foreclose served pursuant to an order issued as a result of such an action must be accompanied by a letter to the defendant mortgagor and/or parties obligated on the debt setting forth the reasons why the corrected Notice of Intention to Foreclose is being served, the procedure to follow in the event a defendant wishes to object to the Notice of Intention to Foreclose, the individuals to contact with any questions, and that the receipt of the corrected Notice of Intention to Foreclose allows defendant mortgagors and/or parties obligated on the debt 30 days in which to object or to cure the default.

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.

It is FURTHER ORDERED that the Office of Foreclosure is authorized to recommend the entry of final judgment pursuant to Rule 1:34-6 in uncontested actions in which the procedures set forth in this Order have been followed.

For the Court,

A handwritten signature in black ink, appearing to be "S. P. ...", written over a horizontal line.

Chief Justice

Dated: April 4, 2012

EXHIBIT 3

ReedSmith

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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.*, ¶ 2.¹ 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 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

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.*

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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 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

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 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").³ 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.⁴ 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

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

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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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 Company⁵

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.

⁵ 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 4th 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.⁶

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.

⁶ 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.

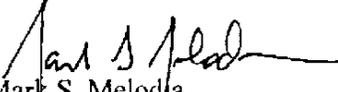
For the reasons set forth in Wells Fargo’s application, the Supreme Court has issued an Order that is faithful to the decision in Guillaume, and provides a mechanism to cure deficient NOIs so that Foreclosure Defendants will receive the notice that they should have received under the FFA and will also 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)

EXHIBIT 4

IN THE MATTER OF RESIDENTIAL MORTGAGE
FORECLOSURE PLEADING AND DOCUMENT
IRREGULARITIES

Administrative Order 01-2010
Docket # F-238-11

CLOSURE OF DECEMBER 20, 2010
ADMINISTRATIVE ORDER DIRECTING
SUBMISSION OF INFORMATION FROM
RESIDENTIAL MORTGAGE FORECLOSURE
PLAINTIFFS CONCERNING THEIR DOCUMENT
EXECUTION PRACTICES TO A SPECIAL
MASTER

To: Foreclosure Plaintiffs Filing 200 or more residential mortgage
foreclosure actions in 2010:

AURORA LOAN SERVICES
BANK OF NEW YORK MELLON
BAYVIEW LOAN SERVICING, LLC
BENEFICIAL NEW JERSEY
DEUTSCHE BANK, N.A.
FEDERAL HOME LOAN MORTGAGE
FEDERAL NATIONAL MORTGAGE ASSOCIATION
HOUSEHOLD FINANCE CO
HSBC BANK USA, N.A.
HSBC MORTGAGE CORPORATION
HUDSON CITY SAVINGS
METLIFE HOME LOANS

MIDFIRST BANK
MORTGAGE ELECTRONIC REGISTRATION SYSTEM
NATIONSTAR MORTGAGE
NJ HOUSING & MORTGAGE FINANCE AGENCY
PHH MORTGAGE CORP
PNC BANK
SOVEREIGN BANK
SUNTRUST MORTGAGE INC
TD BANK, N.A.
THE BANK OF NEW YORK
US BANK, N.A.
WACHOVIA BANK N.A.

Administrative Order 01-2010 was issued on December 20, 2010, and modified by Supplemental Administrative Order on January 31, 2011, in response to the request by the Chief Justice for an examination into residential mortgage foreclosure document preparation and filing practices, in order to protect the integrity of the process and ensure the veracity of filings with the court in foreclosure cases.

The operative provisions of Administrative Order 01-2010 provided *inter alia* that the twenty-four foreclosure plaintiffs that each filed 200 or more residential mortgage foreclosure actions in 2010 as identified in the caption were required to provide the

Special Master, Recall Judge Walter R. Barsonnek, with certifications detailing their roles and the roles of their subsidiaries, servicers, and outsource firms in the foreclosure process and demonstrating affirmatively the absence of irregularities in their handling of residential mortgage foreclosure proceedings. Having found as to each respondent that the submitted documents are sufficient to establish that the institution has not engaged in irregular practices, the Special Master has entered dismissals in favor of each of the respondents, thereby allowing residential mortgage foreclosure actions involving those institutions to continue to be processed by the Superior Court Clerk's Office and the Office of Foreclosure in the normal course.

In a separate but related proceeding (In the Matter of Residential Mortgage Foreclosure Pleading and Document Irregularities, Docket No. F-59553-10), Judge Mary C. Jacobson, Presiding Judge of the General Equity Division, Mercer County, issued a December 20, 2010 order directing six lenders and service providers¹ that had been implicated in irregularities in connection with their handling of residential mortgage foreclosure matters to show cause why the processing of uncontested residential foreclosure matters they had filed should not be suspended. By order dated March 29, 2011, Judge Jacobson appointed a Special Master, retired Judge Richard J. Williams, to inquire into the document preparation practices of those entities and to review any remediation plans they may be directed to submit. Pursuant to Reports of Special Master Williams determining that each of the respondents in that order to show cause had made a prima facie showing of the reliability of its processes and upon agreement

¹ The six lenders and service providers named in Judge Jacobson's order to show cause were Bank of America; JPMorgan Chase; Citi Residential; GMAC (now Ally Financial); OneWest Bank; and Wells Fargo.

by those respondents to a compliance monitoring program, Judge Jacobson subsequently ordered that each of the six respondents in the order to show cause may resume the filing and prosecution of uncontested residential mortgage foreclosure cases.

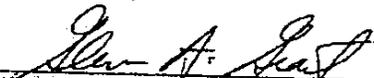
In accordance with the Judiciary's continuing obligation to protect the integrity of the residential mortgage foreclosure process and to ensure the veracity of filings with the court in residential mortgage foreclosure cases and pursuant to the authority of the Administrative Director of the Courts as set forth in the December 20, 2010 Administrative Order, it is ORDERED that:

1 The operative provisions of the Administrative Order 01-2010 related to the twenty-four foreclosure plaintiffs identified in the caption are hereby closed. However, pursuant to the findings of Special Master Barisonek, as set forth in his Final Report, I hereby instruct the Office of Foreclosure to periodically review submissions of respondent PHH Mortgage Corporation ("PHH") and servicer EverBank, d/b/a Everhome Mortgage ("EverBank/Everhome"),² in order to verify that they remain in full compliance with the provisions of the Rules of Court relating to residential mortgage foreclosures. If in that periodic review the Office of Foreclosure finds documents submitted by PHH and/or EverBank/Everhome to be insufficient or finds that those documents raise concerns that either of the two institutions has engaged in irregular practices, the Office of Foreclosure may refer the matter to the Mercer Vicinage General Equity Presiding Judge for appropriate action, which action might include conducting a

² EverBank, d/b/a Everhome Mortgage, serviced mortgages for respondents Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Bank of New York Mellon.

hearing and, depending on her findings, ordering the suspension of the processing of residential mortgage foreclosure actions involving those institutions.

2. The operative provisions of Administrative Order 01-2010 that make reference to Judge Jacobson's separate order to show cause also are hereby closed, subject to Special Master Williams' continued compliance monitoring as agreed to by the six respondents.



Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of
the Courts

Date: February 2, 2012