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October 17, 2012

Jennifer Perez
Clerk Superior Court of New Jersey Foreclosure Processing Services
25 West Market Street 6th Floor
Trenton, NJ 08625
Attention Objection to Notice to Foreclose

Re: **IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES**
Docket No. F-9564-12

Dear Sir/Madam:

Please find enclosed on behalf of the Defendant-Third Party Plaintiff's the following documents:

1) Answer, counterclaim and third party complaint;
2) Motion for leave to file a counterclaim and third party complaint and for judgment on the pleadings with supporting papers;
3) Motion for class certification and appointment of class counsel with supporting papers;

I have enclosed the filing fees of $200.00, $30.00 and $30.00. A copy of the same has been served on the Defendants' counsel.

Truly yours,

Lewis G. Adler, Esquire

Cc: Honorable Margaret Mary McVeigh, P.J.Ch.
Mark Melodia, Esquire

FILED Oct 18, 2012

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SUPERIOR COURT
CLERK'S OFFICE

LEWIS G. ADLER, ESQUIRE
26 NEWTON AVENUE
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(856)845-1968
ATTORNEY FOR Defendant William Brody, Justine Sexton and John Sexton

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PASSAIC COUNTY

DOCKET NO.: F-009564-12

CIVIL ACTION

ANSWER, COUNTERCLIAM AND THIRD PARTY COMPLAINT

IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES

William Brody, Justine Sexton and John Sexton
Defendants-Third Party Plaintiffs
VS.

Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

Defendants, by their attorney, individually, and as private attorneys general, and on behalf of all others similarly situated, hereby makes the following complaint:

Defendants, **William Brody, Justine Sexton and John Sexton**, by way of Answer and Counterclaim against the Plaintiff say:

1. Admit
2. Admit
3. Admit
4. Admit
5. Admit
6. Admit. The Defendants object that the limit of the remedy be limited solely to the issuance of a corrected NOI. The Defendants seek payment by the Plaintiff and/or the Banks for violation of their fundamental rights under the FFA. The court in Guillaume and the Court's April 4, 2012 order reserved to this court the fashioning of the appropriate remedy. In most cases, a reduction in legal fees and costs of suit in the amount due to redeem or reinstate the mortgage presents no

benefit for the borrower. The Plaintiff notes in footnote 2 that considerable time has passed since the NOIs were originally sent. As a result, the amount to redeem or reinstate the loans is far out of reach of most borrowers.

7. Admit
8. Admit
9. Admit
10. Admit
11. Admit
12. Admit
13. Admit

COUNT 1- BANK OF AMERICA, NA

14. Admit
15. Admit

COUNT 2- BANK OF NEW YORK MELLON

16. Admit
17. Admit

COUNT 3- BANKATLANTIC

18. Admit
19. Admit

COUNT 4- BAYVIEW FINANCIAL

20. Admit
21. Admit

COUNT 5- CITIBANK, NA

22. Admit
23. Admit

COUNT 6- COMMERCE BANCORP

24. Admit
25. Admit

COUNT 7- COPPERFIELD INVESTMENTS

26. Admit
27. Admit

COUNT 8- DEUTSCHE BANK

28. Admit
29. Admit

COUNT 9- DLJ MORTGAGE CAPITAL, INC

30. Admit
31. Admit

COUNT 10- E*TRADE

32. Admit
33. Admit

COUNT 11- EMC MORTGAGE

34. Admit
35. Admit

COUNT 12- FEDERAL DEPOSIT INSURANCE CORPORATION

36. Admit
37. Admit

COUNT 13- FEDERAL HOME LOAN MORTGAGE CORPORATION

38. Admit
39. Admit
40. Admit
41. Admit

COUNT 14- FEDERAL NATIONAL MORTAGE ASSOCIATION

42. Admit
43. Admit

44. Admit
45. Admit

COUNT 15- FEDERAL HOME LOAN BANK OF CHICAGO

46. Admit
47. Admit

COUNT 16 FTN FINANCIAL

48. Admit
49. Admit

COUNT 17-GE CAPITAL MORTGAGE SERVICES

50. Admit
51. Admit

COUNT 18- GMAC BANK

52. Admit
53. Admit

COUNT 19- HSBC BANK, NA

54. Admit
55. Admit

COUNT 20- HUDSON CITY SAVINGS BANK

56. Admit
57. Admit

COUNT 21-INVESTORS SAVINGS BANK

58. Admit
59. Admit

COUNT 22- JP MORGAN CHASE BANK

60. Admit
61. Admit

COUNT 23- LA SALLE BANK, NA

62. Admit
63. Admit

COUNT 24- LEHMAN BROTHERS

64. Admit
65. Admit

COUNT 25- LEX SPECIAL ASSETS

66. Admit
67. Admit

COUNT 26- MIDFIRST BANK

68. Admit
69. Admit

COUNT 27- NEW YORK LIFE INSURANCE AND ANNUITY CORPORATION

70. Admit
71. Admit

COUNT 28- PNC BANK

72. Admit
73. Admit

COUNT 29- RESIDENTIAL ACCREDIT LOANS, INC

74. Admit
75. Admit

COUNT 30- RIGGS REAL ESTATE INVESTMENT CORPORATION

76. Admit
77. Admit

COUNT 31- UBS BANK

78. Admit
79. Admit

COUNT 32- UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

80. Admit
81. Admit

COUNT 33- US BANK, NATIONAL ASSOCIATION

82. Admit
83. Admit

COUNT 34- WILMINGTON TRUST COMPANY

84. Admit
85. Admit

COUNT 35- PENDING BANKRUPTCY MATTERS

86. Admit

WHEREFORE, the Defendants-Third Party Plaintiffs request that that this court provide as part of its remedy compensation to the various Defendants-Third Party Plaintiffs for violation of their rights under the FFA attorneys fees and costs of suit.

COUNTERCLAIM
BACKGROUND

87. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporates them by reference herein as if they were set forth fully herein

88. The Defendants-Third Party Plaintiffs, **William Brody, Justine Sexton and John Sexton**, each have been served by Wells Fargo.

89. The Defendants-Third Party Plaintiffs, **William Brody, Justine Sexton and John**

Sexton, are each natural persons who are consumers who borrowed money secured by their residence for personal household expenses.

90. William Brody is subject to a foreclosure action captioned US Bank National Association, as Trustee for Asset-Backed Pass-Through Certificates Series 2006-WFHE3, Docket No. F-18788-08

91. Justine Sexton and John Sexton are subject to a foreclosure action captioned US Bank National Association, as Trustee for Structured Asset Securities Corp Mortgage Loan Trust 2006-NCI, Docket No. F-16217-07

92. The Court in Guillaume held that a failure to provide a NOI which includes the lenders name and address was a violation of a fundamental right under the New Jersey Fair Foreclosure Act.

93. The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure. Guillaume at 470.

94. The Court decision in Guillaume was not limited to prospective relief only. See footnote 3.

95. Wells Fargo as a servicer was acting as an agent of the lender principals named in the complaint.

COUNT ONE
TRUTH-IN-CONSUMER CONTRACTS, WARRANTY AND NOTICE ACT. N.J.S.A. 56:12-1

96. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein

97. The notices of intention to foreclose issued by the Wells Fargo on behalf of the lenders which failed to include the lender's identity and the lender's address in violation of the Fair Foreclosure Act and is actionable as a violation of the Truth-In-Consumer Contracts, Warranty and Notice Act. N.J.S.A. 56:12-14 et seq (TCCWNA)

98. TCCWNA provides that No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed NJSA 56:12-15

99. It is a violation of the Act for the lenders and their agent to send notices of intention to foreclose which failed to include the lender's identity and the lender's address as required by the FFA.

100. TCCWNA provides that "Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than $100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction or as part of a counterclaim by the consumer against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. NJSA 56:12-17

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against Wells Fargo for damages, a statutory penalty of at least $100 for each violation, attorney's fees, interest and costs of suit.

COUNT TWO
GUILLAUME

101. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein

102. The Court in Guillaume provided that the trial court has the authority to mold an appropriate equitable remedy for violations of the requirements for failure to comply with the notice requirements of the FFA.

103. The Court held :

> Courts of equity have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case:
>
> Equitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; 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."[*Sears, Roebuck & Co. v. Camp*, 124 N.J. Eq. 403, 411-12, 1 A.2d 425 (E. & A.1938) (quoting John N. Pomeroy, *Equity Jurisprudence* 109 (4th ed. 1918)).]Absent legislative direction with respect to a remedy, New Jersey courts retain discretion "to fashion equitable remedies," which are "valuable because they allow relief to be fashioned directly to redress the statutory violations shown." *Brenner v. Berkowitz*, 134 N.J. 488, 514, 634 A.2d 1019 (1993); *see also Marioni v. Roxy Garments Delivery Co.*, 417 N.J. Super. 269, 275, 9 A.3d 607 (App.Div.2010) ("In fashioning relief, the Chancery judge has broad discretionary power to adapt equitable

remedies to the particular circumstances of a given case."). Id at 476.

104. In determining an appropriate remedy for a violation of *N.J.S.A.* 2A:50-56(c)(11), trial courts should consider the express purpose of the provision: to provide notice that makes "the debtor aware of the situation," and to enable the homeowner to attempt to cure the default. *N.J.S.A.* 2A:50-56(c); *Statement to Assembly Bill No. 1064, supra*, at 8. Accordingly, a trial court fashioning an equitable remedy for a violation of *N.J.S.A.* 2A:50-56(c)(11) 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 at 480.

105. In the instant case, it appears that the full extent of the offered remedy is to only give relief to the foreclosing lenders. The lender is allowed to proceed with the foreclosure without the necessity of refiling. There is no provision to discourage such conduct on the part of the lenders. There is no consideration of the impact on the homeowners ability or opportunity to cure.

106. There being an admitted violation of the Act, the Court should exercise its equitable powers and provide some compensation to the borrowers for the failure to comply with the Act.

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against the Plaintiff for damages, a civil penalty for each violation, attorney's fees, interest and costs of suit.

COUNT THREE NEW JERSEY CIVIL RIGHTS ACT

107. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporates them by reference herein as if they were set forth fully herein

108. The Court in Guillaume held that a failure to provide a NOI which includes the lenders name and address was a violation of a fundamental right under the New Jersey Fair Foreclosure Act.

109. The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure. Guillaume at 470.

110. The Defendants rights under the FFA have been violated as a direct and proximate result of the Defendants' misconduct in violation of the New Jersey Civil Rights Act.

111. The Civil Rights Act NJSA 10:6-2 provides:

> c. Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection.
>
> d. An action brought pursuant to this act may be filed in Superior Court. Upon application of any party, a jury trial shall be directed.

e. Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund.

f. In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs.

112. Wells Fargo deprived the Defendants-Third Party Plaintiffs of the rights under the FFA by failing to include the lender's name and address in the notice of intention to foreclose.

WHEREFORE, the Defendants-Third Party Plaintiffs demands judgment against the Wells Fargo for damages, a civil penalty for each violation, attorney's fees, interest and costs of suit.

WELLS FARGO CLASS ACTION ALLEGATIONS

113. The Defendants repeat each and every previous allegation and incorporate them by reference herein as if they were set forth fully herein.

114. Wells Fargo has brought this summary action against a uniform class of individuals. Wells Fargo has provided a list of individuals as an exhibit to its complaint that:

A. Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.

B. In which final judgment has not been entered, and

C. In which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

115. The Defendants-Third Party Plaintiffs bring this action on behalf of all persons similarly situated and pursuant to R. 4:32 as a class action on behalf of a statewide class of persons as defined below.

116. The claims of the named class representatives and the absent class members have a common origin and share a common basis. Their claims originate from the same illegal Notice of Intent to Foreclose issued by the Wells Fargo in the same way toward the Individual Defendants-Third Party Plaintiffs and the members of the class. As such, the Individual Defendants-Third Party Plaintiffs have been denied their rights under the FFA.

117. The actions of Wells Fargo are not isolated. Wells Fargo has identified the class members in their exhibits 1-35.

118. The actions of Wells Fargo have affected similarly situated individuals throughout the State of New Jersey.

119. Wells Fargo has identified the class of 34 banks on whose behalf this action was brought. The action can proceed with either subclass for each bank or a class of the bank Third Party Defendants.

120. The Defendants-Third Party Plaintiffs propose a class as

A. Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.

B. In which final judgment has not been entered, and

C. In which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

121. The proposed class representatives state a claim upon which relief can be granted that is typical of the claims of absent class members. If brought and prosecuted individually, the claims of each class member would necessarily require proof of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

122. The claims and remedial theories pursued by the named class representative are sufficiently aligned with the interests of absent class members to ensure that the individual claims of the class will be prosecuted with diligence and care by the individual Defendants-Third Party Plaintiffs as class representative.

123. The class members are so numerous that joinder of all members is impracticable. The list provide by the Plaintiffs list approximately3790 persons.

124. The claims of the Defendants-Third Party Plaintiffs are typical of the claims of each of the class members, and the Defendants-Third Party Plaintiffs have no claim antagonistic to class members. They are aware that they cannot settle this action without Court approval. They have and will continue to vigorously pursue the class member claims.

125. The Representative Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class members. The Defendants-Third Party Plaintiffs are committed to the vigorous representation of the class members

and have retained competent counsel experienced in the prosecution of complex and class action litigation. Counsel have agreed to advance the costs of the litigation contingent upon the outcome.

126. Wells Fargo has acted on grounds generally applicable to the class members, thereby justifying relief against Wells Fargo, for the class members as whole.

127. A class action is superior to other methods for the fair and efficient adjudication of this controversy because prosecution of separate actions by mortgagors creates a high risk of inconsistent and varying adjudications, with inconsistent and varying results. Furthermore, as the damages suffered by many individual class members may be relatively small in relation to the costs of litigation, the expense and burden of individual litigation make it difficult, if not impossible, for class members to individually redress the wrongs done to them. Many, if not most, of the class members are unaware that claims exist against Wells Fargo and the 34 lenders. There will be no unusual difficulty in the management of this class action.

128. The named individual Defendants-Third Party Plaintiffs are willing and prepared to serve the Court and proposed class in a representative capacity with all of the obligations and duties material thereto. The individual Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class and have no interests adverse to, or which directly and irrevocably conflict with, the interests of the other class members.

129. The self-interest of the named class representatives are co-extensive with

and not antagonistic to those of the absent class members. The proposed representatives will undertake to well and truly protect the interests of the absent class members.

130. Questions of fact and law common to the class that predominate include but are not limited to:

I. Did Wells Fargo send notices which were in violation of the New Jersey Fair Foreclosure Act?

131. The named individual Defendants-Third Party Plaintiffs are willing and prepared to serve the Court and proposed class in a representative capacity with all of the obligations and duties material thereto. The individual Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class and have no interests adverse to, or which directly and irrevocably conflict with, the interests of the other class members.

132. The self-interest of the named class representatives are co-extensive with and not antagonistic to those of the absent class members. The proposed representative will undertake to well and truly protect the interests of the absent class members.

133. The named individual Defendants-Third Party Plaintiffs have engaged the services of counsel indicated below. Said counsel are experienced in complex class litigation, will adequately prosecute this action and will assert, protect, and otherwise well represent the named class representative and absent class members.

134. The prosecution of separate actions by individual members of the class

would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action, or could substantially impair or impede their ability to protect their interests. It is for this reason that the Plaintiff brought the within single action.

135. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying applications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class. Such incompatible standards and inconsistent or varying adjudications, on what would be necessarily the same essential facts, proof and legal theories, would also create and allow to exist inconsistent and incompatible rights within the class.

136. Wells Fargo on behalf of the 34 lenders named in the complaint, has acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

137. The questions of law and fact common to members of the class predominate over any questions affecting only individual members.

138. A class action is superior to other available methods for the fair and efficient adjudication of the controversies herein in that:

a) individual claims by the class members are impractical as the costs of pursuit far exceed what any one Defendants-Third Party Plaintiffs or class member has at stake;

b) as a result, there has been no other litigation over the controversies herein; and individual members of the class have no interest in prosecuting and controlling separate actions; and

c) the proposed class action is manageable.

PRAYER FOR RELIEF

Wherefore Defendants-Third Party Plaintiffs requests that this court certify a class pursuant to Rule 4:32 and award:

1. Actual, special, and general damages according to proof;
2. Statutory damages and penalties;
3. Statutory damages;
4. Litigation Expenses and Costs of the proceedings herein;
5. Reasonable attorneys' fees; and
6. All such other further relief as the Court deems just.

THIRD PARTY COMPLAINT

COUNT ONE
TRUTH-IN-CONSUMER CONTRACTS, WARRANTY AND NOTICE ACT. N.J.S.A. 56:12-1

139. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein

140. Wells Fargo as a servicer was acting as an agent of the lender, US Bank National Association, the principal named in the foreclosure complaint.

141. Third Party Defendants herein are Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce

Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company.

142. Wells Fargo acted as Agent for the principal defendants listed above. As such they are liable to the defendants Third Party Plaintiffs for damages.

143. The notices of intention to foreclose issued by the Wells Fargo on behalf of the lenders, US Bank which failed to include the lender's identity and the lender's address in violation of the Fair Foreclosure Act and actionable as a violation of the Truth-In-Consumer Contracts, Warranty and Notice Act. N.J.S.A. 56:12-14 et seq (TCCWNA)

144. TCCWNA provides that No seller, lessor, creditor, lender or bailee shall in the course of his business offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State

or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed NJSA 56:12-15

145. It is a violation of the Act for the lenders and their agent to send notices of intention to foreclose which failed to include the lender's identity and the lender's address as required by the FFA.

146. TCCWNA provides that "Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than $100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction or as part of a counterclaim by the consumer against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. NJSA 56:12-17

WHEREFORE, the Defendants-Third Party Plaintiffs demands judgment against the Third Party Defendant for damages, a statutory penalty of at least $100 for each violation, attorney's fees, interest and costs of suit.

COUNT TWO
GUILLAUME

147. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporates them by reference herein as if they were set forth fully herein

148. The Court in Guillaume provided that the trial court has the authority to mold an appropriate equitable remedy for violations of the requirements for failure to comply with the notice requirements of the FFA.

149. The Court held :

> Courts of equity have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case:
>
> Equitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; 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."[*Sears, Roebuck & Co. v. Camp*, 124 N.J. Eq. 403, 411-12, 1 A.2d 425 (E. & A.1938) (quoting John N. Pomeroy, *Equity Jurisprudence* 109 (4th ed. 1918)).]Absent legislative direction with respect to a remedy, New Jersey courts retain discretion "to fashion equitable remedies," which are "valuable because they allow relief to be fashioned directly to redress the statutory violations shown." *Brenner v. Berkowitz*, 134 N.J. 488, 514, 634 A.2d 1019 (1993); *see also Marioni v. Roxy Garments Delivery Co.*, 417 N.J. Super. 269, 275, 9 A.3d 607 (App.Div.2010) ("In fashioning relief, the Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a given case."). Id at 476.

150. In determining an appropriate remedy for a violation of *N.J.S.A.* 2A:50-56(c)(11), trial courts should consider the express purpose of the provision: to provide notice that makes "the debtor aware of the situation," and to enable the homeowner to attempt to cure the default. *N.J.S.A.* 2A:50-56(c); *Statement to Assembly Bill No. 1064, supra*, at 8. Accordingly, a trial court fashioning an equitable remedy for a violation of *N.J.S.A.* 2A:50-56(c)(11) 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 at 480.

151. In the instant case, it appears that the full extent of the offered remedy is to

only give relief to the foreclosing lenders. The lender is allowed to proceed with the foreclosure without the necessity of refilling. There is no provision to discourage such conduct on the part of the lenders. There is no consideration of the impact on the homeowners' ability or opportunity to cure.

152. There being an admitted violation of the Act, the Court should exercise its equitable powers and provide some compensation to the borrowers for the failure to comply with the Act.

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against the Third Party Defendant for damages, a civil penalty for each violation, attorney's fees, interest and costs of suit.

COUNT THREE NEW JERSEY CIVIL RIGHTS ACT

153. The Defendants-Third Party Plaintiffs repeat each and every allegation of the previous counts and incorporate them by reference herein as if they were set forth fully herein

154. The Court in Guillaume held that a failure to provide a NOI which includes the lenders name and address was a violation of a fundamental right under the New Jersey Fair Foreclosure Act.

155. The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure. Guillaume at 470.

156. The Defendant-Third Party Plaintiffs rights under the FFA have been violated as a direct and proximate result of the Lenders' misconduct through the

actions of their agent Wells Fargo in violation of the New Jersey Civil Rights Act.

157. The Civil Rights Act NJSA 10:6-2 provides:

> c. Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection.
>
> d. An action brought pursuant to this act may be filed in Superior Court. Upon application of any party, a jury trial shall be directed.
>
> e. Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund.
>
> f. In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs.

158. US Bank, National Association and the other lenders through the actions of its agent, Wells Fargo deprived the Defendants of the rights under the FFA by failing to include the lender's name and address in the notice of intention to

foreclose..

WHEREFORE, the Defendants-Third Party Plaintiffs demand judgment against the Third Party Defendants for damages, a civil penalty for each violation, attorney's fees, interest and costs of suit.

THIRD PART COMPLAINT CLASS ACTION ALLEGATIONS

159. The Defendants-Third Party Plaintiffs repeat each and every previous allegation and incorporate them by reference herein as if they were set forth fully herein.

160. The Plaintiff has brought this summary action against a uniform class of individuals. The Plaintiff has provided a list of individuals as an exhibits to its complaint that:

A. Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.

B. In which final judgment has not been entered, and

C. In which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

161. The Defendants-Third Party Plaintiffs bring this action on behalf of all persons similarly situated and pursuant to R. 4:32 as a class action on behalf of a statewide class of persons as defined below.

162. The claims of the named class representatives and the absent class members have a common origin and share a common basis. Their claims originate from the same illegal Notice of Intent to Foreclose issued by the Plaintiff as the

agent of the lenders Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. in the same way toward the Individual Defendants-Third Party Plaintiffs and the members of the class. As such, the Individual Defendants-Third Party Plaintiffs have been denied their rights under the FFA.

163. The actions of the Plaintiff and the Third Party Defendants are not isolated and they have identified the class members in their exhibits 1-35.

164. The actions of the Plaintiff and the Third Party Defendants have affected similarly situated individuals throughout the State of New Jersey.

165. Defendants-Third Party Plaintiffs propose a Third Party Defendant class. The Plaintiffs have identified the class of lenders, Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage

Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company on whose behalf this action was brought. The action can proceed with either subclass for each bank or a Third Party Defendant class of banks serviced by Wells Fargo.

166. The Defendants-Third Party Plaintiffs propose a Defendants-Third Party Plaintiffs class as

A. Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.

B. In which final judgment has not been entered, and

C. In which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

167. The proposed class representatives state a claim upon which relief can be granted that is typical of the claims of absent class members. If brought and prosecuted individually, the claims of each class member would necessarily require proof of the same material and substantive facts, rely upon the same

remedial theories, and seek the same relief.

168. The claims and remedial theories pursued by the named class representative are sufficiently aligned with the interests of absent class members to ensure that the individual claims of the class will be prosecuted with diligence and care by the individual Defendants-Third Party Plaintiffs as class representative.

169. The class members are so numerous that joinder of all members is impracticable. The list provide Wells Fargo lists approximately 3790 persons.

170. The claims of the Defendants-Third Party Plaintiffs are typical of the claims of each of the class members, and the Defendants-Third Party Plaintiffs have no claim antagonistic to class members. They are aware that they cannot settle this action without Court approval. They have and will continue to vigorously pursue the class member claims.

171. The Representative Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class members. The Defendants-Third Party Plaintiffs are committed to the vigorous representation of the class members and have retained competent counsel experienced in the prosecution of complex and class action litigation. Counsel have agreed to advance the costs of the litigation contingent upon the outcome.

172. US Bank through its agent Wells Fargo has acted on grounds generally applicable to the class members, thereby justifying relief against the lenders Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank,

DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, and Wilmington Trust Company. for the class members as whole.

173. A class action is superior to other methods for the fair and efficient adjudication of this controversy because prosecution of separate actions by mortgagors creates a high risk of inconsistent and varying adjudications, with inconsistent and varying results. Furthermore, as the damages suffered by many individual class members may be relatively small in relation to the costs of litigation, the expense and burden of individual litigation make it difficult, if not impossible, for class members to individually redress the wrongs done to them. Many, if not most, of the class members are unaware that claims exist against the US Bank, Wells Fargo, Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank

of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, N.A., and Wilmington Trust Company. There will be no unusual difficulty in the management of this class action.

174. The named individual Defendants-Third Party Plaintiffs are willing and prepared to serve the Court and proposed class in a representative capacity with all of the obligations and duties material thereto. The individual Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class and have no interests adverse to or which directly and irrevocably conflict with, the interests of the other class members.

175. The self-interest of the named class representatives are co-extensive with and not antagonistic to those of the absent class members. The proposed representative will undertake to well and truly protect the interests of the absent class members.

176. Questions of fact and law common to the class that predominate include but are not limited to:

I. Did the lenders, US Bank, Wells Fargo, Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield

Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, N.A., and Wilmington Trust Company though their agent Wells Fargo send notices which were in violation of the New Jersey Fair Foreclosure Act?

177. The named individual Defendants-Third Party Plaintiffs are willing and prepared to serve the Court and proposed class in a representative capacity with all of the obligations and duties material thereto. The individual Defendants-Third Party Plaintiffs will fairly and adequately protect the interests of the class and have no interests adverse to or which directly and irrevocably conflict with, the interests of the other class members.

178. The self-interest of the named class representatives are co-extensive with and not antagonistic to those of the absent class members. The proposed

representatives will undertake to well and truly protect the interests of the absent class members.

179. The named individual Defendants-Third Party Plaintiffs have engaged the services of counsel indicated below. Said counsel are experienced in complex class litigation, will adequately prosecute this action and will assert, protect, and otherwise well represent the named class representative and absent class members.

180. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of other members of the class who are not parties to the action, or could substantially impair or impede their ability to protect their interests. It is for this reason that Wells Fargo brought the within single action.

181. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying applications with respect to individual members of the class which would establish incompatible standards of conduct for the parties opposing the class. Such incompatible standards and inconsistent or varying adjudications, on what would be necessarily the same essential facts, proof and legal theories, would also create and allow to exist inconsistent and incompatible rights within the class.

182. US Bank and the 34 other lenders through their agent Wells Fargo have acted or refused to act on grounds generally applicable to the class, making final declaratory or injunctive relief appropriate.

183. The questions of law and fact common to members of the class predominate over any questions affecting only individual members.

184. A class action is superior to other available methods for the fair and efficient adjudication of the controversies herein in that:

a) individual claims by the class members are impractical as the costs of pursuit far exceed what any one Defendants-Third Party Plaintiffs or class member has at stake;

b) as a result, there has been no other litigation over the controversies herein; and individual members of the class have no interest in prosecuting and controlling separate actions; and

c) the proposed class action is manageable.

PRAYER FOR RELIEF

Wherefore Defendants-Third Party Plaintiffs requests that this court certify a class pursuant to Rule 4:32 and award:

1. Actual, special, and general damages according to proof;
2. Statutory damages and penalties;
3. Statutory damages;
4. Litigation Expenses and Costs of the proceedings herein;
5. Reasonable attorneys' fees; and
6. All such other further relief as the Court deems just.

DESIGNATION OF TRIAL COUNSEL

The undersigned, Roger Mattson, Esquire and Louis D. Fletcher, Esquire are designated as trial counsel.

CERTIFICATION REGARDING FILING AND SERVICE

The undersigned hereby certifies that a copy of the within pleading was served and filed within the time allowed by R. 4:6.

CERTIFICATION

I hereby certify that, to the best of my knowledge and belief, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding.

Dated: 10/16/12

LEWIS G. ADLER, ESQ.
26 Newton Avenue
Woodbury, NJ 08096
(856) 845-1968
Attorney for Defendants-Third Party Plaintiffs

LEWIS G. ADLER, ESQUIRE
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(856)845-1968
ATTORNEY FOR Defendant-Third Party Plaintiffs
William Brody, Justine Sexton and John Sexton

IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION

William Brody, Justine Sexton and John Sexton
Defendants-Third Party Plaintiffs
VS.

Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

CERTIFICATION OF Louis D. Fletcher, Esquire

I, Louis D. Fletcher, Esq., hereby certify as follows:

1. I am an attorney at law admitted to practice in the State of New Jersey and before this Court. I have been practicing law since 1974 when I was initially admitted to practice, and have been practicing ever since. This Certification is being made in support of my application, in conjunction with the applications of Roger C. Mattson, Esq. and Lewis G. Adler, Esq., to act as Class Counsel. Mr. Mattson, Mr. Adler and I have all worked together in the above matter and have shared all of the duties in this case.

2. One of our previous cases was Glukowsky vs. Equity One, Superior Court of New Jersey, Gloucester County, Docket L-872-01. The Glukowsky litigation went to the New Jersey Supreme Court, where we received a 4-3 decision, and this office filed for certification to the U.S. Supreme Court, which was denied. The Glukowsky case

involved an issue concerning the charging of pre-payment penalties, by a non-depository lender. Glukowsky and the others have caused us to be immersed in numerous areas of Federal banking statutes, regulations, and administrative decisions. It has also caused us to be immersed in state banking law in this state and in other jurisdictions.

3. In addition to this and the Glukowsky litigation, Mr. Adler, Mr. Mattson and I also litigated the published opinion of Shinn vs. Encore Mortgage, which was ruled upon in this Court by Judge Joseph Irenas, and ultimately an appeal was taken to the Third Circuit Court of Appeals and was settled at that level..

4. In addition to all of the above cases, we have a number of cases that are awaiting litigation. They will not be enumerated at this point in time since they may or may not ultimately go to suit.

5. We were appointed class counsel in a national class action which was pending in the U.S. District Court of New Jersey. Our case of Driscoll v. First Union involved the charging of prepayment penalties by First Union in violation of the National Bank Act, North Carolina and New Jersey laws.

6. Mr. Mattson, Mr. Adler and I have carefully researched all of these issues across the country, and it appears that these issues are in many instances ones of first impression and unique. It also appears that there may not be any other group of lawyers litigating these issues on behalf of consumers. Indeed, in at least one instance we have had contact with another lawyer who has picked up on these issues, and we have assisted in educating that individual and many other individuals who have called us concerning our expertise. This is particularly true after the 54 page published Opinion by Judge King at the New Jersey Appellate Division in the Glukowsky matter.

7. There has been much written across the country concerning predatory lending, and the practices of lenders in the "sub prime" marketplace. We feel that we have as much knowledge and expertise as anyone in this area, and given the volume of cases that we have filed and had reported, I am not certain whether there is anyone who individually has as many cases pending as we have, and who are attacking the problem as aggressively as we are attacking the problem.

8. It should also be noted that the Office of Thrift Supervision (OTS) has cited our Shinn case and Glukowsky cases in their recent rule-making activities. Consequently, it appears that our litigation is reaching into the banking industry Federal bureaucracy. We hope to have much more impact.

9. The Court should be aware that this case along with the other cases named above have been the primary focus of both my litigation over the past eight years, and it has also been the primary focus of Mr. Mattson's and Mr. Adler's litigation. There is indeed not a day that has gone by when we have not collectively dealt with some aspect of the various litigation. Through the years of practicing law, these cases have proved to be the most complex that I have handled, and I personally have handled many other cases that courts have termed complex and that other counsel have acknowledged as complex. As a thirty-five year practitioner, I have specialized previously in both highly technical civil litigation involving products liability, land use, and other civil matters. Over the course of my practice I have also at other points in time specialized in serious criminal matters and I have handled over seventeen homicide cases, including two death penalty cases. I believe that I have a reputation in the legal community for

being one of the best trial practitioners in this area, and I am sure that the State Court judges whom I have appeared in front of, will acknowledge my level of courtroom skills.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: 10/16/12

LOUIS D. FLETCHER, ESQ.

LEWIS G. ADLER, ESQUIRE
26 NEWTON AVENUE
WOODBURY, NJ 08096
(856)845-1968
ATTORNEY FOR Defendant-Third Party Plaintiffs
William Brody, Justine Sexton and John Sexton

IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION

William Brody, Justine Sexton and John Sexton
Defendants-Third Party Plaintiffs
VS.

Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

CERTIFICATION OF Roger C. Mattson, Esquire

Roger C. Mattson, Esq. hereby certifies:

1. I am an attorney at law admitted to practice in this Court and have been practicing law since I was admitted to practice in 1976. I make this Certification in support of my firm's application for appointment as class counsel in our motion for class certification.

2. I am licensed to practice law in the State of New Jersey, Commonwealth of Pennsylvania, and I am also licensed before the U.S. District Court in both states, as well as the Third Circuit and the U.S. Supreme Court. I am co-counsel for the Plaintiff in this action, along with Lewis G. Adler, Esq. and Louis D. Fletcher, Esq. We have represented the Plaintiff and the Plaintiff class in this matter.

3. Since I as admitted to the bar in 1976, I have concentrated my practice largely on civil litigation, real estate, business law, estates and bankruptcy.

4. For the last eight years or so I have begun to focus more toward the class action lawsuits.

5. Mr. Adler and myself were recently named as Class Counsel in a class action suit entitled Gresk v. Old Republic in State Superior Court which involved illegal pre-payment penalties and a certified class of 704 individuals. The docket number was L-2125-05.

6. One of our previous cases was Glukowsky vs. Equity One, Superior Court of New Jersey, Gloucester County, Docket L-872-01. The Glukowsky litigation went to the State Supreme Court, and this office filed for certification to the U.S. Supreme Court, which was denied. The Glukowsky case involved an issue concerning the charging of pre-payment penalties by non-depository lenders. Glukowsky and others have caused us to be immersed in numerous areas of Federal banking statutes, regulations, and administrative decisions. It has also caused us to be immersed in state banking law in this state and in other jurisdictions.

7. In addition to this and the Glukowsky litigation, Mr. Adler, Mr. Fletcher and I also litigated the published opinion of Shinn vs. Encore Mortgage, which was ruled upon in US District Court by Judge Joseph Irenas, and ultimately an appeal was taken to the Third Circuit Court of Appeals and was settled at that level.

8. We were appointed class counsel in a national class action which was pending in the District Court of New Jersey. Our case of Driscoll v. First Union involved

the charging of prepayment penalties by First Union in violation of the National Bank Act, North Carolina and New Jersey laws.

9. In addition to all of the above cases, we have a number of cases that are awaiting litigation. They will not be enumerated at this point in time since they may or may not ultimately go to suit.

10. Mr. Fletcher, Mr. Adler and I have carefully researched all of these issues across the country, and it appears that these issues are in many instances ones of first impression and unique. It also appears that there may not be any other group of lawyers litigating these issues on behalf of credit consumers. Indeed, in at least one instance we have had contact with another lawyer who has picked up on these issues, and we have assisted in educating that individual and many other individuals who have called us concerning our expertise. This is particularly true after the 54 page published Opinion by Judge King at the New Jersey Appellate Division in the Glukowsky matter.

11. There has been much written across the country concerning predatory lending, and the practices of lenders in the "sub prime" marketplace. We feel that we have as much knowledge and expertise as anyone in this area, and given the volume of cases that we have filed and had reported, I am not certain whether there is anyone who individually has as many cases pending as we have, and who are attacking the problem as aggressively as we are attacking the problem.

12. It should also be noted that the Office of Thrift Supervision (OTS) has cited our Shinn case and Glukowsky cases in their rule-making activities. Consequently, it appears that our litigation is reaching into the banking industry Federal bureaucracy. We hope to have much more impact.

13. The Court should be aware that this case along with the other cases named above have been the primary focus of both my litigation over the past three years, and it has also been the primary focus of Mr. Fletcher's and Mr. Adler's litigation. There is indeed not a day that has gone by when we have not collectively dealt with some aspect of the various litigation. Through the years of practicing law, these cases have proved to be the most complex that I have handled.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: 10/17/12

ROGER C. MATTSON, ESQ.

LEWIS G. ADLER, ESQUIRE
26 NEWTON AVENUE
WOODBURY, NJ 08096
(856)845-1968
ATTORNEY FOR Defendant-Third Party Plaintiffs
William Brody, Justine Sexton and John Sexton

IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION MOTION FOR CLASS CERTIFICATION

William Brody, Justine Sexton and John Sexton
Defendants-Third Party Plaintiffs
VS.

Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

TO: Mark Melodia, Esquire
Diane Bettino, Esquire
Reed Smith, LLP
Princeton Forrestal Village
136 Main Street Suite 250
Princeton, NJ 08540
Attorneys for WELLS FARGO

TAKE NOTICE that on **November 1, 2012** at 9:00am, in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorney for the Defendant-Third Party Plaintiffs shall apply to the above Court located at the Passaic County Courthouse, 71 Hamilton Street, Paterson, New Jersey, for an Order for class certification of counts 1,2 & 3 of t counterclaims and counts 1, 2 & 3 of the third party complaint..

I will rely upon the brief, and certifications with attached exhibits in support hereof.

I request oral argument.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 10/17/12

LEWIS G. ADLER, ESQUIRE

LEWIS G. ADLER, ESQUIRE
26 NEWTON AVENUE
WOODBURY, NJ 08096
(856)845-1968
ATTORNEY FOR Defendant-Third Party Plaintiffs
William Brody, Justine Sexton and John Sexton

IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION ORDER FOR CLASS CERTIFICATION
William Brody, Justine Sexton and John Sexton **Defendants-Third Party Plaintiffs** **VS.** Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings	

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

THIS MATTER having been brought before the Court on the application of Lewis G. Adler, Esquire, attorney for the Defendant-Third Party Plaintiffs, and for good cause having been shown;

IT IS on this ___ day of _____, *2012*, **ORDERED** that

THIS MATTER having been brought to the Court in connection with Defendant's Motion: (A) To Approve The Certification of a Class; (B) To Appoint Class Counsel, and the Court having considered the papers submitted in connection with the Motion, and arguments of counsel, and for good cause shown,

1. The Defendant's motion for class certification as to counts 1, 2 & 3 of the counterclaim and counts 1, 2, & 3 of the third party complaint is GRANTED as follows.

2. The Court certifies a Class according to the provisions of Rule 4:32.

a) The court certifies a New Jersey class as to Wells Fargo, as to the Counterclaim Count I ((Truth-In-Consumer Contract, Warranty and Notice Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

b) The court certifies a New Jersey class as to Wells Fargo, as to the Counterclaim Count II ((Guillaume) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

c) The court certifies a New Jersey class as to Wells Fargo, as to the Counterclaim Count III ((New Jersey Civil Rights Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and

the lender's address.

3. The Court certifies a Defendant Class according to the provisions of Rule 4:32. of the lenders whose loans were serviced by Wells Fargo in which Wells Fargo is seeking to file an amended NOI. Lenders are defined as Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company.

a) The court certifies a New Jersey class as to the lenders whose loans were serviced by Wells Fargo in which Wells Fargo is seeking to file an amended NOI., as to the third party complaint Count I ((Truth-In-Consumer Contract, Warranty and Notice Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

b) The court certifies a New Jersey class as to the lenders whose loans were serviced by Wells Fargo in which Wells Fargo is seeking to file an amended NOI., as to the third party complaint Count II ((Guillaume) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

c) The court certifies a New Jersey class as to the lenders whose loans were serviced by Wells Fargo in which Wells Fargo is seeking to file an amended NOI., as to the third party complaint Count III ((New Jersey Civil Rights Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

4. The Court, pursuant to Rule 4:32 names Lewis G. Adler, Roger C. Mattson, and Louis D. Fletcher, 26 Newton Avenue, Woodbury, New Jersey 08096 as Class Counsel. The Court finds that Class Counsel are adequate pursuant to the Rule.

_____

, JSC

LEWIS G. ADLER, ESQUIRE
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ATTORNEY FOR Defendant-Third Party Plaintiffs
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IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION **Proof of filing and certification of service**
William Brody, Justine Sexton and John Sexton **Defendants-Third Party Plaintiffs** **VS.** Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings	

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

Proof of Filing:

I hereby certify that the within motion together with documents in support thereof have been hand delivered for filing to the above-named Court on this _____th day of _____2012

Proof of Mailing:

I hereby certify that a copy of the within motion together with documents in support thereof were mailed to the Defendants' counsel, by way of UPS Next day, to:

Mark Melodia, Esquire
Diane Bettino, Esquire
Reed Smith, LLP
Princeton Forrestal Village
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Princeton, NJ 08540
Attorneys for Wells Fargo

, this ___17___th day of _____October_____ 2012

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

_____
Lewis G. Adler, Esquire

LEWIS G. ADLER, ESQUIRE
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ATTORNEY FOR Defendant-Third Party Plaintiffs
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IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION CERTIFICATION OF LEWIS G. ADLER, ESQUIRE
William Brody, Justine Sexton and John Sexton **Defendants-Third Party Plaintiffs** **VS.** Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A.,	

Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

Lewis G. Adler, Esq. hereby certifies:

1. I am an attorney at law, licensed to practice in the State of New Jersey and Commonwealth of Pennsylvania, and am also licensed before the U.S. District Court in both states, U.S. Tax Court, as well as the Third Circuit and the U.S. Supreme Court. I am counsel for the Defendants- Third Party Plaintiffs in this action I have represented William Brody, and Justine & John Sexton and the class in this matter. This Certification is given in support of the motion for:

   a) Certification of the class;

   b) Approval of Class Counsel;

2. I have been an attorney in good standing since I began practice in 1985.

3. The Court should be aware that this case along with other banking cases have been the primary focus of both my litigation over the past four years, and it has also been the primary focus of Mr. Mattson's and Mr. Fletcher's litigation. There is indeed not a day that has gone by when we have not collectively dealt with some aspect of the various litigation. Through the years of practicing law, these cases have proved to be the most complex that I have handled, and I personally have handled many other cases that courts have termed complex and that other counsel have acknowledged as complex. As a twenty-four year practitioner, I have specialized previously in both highly technical civil litigation involving products liability, land use, and other civil matters.

4. For the last ten years or so I have begun to focus more toward the class action lawsuits.

5. Mr. Mattson and I were named as Class Counsel in a suit entitled Gresk v. Old Republic in N.J. Superior Court which involved illegal prepayment penalties and a certified class of 704 individuals. The docket number was L-2125-05.

6. Mr. Fletcher, Mr. Mattson and I were named as Class Counsel in a suit entitled Boyko v. AIG in N.J. District Court which involved illegal charges for auto insurance. The docket number was 1:08-cv-2214

7. One of our previous cases was Glukowsky vs. Equity One, Superior Court of New Jersey, Gloucester County, Docket L-872-01. The Glukowsky litigation went to the State Supreme Court, and this office filed for certification to the U.S. Supreme Court, which was denied. The Glukowsky case involved an issue concerning the charging of pre-payment penalties by non-depository lenders. Glukowsky and the others have caused us to be totally immersed in numerous areas of Federal banking statutes, regulations, and

administrative decisions. It has also caused us to be immersed in state banking law in this state and in other jurisdictions.

8. In addition to this and the Glukowsky litigation, Mr. Mattson, Mr. Fletcher and I also litigated the published opinion of Shinn vs. Encore Mortgage, which was ruled upon in the District Court by Judge Joseph Irenas, and ultimately an appeal was taken to the Third Circuit Court of Appeals and was settled at that level.

9. We were appointed class counsel in a national class action in the U.S. District Court of New Jersey. Our case of Driscoll v. First Union involved the charging of prepayment penalties by First Union in violation of the National Bank Act, North Carolina and New Jersey laws.

10. In addition to all of the above cases, we have a number of cases that are awaiting litigation. They will not be enumerated at this point in time since they may or may not ultimately go to suit.

11. Mr. Fletcher, Mr. Mattson and I have carefully researched all of these issues across the country, and it appears that these issues are in many instances ones of first impression and unique. It also appears that there may not be any other group of lawyers litigating these issues on behalf of consumers. Indeed, in at least one instance we have had contact with another lawyer who has picked up on these issues, and we have assisted in educating that individual and many other individuals who have called us concerning our expertise. This is particularly true after the 54 page published Opinion by Judge King at the New Jersey Appellate Division in the Glukowsky matter.

12. There has been much written across the country concerning predatory lending, and the practices of lenders in the "sub prime" marketplace. We feel that we

have as much knowledge and expertise as anyone in this area, and given the volume of cases that we have filed and had reported, I am not certain whether there is anyone who individually has as many cases pending as we have, and who are attacking the problem as aggressively as we are attacking the problem.

13. It should also be noted that the Office of Thrift Supervision (OTS) has cited our Shinn case and Glukowsky cases in their recent rule-making activities. Consequently, it appears that our litigation is reaching into the banking industry Federal bureaucracy. I hope to have much more impact.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: 10/16/2012

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IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION

William Brody, Justine Sexton and John Sexton **Defendants-Third Party Plaintiffs** **VS.** Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings	

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

BRIEF IN SUPPORT OF DEFENDANT'-THIRD PARTY PLAINTIFFS' NOTICE OF MOTION FOR CLASS CERTIFICATION

On the Brief:

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INTRODUCTION

filed the instant putative class action concerning the practices of the lenders Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company through their agent Wells Fargo by which violates their rights under the Fair Foreclosure Act (FFA) which is a violation of their consumer rights under the New Jersey Truth in Consumer Contract Warranty and Notice Act.(TCCNWA), the holding of the New Jersey Supreme Court in Guillaume and the New Jersey Civil Rights Act. (CRA)

FACTS

The facts included here are the same facts as included in the original amended complaint filed by Wells Fargo as supplemented in the Defendant Third Party's answer, counterclaim and third party complaint

ARGUMENT

I. THIS COURT SHOULD CERTIFY THIS ACTION, EITHER ON A FULL OR PARTIAL BASIS, AS A CLASS ACTION.

A. Standard of Review

Rule 4:32-1 governs the certification of a class action in New Jersey. The rule must be liberally construed, particularly in cases involving consumer fraud. *In re Cadillac V8-6-4*, 93 N.J. 412, 435, 461 A.2d 736 (1983). A request for class action certification should be granted "'unless there is a clear showing that it is inappropriate or improper.'" *Delgozzo v. Kenny*, 266 N.J. Super. 169, 180, 628 A.2d 1080 (App.Div.1993) (quoting *Lusky v. Capasso Bros.*, 118 N.J. Super. 369, 373, 287 A.2d 736 (App.Div.1972)).

"There are several prerequisites to maintaining a class action. Part (a) of *Rule* 4:32-1(a) states that a class action can be maintained only if:
(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

In addition, one of the requirements of part (b) of the rule must also be met. Plaintiffs submit that they satisfy the conditions of part (b)(3), which specifically requires the court to find that:

[T]he questions of law or fact common to the members of the class predominate over questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The factors pertinent to the findings include:(A) the interest of members of the class in

individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability in concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action.{417 N.J. Super. 178} [*R.* 4:32-1(b)(3).] " *Kleinman v. Merck & Co.*, 417 NJ Super 166, 177(App. Div. 2008)

The class action is "'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only,'" *Iliadis*, *supra*, 191 N.J. at 103, 922 A.2d 710 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01, 99 S. Ct. 2545, 2558, 61 L. Ed. 2d 176, 193 (1979)), and is an "'invention of equity'" that "enable[s] litigation to proceed 'in suits where the number of those interested in the subject of the litigation is so great that their joinder as parties in conformity to the usual rules of procedure is impracticable.'" *Id.* at 103, 922 A.2d 710 (quoting *Hansberry v. Lee*, 311 U.S. 32, 41, 61 S. Ct. 115, 118, 85 L. Ed. 22, 27 (1940)). It "level[s] the playing field between adversaries," *Iliadis v. Wal-Mart Stores. Inc.*, 387 N.J. Super. 405, 415, 904 A.2d 736 (App. Div. 2006), *rev'd on other grounds*, *Iliadis*, *supra*, 191 N.J. 88, 922 A.2d 710 by "equaliz[ing] . . . the ability of the parties to prepare and pay for the advocacy of their rights." *In re Cadillac V8-6-4 Class Action*, 93 N.J. 412, 435, 461 A.2d 736 (1983); *see also Iliadis*, *supra*, 191 N.J. at 104-05, 922 A.2d 710 (discussing equalizing function of class action). Thus, despite the complexity of management a class action poses for a trial court, "overarching principle[s] of equity" dictate that *Rule* 4:32-1 be liberally construed, especially in consumer fraud actions brought to redress common grievances, under circumstances that would make individual actions uneconomical to pursue.

Varacallo, *supra*, 332 N.J. Super. at 45, 752 A.2d 807; *see also Iliadis*, *supra*, 191 N.J. at 103, 922 A.2d 710.

Given these policy considerations, class certification should be granted absent a clear showing that it is inappropriate or improper. *Iliadis*, *supra*, 191 N.J. at 103, 922 A.2d 710. *Beegal v. Park West Gallery*, 394 NJ super 98, 110(App. Div. 2007)

"Our class-action rule, *R.* 4:32, is a replica of Rule 23 of the Federal Rules of Civil Procedure as amended in 1966." *Riley v. New Rapids Carpet Ctr.*, 61 N.J. 218, 226, 294 A.2d 7 (1972). Construction of the federal rule may be considered helpful, if not persuasive, authority. *See Saldana v. City of Camden*, 252 N.J. Super. at 194 n.1, 599 A.2d 582. *Rule* 4:32-2 tracks *Rule* 23(c) of the *Federal Rules of Civil Procedure. Fed. R. Civ. P.* 23(c)(1) provides: "As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits." The content of the federal rule matches that of *R.* 4:32-2(a) except for New Jersey's use of "conditioned" instead of "conditional" and the addition of the title "Order Determining Maintainability." *Muise v. GPU, Inc*, 371 NJ Super 13, 31 (App Div 2004)

B. THE COURT SHOULD CERTIFY THE FOLLOWING CLASSES.

This is a case particularly well suited for class action. This is also a case that is absolutely clear on its facts. The Lenders through their agent Wells Fargo admit in the verified complaint that they issued notice of intent to foreclose in violation of the Fair Foreclosure Act by failing to include the lenders name and address.

There is one (1) class being sought for each count of the counterclaim and third party complaint.

1. The Court should certify a New Jersey class as to Wells Fargo.

a) The court should certify a New Jersey class as to Wells Fargo, as to the Counterclaim Count I ((Truth-In-Consumer Contract, Warranty and Notice Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

b) The court should certify a New Jersey class as to Wells Fargo, as to the Counterclaim Count II ((Guillaume) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

c) The court should certify a New Jersey class as to Wells Fargo, as to the Counterclaim Count III ((New Jersey Civil Rights Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is

seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

2. The Court should certify a New Jersey class as to the lenders.

The Court should certify a Defendant Class according to the provisions of Rule 4:32. of the lenders whose loans were serviced by Wells Fargo in which Wells Fargo is seeking to file an amended NOI. Lenders are defined as Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company.

a) The court should certify a New Jersey class as to the lenders whose loans were serviced by Wells Fargo in which Wells Fargo is seeking to file an amended NOI., as to the third party complaint Count I ((Truth-In-Consumer Contract, Warranty and Notice Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is

seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

b) The court should certify a New Jersey class as to the lenders whose loans were serviced by Wells Fargo in which Wells Fargo is seeking to file an amended NOI., as to the third party complaint Count II ((Guillaume) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

c) The court should certify a New Jersey class as to the lenders whose loans were serviced by Wells Fargo in which Wells Fargo is seeking to file an amended NOI., as to the third party complaint Count III ((New Jersey Civil Rights Act) as follows:

Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff.; In which final judgment has not been entered; and in which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address.

II. THE DEFENDANT HAS ESTABLISHED A VALID CAUSE OF ACTION AGAINST THE VARIOUS LENDERS AND WELLS FARGO.

The issues of liability have been extensively briefed in the Defendant Third Party Plaintiffs' motion for summary judgment. The Defendant Third Party Plaintiffs' would incorporate those arguments in their entirety with this brief.

III. The Proposed Classes Satisfy Rule 4:32-1

A. The Proposed Classes Satisfy Rule 4:32(1)(a)

1. Numerosity Exists.

Rule 4:32-1(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." There is no magic number to this determination. The number of class members is "not wholly dispositive of the analysis," *W. Morris Pediatrics, P.A. v. Henry Schein, Inc.*, 385 N.J. Super. 581, 595 (Law. Div. 2004) (citing *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993)), aff'd, No. A-3595-04 (App. Div. Mar. 30, 2006), and plaintiffs do not have "to show the exact size of the class in order to satisfy numerosity." *Ibid.* "Rather, an equal part of the inquiry centers around whether 'the difficulty and or inconvenience of joining all members of the class calls for class certification.'" Id. at 596 (quoting *Lerch v. Citizens First Bankcorp, Inc.*, 144 F.R.D. 247, 250 (D.N.J. 1992)). Plaintiffs are not required to detail, to the person, the exact size of the class or to demonstrate the joinder of all class members is impossible. "Impracticability does not mean impossibility." *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993)("precise enumeration of the members of a class is not necessary."); see also *Zinberg v. Washington Bancorp, Inc.*, 138 F.R.D. 397, 405 (D.N.J. 1990)("It is proper for the court

to accept common sense assumptions in order to support a finding of numerosity."); *Moskowitz v. Lopp*, 128 F.R.D. 624, 628 (E.D. Pa. 1989). Instead, Plaintiffs need only provide the Court with an estimate as to the size of the class. *Zinberg*, 138 F.R.D. at 405. "Difficulty in immediately identifying all class members makes joinder more impracticable and certification more desirable." *Haywood v. Barnes*, 109 F.R.D. 568, 575 (E.D.N.C. 1986).

In *Riordan v. Smith Barney*, 113 F.R.D. 60, 62 (N.D. Ill. 1986), the class included twenty-nine members; in *Saldana v. City of Camden*, 252 N.J. Super. 188, 193 (App. Div. 1991), the class consisted of eighty-one members; and in *Delgozzo v. Kenny*, 266 N.J. Super. 169, 184 (App. Div. 1993), the class included "35,000 purchasers throughout the United States and Canada."

Numerosity is indisputable here. Wells has attached to its complaint a list of 3790 cases all which require a revised NOI to be issued [Exhibits 1-35 of Wells Fargo Complaint]

Thus, based on the Wells' own verified pleading, it is clear that the numerosity requirement for certification is easily satisfied. *See Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001) ("[G]enerally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met.").

2. There are Questions of Law and Fact Common to the Class

Rule 4:32(1)(a)(2) requires that there be "questions of law or fact common to the class." The commonality requirement with other members of the class is met if Plaintiff's grievances share a common question of law or fact. *Baby Neal*, supra. Rule

23 only requires that "the questions of law or fact common to the members of the class predominate over any questions affecting only an individual member." Plaintiffs are not required to show that all class members' claims are identical to each other as long as there are common questions at the heart of the case; "factual differences among the claims of the putative class members do not defeat certification." Fed. R. Civ. P. 23(b)(3); *Baby Neal*, 43 F.3d at 56; *In re Prudential Ins. Company of America Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998). Indeed, a single common question is sufficient to satisfy the requirements of Rule 23(a)(2). *See H. Newberg & A. Conte*, 1 Newberg on Class Actions § 3.10, at 3-50 (1992); accord *Baby Neal*, 43 F.3d at 56. "Commonality does not require an identity of claims or facts among class members; instead, 'the commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.'" *Johnston v. HBO Film Mgmt.*, 265 F.3d 178, 184 (3d Cir. 2001) (quoting *In re the Prudential Ins. Co. of Am. Sales Practice Litig.*, 148 F.3d 283, 310 (3d Cir. 1998)). This requirement is easily met in this case, as there are a number of questions of law or fact common to all class members as reflected in the prior sections on the various causes of action, including: 1) Did Wells Fargo send notices which were in violation of the New Jersey Fair Foreclosure Act? 2) Whether such clauses are a violation of the New Jersey Truth in Consumer Contact and Warranty Act? 3) What is the appropriate relief under Guillaume to allow the lender to proceed? 4) Whether such clauses are a violation of the New Jersey Civil Rights Act?

Plaintiffs have satisfied the commonality requirement. As to the Class, the heart of the Plaintiffs' claims against the Defendants is that they and all members of the proposed class had the defective NOI sent to them.

3. The Claims of the Representative Plaintiffs are Typical of the Claims of the Class at Large.

Rule 4:32(1)(a)(3) also requires that the representative Plaintiff's claims be "typical" of those of other class members. The court discussed the legal considerations regarding the typicality requirement in Laufer v. U.S. Life Insurance Company:

> The claims of a putative class representative are typical if they "have the essential characteristics common to the claims of the class." [In re Cadillac V8-6-4 Class Action, 93 N.J. 412, 425] (quoting 3B James W. Moore et al., Moore's Federal Practice § 23.06-2 (2d ed. 1982)). "Since the claims only need share the same essential characteristics, and need not be identical, the typicality requirement is not highly demanding." 5 James W. Moore, et al, Moore's Federal Practice, § 23.24[4] (3d ed. 1997). "If the class representative's claims arise from the same events, practice, or conduct, and are based on the same legal theory, as those of other class members, the typicality requirement is satisfied." Moore, supra, § 23.24[2]. "[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the varying fact patterns underlying the individual claims." Baby Neal v. Casey, 43 F.3d 48, 58 (3d Cir. 1994). "Actions requesting declaratory and injunctive relief to remedy conduct directed at the class[,]" which is the primary relief sought in a class action brought under Rule 4:32-1(b)(2), "clearly fit this mold."
>
> [385 N.J. Super. 172, 180-81 (App. Div. 2006) (all but first alteration in original).]

A "proper consideration" of typicality includes

> three distinct, though related, concerns: (1) the claims of the class representative must be generally the same as those of the class in terms of both (a) the legal theory advanced and (b) the factual circumstances underlying that theory; (2) the class representative must not be subject to a defense that is both inapplicable to many members of the class and likely to become a major focus of the litigation; and (3) the interests and incentives of the representative must be sufficiently aligned with those of the class.

[Schering Plough, supra, 589 F.3d at 599.]

The commonality and typicality requirements of Rule 23 (a) "tend to merge." *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982). "The typicality requirement centers on whether the interests of the named Plaintiffs align with the interests of the absent members." *Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001) "Factual differences will not render a claim atypical if the claim arises from the same event or practice of course of conduct that gives rise to the claims of the class members, and it is based on the same legal theory." *Hayworth v. Blondery Robinson & Co.*, 980 F.2d 912, 923 (3d Cir. 1992). "[T]he threshold for satisfying the typicality prong is a low one." *Barr v. Harrah's Entm't, Inc.*, 2007 U.S. Dist. LEXIS 32435, *13 (D.N.J. May 3, 2007)(quoting *Weisfeld v. Sun Chemical Corp.*, 210 F.R.D. 136, 140 (D.N.J. 2002).

Typicality is demonstrated where the Plaintiff can "show that issues of law or fact he or she shares in common with the class occupy the same degree of centrality to his or her claims as to those of unnamed class members." *Weiss v. York Hosp.*, 745 F.2d 786, 809-10 (3d Cir. 1984); see also *Blihovde v. St. Croix County*, 219 F.R.D. 607, 617 (W.D. Wis. 2003). (applying this principle to a strip search class action). A class representative should "have the incentive to prove all of the elements of the cause of action which would be presented by the individual members of the class were they initiating individual actions." *Dietrich v. Bauer*, 192 F.R.D. 119, 124 (S.D.N.Y. 2000). The Third Circuit has stated:

> In considering the typicality issue, the district court must determine whether the named plaintiff[s'] individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based. This criteria does not require that all putative class members share

> identical claims. Indeed, so long as the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is established regardless of factual differences. *Johnston*, 265 F.3d at 184.

Here, the claims against Wells Fargo and the lenders are typical of the claims of the Class. They arise from the same course of events and the Defendant-Third Party Plaintiffs must make the same – or effectively the same – arguments to prosecute their claims as would be made by members of the proposed Class in any individual cases. See *Weisfeld v. Sun Chem. Corp.*, 210 F.R.D. 136, 140 (D. N.J. 2002)("[I]n instances wherein it is alleged that the Defendants engaged in a common scheme relative to all members of the class there is strong assumption that the claims of the representative parties will be typical of the absent class members.")(citation omitted); *Bowers*, 2006 WL 2818501, *2-3 ("A Plaintiff's claim is typical if it arises from the same event or course of conduct that gives rise to the claims of other class members and is based on the same legal theory."); *Marriott v. County of Montgomery*, 227 F.R.D. 159, 172-173, affirmd, 2005 U.S. App. LEXIS 25428 (2d Cir 2005) (finding typicality even where the claims of the representative parties involved a more detailed search than other class members, because they were conducted pursuant to the same policy); Typicality exists because the Defendants acted pursuant to a policy that called for use of the same preprinted forms which included the illegal language. If this allegation is true, "then the named [P]laintiff would be similarly situated to the other members of the class." *Blihovde v. St. Croix County*, 219 F.R.D. 607, 617 (W.D. Wis. 2003)

Thus, typicality is easily satisfied by this proposed class action.

4. William Brody, Justine Sexton and John Sexton and thier Counsel Will Fairly and Adequately Represent the Class

Rule 4:32(1)(a)(4) requires that the class representative "fairly and adequately protect the interests of the class." "Adequate representation depends on two factors: (a) the Plaintiff's attorney must be qualified, experienced and generally able to conduct the proposed litigation; and (b) the Plaintiff must not have interests antagonistic to those of the class." *Weiss v. York Hosp.*, 745 F.2d at 811. Both prerequisites of adequacy of representation are met in this case. See *Lewis v. Curtis*, 671 F.2d 779, 788 (3d Cir. 1982). *New Directions Treatment Servs. v. City of Reading*, 490 F.3d 293, 313 (3d Cir. 2007) (quoting *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 247 (3d Cir. 1975))

Under Rule 4:32-1(a)(4), the class representative must be able to "fairly and adequately protect the interests of the class." Although courts consider the adequacy of both the named representative and the class counsel, *Laufer*, supra, 385 N.J. Super. at 181.

> The determination whether a putative class representative can fairly and adequately protect the interests of the class is closely related to the requirement of typicality. See In re Cadillac, supra, 93 N.J. at 425, 461 A.2d 736. To satisfy this requirement, "the plaintiff must not have interests antagonistic to those of the class." Delgozzo v. Kenny, 266 N.J. Super. 169, 188, 628 A.2d 1080 (App. Div. 1993) (quoting In re Asbestos Sch. Litig., 104 F.R.D. 422, 430 (E.D. Pa. 1984)). However, this does not mean that "the interests of the class representative and the absentee class members [must] be identical." Moore, supra, § 23.25[4][b][i]. "[T]he named representative only needs to be adequate[.]"
>
> [Id. at 182 (alterations in original).]

Here, William Brody, Justine Sexton and John Sexton are interested in ending the use of the illegal notices of intention to foreclose. William Brody, Justine Sexton and

John Sexton are further committed to obtaining appropriate compensation from Wells Fargo and the lenders for themselves and the members of the proposed class. They have come forward to represent the class under great personal pressure of this litigation. Their "interests in this case coincide with those of the potential class members in that [the Defendant-Third Party Plaintiffs seek] a declaration that the practices, policies, and conditions complained of in the Complaint are illegal and seeks injunctive relief prohibiting the continuation of those" policies. *Bowers*, 2006 WL 2818501, *6-8.

The class is represented by competent and experienced counsel who have invested considerable time and resources into the prosecution of this action and who have had extensive experience in successfully litigating various forms of class actions and other complex matters, including other consumer cases. (Copies of the their attorneys' resumes are attached)

Accordingly, William Brody, Justine Sexton and John Sexton are an adequate representatives and have retained experienced class counsel that have aggressively litigated this action. They have satisfied this requirement for certification.

B. William Brody, Justine Sexton and John Sexton Has Satisfied the Requirements for a Class Under Rule 23(b)(3), Since the Common Issues Shared by Class Members Predominate Over Individual Issues and a Class Action is the Superior Method to Prosecute this Action

1. Common Issues Predominate.

Rule 4:32(1)(b)(3) requires that the party proposing a class action establish that issues common to the class predominate over the individual issues of particular class members. See *Amchem Prod. V. Windsor*, 521 U.S. 591, 623 (1997). The "predominance requirement" of Rule 4:32-1(b)(3) "is more demanding than the commonality requirement." *Muise v. GPU, Inc.* 371 N.J. Super. 13, 37 (App. Div. 2004). It "requires an evaluation of the legal issues and the proof needed to establish them." *In re Cadillac*, supra, 93 N.J. at 430. A party must show that "the issues common to the class outweigh those that are not." *Debra F. Fink, D.M.D., MS, P.C. v. Ricoh Corp.*, 365 N.J. Super. 520, 568 (Law Div. 2003). "Even where the individual issues are fewer than common issues, it is the significance of the uncommon issues that sways the pendulum." *Ibid.* "As a matter of efficient judicial administration, the goal is to save time and money for the parties and the public and to promote consistent decisions for people with similar claims." *In re Cadillac*, supra, 93 N.J. at 430. The most pragmatic way for the Court to make this determination is to evaluate whether "common proof will predominate at trial." *In re NASDAQ Mkt. Makers*, 169 F.R.D. 473, 517 (S.D.N.Y. 1996); *see also Jenkins v. Raymark Indus.*, 782 F.2d 468, 472 (5th Cir. 1986) (the "significant aspect" requirement is met if "jury findings on the class question...will...significantly advance the resolution of the underlying...cases"); *Dietrich*, 192 F.R.D. at 127 (in determining whether common issues of fact predominate, "a court's inquiry is directed primarily toward whether the

issue of liability is common to members of the class"). This is especially true "when the class is challenging a uniform policy," as "the validity of that policy predominates over individual issues." *Blihovde v. St. Croix County*, 219 F.R.D. 607, 620 (W.D. Wis. 2003). The Supreme Court has stated that "[p]redominance is a test readily met in certain cases alleging consumer or securities fraud or violations of the antitrust laws." *Amchem Products, Inc., v. Windsor*, 521 U.S. 591, 625, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997)

Here, the proposed class members' claims involve one central legal issue: The illegal NOI issued by the lenders by their agent, Wells Fargo See e.g. *Marriott*, 227 F.R.D. at 173 (predominance found despite differing facts regarding personal involvement of some individual defendants and slight differences between class members).

Here, the claims of each individual claimant would be small, possibility as small as $100 each. It is doubtful any claimant would undergo the time and expense of a lawsuit to enforce his or her rights for $100. The cost of litigation would exceed the benefit of the recovery. This is exactly the sort of claim class actions are designed to address. Public policy also favors a class action in this setting. A great deal more judicial resources would be expended in managing and trying thousands of Small Claims or Special Civil Part cases.

In order to defeat Rule 23(b)(3) certification, the lenders and Wells Fargo may argue that this case requires individual determination of damages for each class member and, as such, these damage calculations will predominate over other common issues. It is black letter law that distinctions in damages will not defeat class certification when there are core common liability issues to be determined. Indeed, it was noted nearly twenty

years ago that "'overwhelming weight of authority hold that the need for individual damages calculations does not diminish the appropriateness of class action certification where common questions as to liability predominate'" *In re Asbestos Sch. Litig.*, 104 F.R.D. 422, 432 (E.D. Pa. 1983) (quoting *Wolgin v. Magic Marker Corp.*, 82 F.R.D. 168, 176 (E.D. Pa. 1979); *accord Weikel v. Tower Semiconductor Ltd.*, 183 F.R.D. 377, 399 (D.N.J. 1998); *Seawell v. Universal Fidelity Corp.*, 235 F.R.D. 64 (E.D. Pa. 2006).

Moreover, the Court can utilize various "management tools ... to address any individualized damages issues that might arise in a class action, including (1) bifurcating liability and damages trial with the same or different juries; (2) appointing a magistrate judge or special master to preside over individual damages proceedings; (3) decertifying the class after the liability trial and providing notice to class members concerning how they may proceed to prove damages; (4) creating subclasses; or (5) altering or amending the case." *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 141 (2d Cir. 2001).

"The existence of this defense does 'not... foreclose class certification'" *Id., quoting Visa Check*, 280 F.3d at 138. See also *Tardiff v. Knox County*, 365 F.3d 1 (1st Cir. 2004)(likewise certifying class notwithstanding individual individualized issues);

2. A Class Action is the Superior Method to Prosecute this Action

Rule 4:32-1(b)(3) superiority requirement asks a court "to balance, in terms of fairness and efficiency, the merits of a class action against those of 'alternative available methods' of adjudication." _*Georgine v. Amchem Products, Inc.*, 83 F.3d 610, 632 (3d Cir. 1996)

> In determining whether a class action is superior to other available methods of adjudication, the Court looks to four (4) non-exhaustive factors:
>
> (A) the interest of members of the class individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action. Fed. R. Civ. P. 23(b)(3).

Here, the prosecution of this litigation as a class action is the superior method of proceeding with this case. To require hundreds or thousand of identical individual, repetitive cases to be filed to address the claims in this – all with the attendant possibility of inconsistent adjudications – verges on the absurd. See *California v. Yamaski*, 42 U.S. 682, 700-01 (1970). The class action device is designed for this very situation where an individual seeks to vindicate "the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Amchem Prods.*, 521 U.S. at 617. "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do no provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Id: see also Yang v. Odum*, 392 F.3d 97, 106 (3d Cir. 2004); *Marriott*, 227 F.R.D. at 173; *Sutton v. Hopkins County*, 2007 WL 119892,*9 (W.D. Ky. Jan. 11, 2007), ("litigating the existence of a uniform policy for the class as a whole would both reduce the range of issues and promote judicial economy."). This is especially true when, in considering what is "best" available method to provide legal redress, for a court to consider the "inability of the poor or uninformed to enforce their

rights, and the improbability that large numbers of class members would possess the initiative individually." *Haynes v. Logan Furniture Mart, Inc.*, 503 F.2d 1161, 1165 (7th Cir. 1974); *accord Labbate-D'Alauro v. GC Servs. Ltd. Pshp.*, 168 F.R.D. 451, 458 (E.D.N.Y. 1996)(quoting id.); Poor and marginalized class members are unlikely to be able to litigate these cases individually. *See Mack v. Suffolk County*, 191 F.R.D. 16, 25 (D. Mass. 2000); *D'Alauro v. GC Services Ltd.*, 168 F.R.D. 451, 458 (E.D.N.Y. 1996); *In re Nassau County Strip Search Cases*, 461 F.3d 219, 230 (2nd Cir. 2006); Class certification is superior where individual claims are small or modest. *In re Prudential Inc. Co. of Am. Sales Practice Litigation Agent Actions*, 148 F.3d 283, 316 (3d Cir. 1998).

Here, the first two factors support class certification. The size of the potential class suggests that individual suits would be overly burdensome for the Court and impracticable. The value of most individual claims at least $100.00.The fact that no other complaints against the lenders and Wells Fargo raising the claims presented here have been filed suggests a lack of interest in individually prosecuting claims, controlling the prosecution of the claims, or an inability for class members to pursue individual causes of action against the lenders and Wells Fargo. Lastly, the potentially small amount of damages experienced by individual class members indicates that it would not be cost effective for a class member to individually seek relief. *Pro v. Hertz*, 72 F. S. 3d 485 (D. N.J. 2008) "This is exactly the kind of result Congress intended to avoid through the creation of the class action form." *Barkouras v. Hecker*, Civ. No. 06-0366 (AET), 2006 U.S. Dist. LEXIS 88998, 2006 WL 3544585, at *4 (D.N.J. Dec. 8, 2006). Accordingly, sophisticated parties know it gives them an edge in engaging in such practices.

The third factor supports certification. The courts have held that a party's common course of conduct alone may support a finding of predominance under the NJCFA, *see, e.g., Varacallo v. Massachusetts Mutual Life Ins. Co.*, 332 N.J. Super. 31, 752 A.2d 807 (N.J. Super. Ct. App. Div. 2000); *Elias v. Ungar's Food Prod., Inc.*, 252 F.R.D. 233, 238 (D.N.J. 2008). It is unquestioned that the lenders through their agent Wells Fargo conducted themselves in a uniform manner. This is the very reason for the application by Wells Fargo.

The fourth factor is manageability. All large class actions present manageability issues. In this case, because the same contract clauses apply to all class members, any manageability issues presented will be minimal and do not justify denial of class certification. This case focuses on core questions of law and fact which will resolve liability for the entire potential class.

For these reasons, William Brody, Justine Sexton and John Sexton respectfully suggests that his motion for class certification be granted.

C. William Brody, Justine Sexton and John Sexton Have Also Satisfied the Requirements of Rule 4:32-1(b)(2)

Rule 4:32-1(b)(2) permits certification when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Rule 4:32-1(b)(2) mirrors Fed.R.Civ.P. 23(b)(2). Rule 23(b)(2) is "almost automatically satisfied in actions primarily seeking injunctive relief." *Baby Neal*, 43 F.3d at 58. As recognized:

> Courts have noted that Rule 23(b)(2) is "an especially appropriate vehicle for civil rights actions seeking... declaratory relief 'for

> prison and hospital reform.'" *Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir. 1980) (quoting 3B J. Moore & J. Kennedy, Moore' Federal Practice P 23.40(1) (1980)0; *see also Santiago v. City of Phila.*, 72 F.R.D. 619, 625-26 (E.D. Pa. 1976)("This subsection has been liberally applied to the area of civil rights, including suits challenging conditions and practices at various detention facilities." (citing *Martinez Rodriguez v. Jimenez*, 409 F. Supp. 582 (D. P.R. 1976); *Woe v. Mathews*, 408 F. Supp. 318 (M.D. Ala. 1976); *King v. Carey*, 405 F. Supp. 41 (W.D.N.Y. 1975). "The essential consideration is whether the complaint alleges that the plaintiffs have been injured by defendants' conduct which is based on policies and practices applicable to the entire class." *Santiago*, 72 F.R.D. at 626.
>
> *Bowers v. City of Philadelphia*, 2006 WL 2818501 (E.D. Pa. Sept. 28, 2006) *3-4

Here, William Brody, Justine Sexton and John Sexton seek to enjoin the lenders and Wells Fargo from issuing improper NOI's in the future If William Brody, Justine Sexton and John Sexton obtain the injunctive and declaratory relief sought, this relief would benefit the entire class. As a result, the proposed class is cohesive. William Brody, Justine Sexton and John Sexton do seek money damages however, the money damages claims do not subordinate their injunctive and declaratory claims. William Brody, Justine Sexton and John Sexton allege a wrong which they seek to redress and prevent from occurring again. The proposed class is cohesive and the relief sought would benefit all class members, Fed. R. Civ. P. 23(b)(2) certification is appropriate. *Pro v. Hertz*, 72 F. S. 3d 485 (D. N.J. 2008)

Accordingly, the requirements of Rule 23(b)(2) are satisfied. *Seawell*, 235 F.R.D. at 67 (certification under Rule 23(b)(2) was warranted for the portion of the case for which the plaintiff sought exclusively injunctive/declaratory relief, where such relief "would obviously benefit the entire class."); *Marriott*, 227 F.R.D. at 173 (holding that requirements of Rule 23(b)(2) are met where "the centerpiece of the litigation is

elimination of the… procedure which is applicable to all admittees without a requirement for reasonable suspicion.").

D. Partial Certification is Appropriate Should the Court Deny William Brody, Justine Sexton and John Sexton Motion for Full Certification

Should the Court conclude that full certification under Rule4:32-1(b)(3) is not appropriate, William Brody, Justine Sexton and John Sexton submit that partial certification under Rule 4:32-2(d) should be granted. The common nature of liability would make any ensuing litigation duplicative and unnecessary. As one leading recent decision recognized, "If there are genuinely common issues, issues identical across all the claimants, issues moreover the accuracy of the resolution of which is unlikely to be enhanced by repeated proceedings, then it makes good sense, especially when the class is large, to resolve those issues in one fell swoop while leaving the remaining, claimant-specific issues to individual follow-on proceedings." *Mejdrech v. Met-Coil Sys. Corp.*, 319 F.3d 910, 911 (7th Cir. 2003); *see also Laufer v. U.S. Life Ins. Co. in City of New York*, 385 N.J. Super. 172, 181, 896 A.2d 1101 (N.J. Super. 2006) "Federal district courts under Fed. R. Civ. P. 23(c)(4)(A) are instructed that they should take full advantage of this provision to certify separate issues in order to 'reduce the range of disputed issues in complex litigation and achieve judicial efficiencies.'" *Robinson v. Metro-North Commuter Railroad Co.*, 267 F.3d 147, 167 (2d Cir. 2001). Specifically, William Brody, Justine Sexton and John Sexton request that this Court certify this action to allow a class wide determination of Wells Fargo's uniform failure to provide the lender's names and addresses in the NOI.

E. The Lenders and Wells Fargo Should Be Required to Assist Class Counsel in Providing Notice to Absent Class Members.

"[I]f a defendant can undertake the tasks associated [with class notice] with less expenses and difficulty than could a plaintiff, the defendant may be ordered to provide notice." *LaFlamme v.Carpenters Local #370 Pension Plan* , 212 F.R.D. 448, at 459 (D. N. N.Y. 2003). Class counsel is fully prepared and able to provide notice to all class members. The lenders and Wells Fargo however, has all the addresses (at the least, the last known addresses) and social security numbers of all prospective class members, which can presumably be accessed to form a database and provide a mass mailing. We respectfully suggests that the lenders and Wells Fargo be required to "provide the notice or ... cooperate with movants by giving them the information necessary to provide the notice." *Id.*, at 460.

F. Appointment of class counsel.

Rule 4:32-2(g) requires that the Court appoint class counsel when it certifies a class. Class counsel must "fairly and adequately represent the interest[s] of the class. Rule 4:32-2(g). Rule 4:32-2(g) lists four factors to be considered: "(I) the work counsel has done identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class."

William Brody, Justine Sexton and John Sexton proposes that Lewis G. Adler, Esquire, Roger C. Mattson, Esquire and Louis D. Fletcher, Esquire be appointed class counsel. These attorneys have done extensive work identifying and investigating their claims. The attorneys have experience prosecuting consumer class actions, have been

designated as class counsel in federal courts, and are knowledgeable in class action and consumer law. The attorneys have already expended significant resources in representing the class which evidences that they are willing to continue to do so. Pursuant to Rule 4:32-2(g), William Brody, Justine Sexton and John Sexton ask the court to name Lewis G. Adler, Esquire, Roger C. Mattson, Esquire and Louis D. Fletcher, Esquire as class counsel.

CONCLUSION

For all the foregoing reasons, William Brody, Justine Sexton and John Sexton respectfully request that the Court certify this action as a class action under Rules 4:32-1(a) ,(b)(2) and (3), and the appointment of class counsel under Rule 4:32-2(g), as well as any other relief that this Court finds to be just, proper and equitable.

Respectfully submitted,

Lewis G. Adler, Esquire

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ATTORNEY FOR Defendant-Third Party Plaintiffs
William Brody, Justine Sexton and John Sexton

IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION Proof of filing and certification of service

---

William Brody, Justine Sexton and John Sexton
Defendants-Third Party Plaintiffs
VS.

Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

Proof of Filing:

I hereby certify that the within motion together with documents in support thereof have been hand delivered for filing to the above-named Court on this 17th day of Oct 2012

Proof of Mailing:

I hereby certify that a copy of the within motion together with documents in support thereof were mailed to the Defendants' counsel, by way of UPS Next day, to:

Mark Melodia, Esquire
Diane Bettino, Esquire
Reed Smith, LLP
Princeton Forrestal Village
136 Main Street Suite 250
Princeton, NJ 08540
Attorneys for Wells Fargo

, this 17th day of October 2012

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Lewis G. Adler, Esquire

LEWIS G. ADLER, ESQUIRE
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IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION
William Brody, Justine Sexton and John Sexton **Defendants-Third Party Plaintiffs** **VS.** Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank,	NOTICE OF MOTION

N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company.

Third Party Defendants

TO: Mark Melodia, Esquire
Reed Smith, LLP
Princeton Forrestal Village
136 Main Street Suite 250
Princeton, NJ 08540
Attorneys for WELLS FARGO

TAKE NOTICE that on **November 1, 2012** at 9:00am, in the forenoon, or as soon thereafter as counsel may be heard, the undersigned attorney for the Defendant-Third Party Plaintiffs shall apply to the above Court located at the Passaic County Courthouse, 71 Hamilton Street, Paterson, New Jersey, :

1) To allow the Defendants-Third Party Plaintiffs to file a counterclaim and third-party complaint;

2) For a judgment on the pleadings of counts 1,2 & 3 of the counterclaim and counts 1, 2 & 3 of the third party complaint..

I will rely upon the brief, and certifications with attached exhibits in support hereof.

I request oral argument.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 10/17/12

LEWIS G. ADLER, ESQUIRE

LEWIS G. ADLER, ESQUIRE
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(856)845-1968
ATTORNEY FOR Defendant-Third Party Plaintiffs
William Brody, Justine Sexton and John Sexton

IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION JUDGMENT ON THE PLEADINGS
William Brody, Justine Sexton and John Sexton **Defendants-Third Party Plaintiffs** **VS.** Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings	

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

THIS MATTER having been brought before the Court on the application of Lewis G. Adler, Esquire, attorney for the Defendant-Third Party Plaintiffs William Brody, Justine Sexton and John Sexton , and for good cause having been shown;

IT IS on this ___ day of _____, *2012*, **ORDERED** that

1) The Defendant-Third Party Plaintiffs motion to file a counterclaim and third party complaint are granted.

2) The Defendant-Third Party Plaintiffs motion for judgment on the pleadings as to counts 1, 2, & 3 of the counterclaim and counts 1, 2, & 3 of the third party complaint are granted.

_____

, JSC

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(856)845-1968
ATTORNEY FOR Defendant-Third Party Plaintiffs
William Brody, Justine Sexton and John Sexton

IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION
William Brody, Justine Sexton and John Sexton **Defendants-Third Party Plaintiffs** **VS.** Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings	

Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation, UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company. **Third Party Defendants**	

BRIEF IN SUPPORT OF DEFENDANT'-THIRD PARTY PLAINTIFFS' NOTICE OF MOTION FOR LEAVE TO FILE A COUNTERCLAIM AND THIRD PARTY COMPLAINT AND JUDGMENT ON THE PLEADINGS

On the Brief:

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ATTORNEY FOR Defendant-Third Party Plaintiffs
William Brody, Justine Sexton and John Sexton

FACTS

The Statement of facts for purposes of this motion is outlined in Wells Fargo's verified complaint which is incorporated by reference herein.

ARGUMENT

I. The Court should allow the within application or for the matter to proceed as a plenary matter under R 4:67-5 or in the alternative sever the action.

The broad issue before the court is to determine the appropriate remedy for the failure of Wells Fargo to issue proper notices of intention to foreclose on behalf of the lenders. The facts relied upon by the Defendant-Third Party Plaintiffs are the same as those in the verified complaint. The Court in fashioning its remedy must also address the statutory claims of the borrowers. It would be inequitable to consider only the interests of the Wells Fargo and the lenders. The Supreme Court in Guillaume specifically held

> Courts of equity have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case:
>
> Equitable remedies "are distinguished for their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use. There is in fact no limit to their variety and application; 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."[*Sears, Roebuck & Co. v. Camp*, 124 N.J. Eq. 403, 411-12, 1 A.2d 425 (E. & A.1938) (quoting John N. Pomeroy, *Equity Jurisprudence* 109 (4th ed. 1918)).]Absent legislative direction with respect to a remedy, New Jersey courts retain discretion "to fashion equitable remedies," which are "valuable because they allow relief to be fashioned directly to redress the statutory violations shown." *Brenner v. Berkowitz*, 134 N.J. 488, 514, 634 A.2d 1019 (1993); *see also Marioni v. Roxy Garments Delivery Co.*, 417 N.J. Super. 269, 275, 9 A.3d

> 607 (App.Div.2010) ("In fashioning relief, the Chancery judge has broad discretionary power to adapt equitable remedies to the particular circumstances of a given case."). Id at 476.

Beyond fashioning a just remedy, the Court must also consider the claims of the Borrowers under the New Jersey Truth in Consumer Contract Warranty and Notice Act and the New Jersey Civil Rights Act.

In addition to the equities which require the court to consider these issues, the Entire Controversy Doctrine codified in R 4:30A would require the Defendant-Third Party Plaintiffs to bring the within action. State v. Bradley, 174 NJ Super 154 (App. Div. 1980)

If the court declines to allow this application to proceed in this proceeding, the matter should be severed and allowed to proceed separately.

II. Standard for Determination of a motion under R 4:6-2(e).

The New Jersey Supreme Court in the case of NCP Litig. Trust v. KPMG LLP, 187 NJ 353 (2005) articulated the standard the Court must use in a motion to dismiss under **R 4:6-2(e)**.

> At the outset, we observe that this matter is before us on a ***Rule* 4:6-2(e)** motion to dismiss. On such motions, a trial court should grant a dismissal "in only the rarest of instances." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 772, 563 A.2d 31 (1989). A court's review of a complaint is to be "undertaken with a generous and hospitable approach," *id.* at 746, 563 A.2d 31, and the court should assume that the nonmovant's allegations are true and give that party the benefit of all reasonable inferences, Smith v. SBC Communications Inc., 178 N.J. 265, 282, 839 A.2d 850 (2004). If "the fundament of a cause of action may be gleaned even from an obscure statement of claim," then the complaint should survive this preliminary stage. Craig v. Suburban Cablevision, Inc., 140 N.J. 623, 626, 660 A.2d 505 (1995) (citation omitted).

In the instant case, the Court must accept as true the allegations of the complaint.

III. The Defendant-Third Party Plaintiffs have proven a cause of action for violation of the New Jersey TCCWNA.

The Defendant-Third Party Plaintiffs have proven a cause of action in count I of the counterclaim and count I of the third party complaint for violations of the Truth-In-Consumer, Warranty and Notice Act. The Defendant-Third Party Plaintiffs have a cause of action under *NJSA 56:12-14* which prohibits the issuance of a notice which violates the Defendant-Third Party Plaintiffs' rights under state or federal law. The act does not require any actual damages by the Defendant-Third Party Plaintiffs and instead provides for a statutory penalty of at least $100 per violation plus reasonable attorney's fees and court costs. *NJSA 56:12-17* states:

> Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than $100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction or as part of a counterclaim by the consumer against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract.

To have standing, the consumer Defendant-Third Party Plaintiffs had to have a notice issued in violation of the law. Defendant-Third Party Plaintiffs need not have suffered any damages. This same conclusion was reached by the New Jersey Appellate Division in the case of Smerling v. Harrah's, 389 N.J. Super. 181 (App. Div. 2006). In that case, the court held that advertising by the casino which contained false, deceptive or misleading information was actionable under the Truth-in-Consumer Contract, Warranty

and Notice Act. As the New Jersey Appellate Court held in Bosland v. Warwick Dodge, 396 NJ Super 267 (App Div 2007) ,affirmed 197 NJ 453 (2009) that proving a case under the New Jersey Consumer Fraud Act will satisfy a cause of action under this act. The purpose of the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act is remedial in nature to prevent wrongs to consumers. Just like the New Jersey Consumer Fraud Act, the Truth-in-Consumer Contract, Warranty and Notice Act is to be liberally construed given the broad scope of wrongs and remedies covered by the statute.

In the instant case, Wells Fargo admits that it sent Notices of Intent to Foreclose as an agent of the lenders which did not include the names and address of the lenders in violation of the Fair Foreclosure Act. The Supreme Court in Guillaume specifically provided that the ruling was not limited and applied the law retroactively. The Guillaume Court held that the failure to provide the name and address of the lender violated the borrowers fundamental rights under the FFA. Guillaume at 470.

The act provides that any person who violates the act shall be liable. In the instant case, Wells Fargo as the agent of US Bank and the other Lenders admits to actually causing the defective notices to be issued. In addition, US Bank and the other Lenders are responsible for the actions of their agent. The court in Rickenbach v. Wells Fargo Bank, NA, 635 F. Supp. 2d. 389, 400 (2009) specifically held with a similar set of facts that a cause of action did exist under the act against the principal for the actions of its agent. In Rickenbach the issue was for the issuance of an improper payoff statement.

> Defendants argue on reply 8 that Plaintiffs cannot state a claim under the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act because the letter to the McTagues that included the allegedly improper charges was sent by Defendant Zucker, as the attorney for Defendants

> Wells and MERS, not Wells or MERS. The Court rejects this argument. Plaintiffs McTague allege that Defendant Zucker represented Wells and MERS throughout the foreclosure proceeding and mailed the payoff statement to the McTagues "on behalf of MERS and WELLS." (Am. Compl. PP 4, 28.) Defendants Wells and MERS cannot escape liability for conduct of their alleged agent. The Court finds that Plaintiffs have sufficiently alleged that they received "notice" from Wells and MERS through their attorney agent Zucker and so the Court will not dismiss their claim under the Truth-in-Consumer Contract Act.

As a matter of law, judgment must be entered on behalf of the Defendant-Third Party Plaintiffs against Wells Fargo, US Bank, and the Lenders.

IV. The Defendant Third Party Plaintiffs in Count II of the counterclaim and third party complaint object that the remedy be limited solely to the issuance of a corrected NOI.

The Defendant Third Party Plaintiffs object that the remedy be limited solely to the issuance of a corrected NOI. The Defendants seek payment by Wells Fargo and/or the Banks for violation of their fundamental rights under the FFA. The court in Guillaume and the Court's April 4, 2012 order reserved to this court the fashioning of the appropriate remedy. In most cases, a reduction in legal fees and costs of suit in the amount due to redeem or reinstate the mortgage presents no benefit for the borrower. The Plaintiff notes in footnote 2 that considerable time has passed since the NOIs were originally sent. As a result, the amount to redeem or reinstate the loans is far out of reach of most borrowers

"In determining an appropriate remedy for a violation of *N.J.S.A.* 2A:50-56(c)(11), trial courts should consider the express purpose of the provision: to provide notice that makes 'the debtor aware of the situation,' and to enable the homeowner to attempt to cure the default. *N.J.S.A.* 2A:50-56(c); *Statement to Assembly Bill No. 1064, supra*, at 8.

Accordingly, a trial court fashioning an equitable remedy for a violation of *N.J.S.A.* 2A:50-56(c)(11) 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 at 480.

In the instant case, it appears that the full extent of the offered remedy is to only give relief to the foreclosing lenders. The lender is allowed to proceed with the foreclosure without the necessity of refiling. There is no provision to discourage such conduct on the part of the lenders. There is no consideration of the impact on the homeowners ability or opportunity to cure.

There being an admitted violation of the Act, the Court should exercise its equitable powers and provide some compensation to the borrowers for the failure to comply with the Act.

V. The Defendant-Third Party Plaintiffs have proven a cause of action under the New Jersey Civil Rights Act.

The Defendant-Third Party Plaintiffs have proven a cause of action in count III of the counterclaim and count III of the third party complaint for violations of the New Jersey Civil Rights Act. The Civil Rights Act NJSA 10:6-2 provides:

> c. Any person who has been deprived of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of the United States, or any substantive rights, privileges or immunities secured by the Constitution or laws of this State, or whose exercise or enjoyment of those substantive rights, privileges or immunities has been interfered with or attempted to be interfered with, by threats, intimidation or coercion by a person acting under color of law, may bring a civil action for damages and for injunctive or other appropriate relief. The penalty provided in subsection e. of this section shall be applicable to a violation of this subsection.

> d. An action brought pursuant to this act may be filed in Superior Court. Upon application of any party, a jury trial shall be directed.
>
> e. Any person who deprives, interferes or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any other person of any substantive due process or equal protection rights, privileges or immunities secured by the Constitution or laws of this State is liable for a civil penalty for each violation. The court or jury, as the case may be, shall determine the appropriate amount of the penalty. Any money collected by the court in payment of a civil penalty shall be conveyed to the State Treasurer for deposit into the State General Fund.
>
> f. In addition to any damages, civil penalty, injunction or other appropriate relief awarded in an action brought pursuant to subsection c. of this section, the court may award the prevailing party reasonable attorney's fees and costs.

In the instant case, Wells Fargo admits that it issued defective notices of intention to foreclosure on behalf of US Bank and the other lenders which failed to include the names and addresses of the lenders. The Court in Guillaume held that a failure to provide a NOI which includes the lenders name and address was a violation of a fundamental right under the New Jersey Fair Foreclosure Act. The notice of intention is a central component of the FFA, serving the important legislative objective of providing timely and clear notice to homeowners that immediate action is necessary to forestall foreclosure. Guillaume at 470. It is for this reason that Wells Fargo brought the within action.

The Defendant-Third Party Plaintiffs' fundamental rights under the FFA have been violated by US Bank and the other lenders through the actions of their agent Wells Fargo. The CRA provides that any person who deprives another of their rights is liable for civil penalty, damages, and attorneys fees.

As a matter of law, judgment must be entered on behalf of the Defendant-Third Party Plaintiffs against Wells Fargo, US Bank, and the Lenders.

VI. Any dismissal by the Court should be without prejudice and the Defendant-Third Party Plaintiffs given an opportunity to be heard with a remedy.

In the event, the court should hold that any of the Defendant-Third Party Plaintiffs' pleadings are defective, the court should allow them an opportunity to amend and to be heard. The New Jersey Supreme Court in the case of Printing Mart- Morristown v. Sharp Elecs. Corp., 116 NJ 739, 746 (1989) articulated the standard.

> However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Di Cristofaro v. Laurel Grove Memorial Park, 43 *N.J. Super.* 244, 252 (App.Div.1957).

The issues raised by the Defendant-Third Party Plaintiffs' are areas of law which have not been subject to much litigation. In the event the court finds any of the pleadings or process deficient, the Defendant-Third Party Plaintiffs should be allowed to file an amended pleading and an opportunity to be heard.

CONCLUSION

The Defendant Third Party Plaintiffs object that the limit of the remedy be limited solely to the issuance of a corrected NOI. The Defendants seek payment by Wells Fargo and/or the Banks for violation of their fundamental rights under the FFA. The court in Guillaume and the Court's April 4, 2012 order reserved to this court the fashioning of the appropriate remedy. In most cases, a reduction in legal fees and costs of suit in the amount due to redeem or reinstate the mortgage presents no benefit for the borrower. The Plaintiff notes in footnote 2 that considerable time has passed since the NOIs were originally sent. As a result, the amount to redeem or reinstate the loans is far out of reach of most borrowers.

Respectfully submitted,

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IN RE APPLICATION BY WELLS FARGO BANK, NA TO ISSUE CORRECTED NOTICES OF INTENT TO FORECLOSE ON BEHALF OF IDENTIFIED FORECLOSURE PLAINTIFFS IN UNCONSTESTED CASES	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION PASSAIC COUNTY DOCKET NO.: F-009564-12 CIVIL ACTION
William Brody, Justine Sexton and John Sexton Defendants-Third Party Plaintiffs VS. Bank of America, N.A., Bank of New York Mellon, Bank Atlantic, Bayview Financial, CitiBank, N.A., Commerce Bancorp, Copperfield Investments, Deutsche Bank, DLJ Mortgage Capital, Inc., E Trade, EMC Mortgage, Federal Deposit Insurance Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Bank of Chicago, FTN Financial, GE Capital Mortgage Services, GMAC Bank, HSBC Bank, N.A., Hudson City Savings Bank, Investors Savings Bank, JP Morgan Chase Bank, LaSalle Bank, N.A., Lehman Brothers, Lex Special Assets, Midfirst Bank, New York Life Insurance and Annuity Corporation, PNC Bank, Residential Accredit Loans, Inc., Riggs Real Estate Investment Corporation,	

UBS Bank, United States Department of Housing and Urban Development, US Bank, N.A., and Wilmington Trust Company.

Third Party Defendants

STATEMENT OF UNCONTESTED MATERIAL FACTS

STATEMENT OF UNCONTESTED MATERIAL FACTS

1. Wells Fargo Bank, NA (Wells Fargo) is authorized to act on behalf of the Foreclosure Plaintiffs in pending, pre-judgment uncontested foreclosure actions. [Amended Verified Complaint]

2. Wells Fargo is a national banking association and a wholly-owned subsidiary of Wells Fargo & Company, a bank holding company. [Amended Verified Complaint paragraph 1]

3. Wells Fargo services mortgage loans for residential properties in New Jersey either through its division, Wells Fargo Home Mortgage or its trade name, America's Servicing Company. [Amended Verified Complaint paragraph 2]

4. When Wells Fargo is the servicer of a loan, it undertakes payment collection, loss mitigation (modifications, short sales, deeds in lieu) and collection efforts, including foreclosure, with respect to a mortgage loan. If a loan is owned by another entity, Wells Fargo undertakes these efforts in accordance with the contracts that govern its relationship wit the owner of the loan as well as the loan documents, Rules of Court and any applicable laws. As the entity collecting and processing payments, Wells Fargo has the information relevant to the payments, escrows paid, amounts due and whether a loan is in default and by how much. This information is maintained on Wells Fargo's system of record. In cases in which Well Fargo is only the servicer (and not also the lender), the lender is not likely to have possession of the relevant servicing information, as was recognized

by the Supreme Court when it revised the Court Rules governing foreclosures at R. 4:64-1 and R. 4:64-2 in June 2011. Wells Fargo made the within application to the Court pursuant to the authority granted to Wells Fargo as the servicing agent of Foreclosure Plaintiffs in pending foreclosure cases. [Amended Verified Complaint paragraph 3]

5. The identities of the Foreclosure Plaintiffs in the foreclosure cases for which Wells Fargo is seeking to issue corrected Notices of Intent (NOI) are identified alphabetically in the Counts 1through 34. The Exhibits 1-34 of the complaint are the current lists of the pending, uncontested foreclosure cases that require a corrected NOI. [Amended Verified Complaint paragraph 4]

6. One of the duties of a servicer on a defaulted mortgage loan in New Jersey is to prepare and server the NOI, in accordance with the applicable contracts and as required by NJSA 2A:50-56 of the Fair Foreclosure Act. The NOI is prepared based on current loan information held by Wells Fargo and includes, among other data elements, information about the amount that is required to reinstate the loan and the date by which the reinstatement must occur. [Amended Verified Complaint paragraph 6]

7. Wells Fargo reviewed its pending foreclosure cases with its counsel to identify those foreclosure cases which will require a corrected NOI because the lender and the lender's address were not included in the previously served NOIs. The Corrected NOI List was reviewed for accuracy to verify the status of the foreclosures, the effect of loss mitigation on pending foreclosures, whether there

are relevant bankruptcy proceedings and whether, since the original NOIs were sent, there were intervening deaths of Foreclosure Defendants. [Amended Verified Complaint paragraph 9]

8. The Corrected NOI List attached as Exhibits 1-34 of the complaint includes the portfolio of loans that are pre-judgment, uncontested foreclosures that Wells Fargo is servicing and in which deficient NOIs were served by Wells Fargo. Specifically, as directed by the Supreme Court in Guillaume and the April 4, 2012 Order, the Corrected NOI List includes a listing of:

   a. Foreclosures that were filed on or before February 27, 2012 and which Wells Fargo is servicing the loans and acting as agent for a Foreclosure Plaintiff;

   b. In which final judgment has not been entered, and;

   c. In which Wells Fargo is seeking leave to file a corrected NOI to include the identity of the lender and the lender's address. [Amended Verified Complaint paragraph 10]

9. The Corrected NOI List also identifies (1) the name of the lender on each loan which is listed as the Plaintiff in the foreclosure action; (2) the name of the first named Foreclosure Defendant, (3) the foreclosure docket number and, (4) the vicinage. While Wells Fargo is not the Plaintiff in each of the foreclosure actions, it is the servicer of each such loan, maintains the records for each such loan, and is responsible for mailing the corrected NOI pursuant to the relevant contracts with the Foreclosure Plaintiffs. [Amended Verified Complaint paragraph 11]