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SUPERIOR COURT
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THE LAW OFFICES OF KRISTOPHER J. FACENDA, LLC
Kristopher J. Facenda, Esq.
2020 New Road, Suite 2A
Linwood, New Jersey 08221
Phone: (609) 385-8791
Email: kris@facendalaw.com
Attorney for Defendant, John A. Keller

**IN RE APPLICATION BY WELLS FARGO
BANK, N.A. TO ISSUE CORRECTED
NOTICES OF INTENT TO FORECLOSE ON
BEHALF OF IDENTIFIED FORECLOSURE
PLAINTIFFS IN UNCONTESTED CASES**

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
PASSAIC COUNTY

Docket No. F-009564-12

Civil Action

**NOTICE OF AND OBJECTION TO
RELIEF SOUGHT IN ORDER TO
SHOW CAUSE**

AND:

**US BANK NATIONAL ASSOCIATION AS
TRUSTEE FOR BAFC 2007-4,**

Plaintiff,

v.

**JOHN A. KELLER, JR.; MRS. JOHN A.
KELLER JR., HIS WIFE; ELIZABETH
MACKETHAN,**

Defendants

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
CAPE MAY COUNTY

Docket No. F-62712-09

Civil Action

**NOTICE OF AND OBJECTION TO
RELIEF SOUGHT IN ORDER TO
SHOW CAUSE**

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

Wells Fargo/America's Servicing Company
c/o Mark S. Melodia, Esq.
Reed Smith. LLP
Princeton Forrestal Village
136 Main Street
Princeton, New Jersey 08540

The Honorable Margaret Mary McVeigh, JSC
Superior Court of New Jersey
Chambers 100
71 Hamilton Street
Paterson, New Jersey 07505

NOTICE OF AND OBJECTION TO RELIEF SOUGHT IN ORDER TO SHOW CAUSE

Defendant, John A. Keller, hereby notifies the above parties that he objects to the relief sought in the above captioned action by Wells Fargo Bank, N.A.

The February 27, 2012 decision by New Jersey's Supreme Court in U.S. Bank National Association as Trustee for CSAB Mortgage-Backed Pass-Through Certificates, Series 2006-3 v Guillaume, 2012 WL 603307 (2012) continues to provide trial courts in New Jersey with the authority to dismiss foreclosure actions, without prejudice for procedural and substantive defects. Defendant submits that, although there are two additional remedies, one of which is sought by Wells Fargo, dismissal without prejudice remains the disposition that is most fair to least likely to trample the Defendant's procedural and substantive due process rights and traditional notions of fundamental fairness and fair play.

N.J.S.A. 2A:50-56 is clear and specifically provides that before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation or commence any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender shall give the residential mortgage

debtor notice of such intention at least 30 days in advance of such action as provided in this section. The statute further provides that the notice of intention is only effective on the date the compliant notice is properly served upon the foreclosure defendant. Accordingly, if a defective notice is provided, the notice is deficient, there can be no acceleration and a foreclosure action cannot be properly instituted as in personem jurisdiction over the Defendant is lacking. Further, any judicial proceedings taken under an underlying foreclosure matter, including the entry of default, in a case where the Court lack in personem jurisdiction, are void *ab initio*.

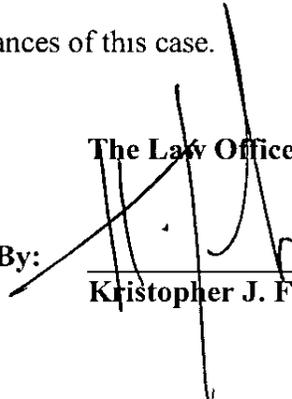
Defendant submits that debtors who are in receipt of defective notices of intent to foreclose are never truly advised, clearly and conspicuously, of things such as the particular obligation or real estate security interest; the nature of the default claimed; the right to cure the alleged default; what performance, including what sum of money, if any, and interest, shall be tendered to cure the default; the date by which the debtor shall cure the default to avoid initiation of foreclosure proceedings (which date cannot be less than 30 days after the date the notice is effective, and the name and address and phone number of a person to whom the payment or tender shall be made; that if the debtor does not cure the default by the date specified, the lender may take steps to terminate the debtor's ownership in the property by commencing a foreclosure suit in a court of competent jurisdiction; the right of the debtor to transfer the real estate to another person subject to the security interest; that the debtor is advised to seek counsel; the possible availability of financial assistance for curing a default from various programs operated by the State or federal government or nonprofit organizations; or the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default.

Lastly, it is important to note that compliance with N.J.S.A. 2A:50.56 must be set forth in the pleadings of any legal action referred therein. Compliance must be construed as strict compliance, not partial compliance.

Alternatively, in the event this Court is inclined to exercise its discretion beyond a dismissal without prejudice, the Defendant respectfully requests that:

1. Wells Fargo provide the Defendant a fully compliant notice of intention to foreclose;
2. Any acceleration of the Defendant's loan be voided, vacated or otherwise adjudicated to be without merit;
3. any default entered in the underlying foreclosure be vacated and the matter returned to a pre-default status; and
4. Defendant be provided with a period of time to be not less than 35 days to properly evaluate the allegations and potential defenses of the underlying foreclosure action.

Defendant submits, in the alternative to a dismissal without prejudice, that the above remedy is appropriate to the circumstances of this case.

The Law Offices of Kristopher J. Facenda, LLC
By: 

Kristopher J. Facenda, Esq.

I, Kristopher J. Facenda, Esq. do hereby certify as follows:

1. I am an attorney at law in the State of New Jersey and counsel to John A. Keller, Jr., Defendants in the above-captioned matters.

2. On October 17, 2012, I sent via Overnight Mail - UPS, an original and one copy of Defendant's Notice of and Objection to Relief Sought in Order to Show Cause and Certification of Service to the following:

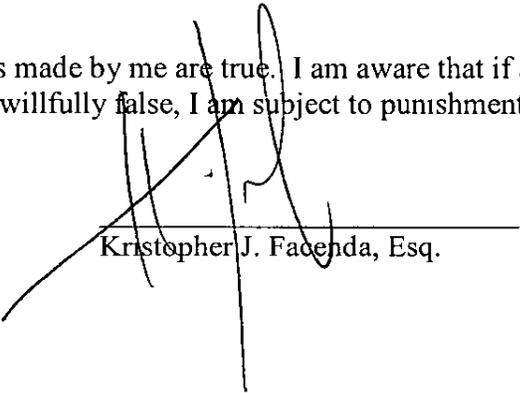
Superior Court Clerk's Office, Foreclosure Processing Services
Attention: Objection to Notice of Intention to Foreclose
P.O. Box 971
Trenton, New Jersey 08625

Wells Fargo/America's Servicing Company
c/o Mark S. Melodia, Esq.
Reed Smith. LLP
Princeton Forrestal Village
136 Main Street
Princeton, New Jersey 08540

The Honorable Margaret Mary McVeigh, JSC
Superior Court of New Jersey
Chambers 100
71 Hamilton Street
Paterson, New Jersey 07505

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: October 17, 2012



Kristopher J. Facenda, Esq.

THE LAW OFFICES OF
KRISTOPHER J. FACENDA, LLC

Counselor at Law
2020 New Road
Linwood, New Jersey 08221
(609) 385-8791
kris@facendalaw.com

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OCT 18 2012
SUPERIOR COURT
CLERK'S OFFICE

October 17, 2012

Sent via Overnight Mail

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

**Re: In Re Application of Wells Fargo Bank NA to Issue Corrected Notices of
Intent to Foreclose
Docket No. F-9564-12**

**Re: US Bank National v. Keller, et als.
Docket No. F-62712-09**

To Whom It May Concern:

Please be advised that I represent John A. Keller, Jr. in connection with the above referenced actions. In that regard, enclosed please find an original and one copy of the following:

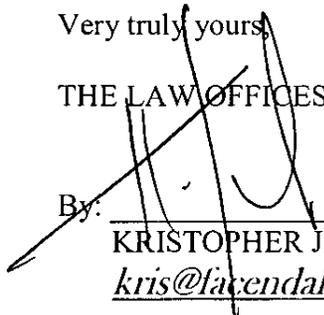
1. Notice of Objection to Relief Sought in Order to Show Cause;
2. Certification of Service.

Kindly file same and return a copy of the "filed" document to my office in the enclosed envelope.

Thank you for your attention to this matter

Very truly yours,

THE LAW OFFICES OF KRISTOPHER J. FACENDA, LLC

By: 

KRISTOPHER J. FACENDA
kris@facendalaw.com

THE LAW OFFICES OF
KRISTOPHER J. FACENDA, LLC

October 17, 2012

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Encl.

KJF

cc: John A. Keller, Jr. (via email)

Copies Sent via Overnight Mail to:

Wells Fargo/America's Servicing Company
c/o Mark S. Melodia, Esq
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