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October 18, 2012

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

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SUPERIOR COURT
CLERK'S OFFICE

RE: In Re Application by Wells Fargo Bank, N.A. to Issue corrected Notices of Intent to Foreclose on behalf of Identified Foreclosure Plaintiffs in Uncontested Case F-9564-12 U.S. Bank National Association v. Dilcia Mendez, F-20614-09
Letter Brief in Opposition to Order to Show Cause

Dear Sir/Madam:

Please accept this letter brief in lieu of a more formal brief in opposition to the Order to Show Cause.

The summary action allowed by the Order to Show Cause for Wells Fargo to correct deficiencies in its Notices of Intention to Foreclose does not permit attention to defendant's case on an individualized case-by-case basis and defendant's individual right to due process to which she is entitled. As Guillaume stated, courts in equity "have long been charged with the responsibility to fashion equitable remedies that address the unique setting of each case." US Bank Nat'l Ass'n v. Guillaume, 208 N.J. 380 (2011) Further, the court stated that, ". . . 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." Id. For these reasons, the remedy for each foreclosure defendant should be addressed individually to be decided on its own merits to protect each defendant's right of due process.

The Guillaume Court held that, "a trial court adjudicating a foreclosure complaint in which the notice of intention does not comply with N.J.S.A. 2S:5-56(c)(11) may [1)] dismiss the action without prejudice, [2)] order the service of a corrected notice, or [3)] impose other appropriate remedies." Id. The correct remedy should be decided by the court after consideration of "the impact of the effect upon the homeowner information about the loan's status and the opportunity to cure the default." Id. By taking summary action, the court here defeats the

opportunity to cure the default.” Id. By taking summary action, the court here defeats the Guillaume ruling by ignoring information about defendant’s loan’s status and the opportunity for her to cure the default.

An alternative to the Order to Show Cause would be to order dismissals without prejudice to allow Plaintiff the opportunity to file its foreclosure complaints properly with the court and give Defendants the opportunity to respond after receiving proper notice as required under the Fair Foreclosure Act. Clearly, the failure to file the notice under the Fair Foreclosure Act has also led to incorrect allegations in its pleadings that it met the requirements of the act. Thus, in addition to the improper notice, false allegations have been filed in the cases where Plaintiff has been permitted to correct Notices of Intention to Foreclosure. Thus, Plaintiff approaches the court with unclean hands and must not be permitted to continue to pursue its current course with the current suit. Instead, Plaintiff’s complaint should be dismissed without prejudice so that Plaintiff can properly follow the mandates of the statute and properly grant defendant the statutory time to cure her default.

CONCLUSION

For the foregoing reasons, Defendant respectfully objects to the Order to Show Cause. Further, Defendant requests that Plaintiff’s complaint be dismissed without prejudice permitting Plaintiff to refile their complaint in foreclosure once they are prepared to make their filings properly and timely.

Respectfully submitted,



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cc:

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