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 SUPERIOR COURT
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 Alice Davis*
 Harvard Law School

*Pursuant to R 1-21-3(b)

October 18, 2012

Clerk, Superior Court
 Chancery Division – Foreclosure Processing Unit
 25 W. Market Street, 6th Floor, North Wing
 Trenton, New Jersey 08625

Re: In re Application by Wells Fargo Bank, N.A. to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases. Docket No. F-09564-12

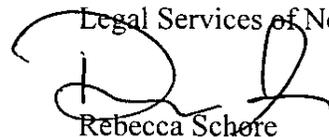
Dear Sir or Madam:

Enclosed for filing are an original and one copy of Letter Brief in Objection to Order to Show Cause, proposed Order and Certification of Service.

Kindly file and return a copy marked "filed" in the enclosed self-addressed, stamped envelope. Thank you for your assistance.

Please note that pursuant to R. 1:13 no filing fees may be charged because the defendant is represented by a legal services office.

Very truly yours,
 Legal Services of New Jersey



Rebecca Schore

Enclosures

cc: Diane Bettino, Esq



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*Pursuant to R 1-21-3(b)

October 18, 2012

Superior Court of New Jersey
 Foreclosure Processing Unit
 25 W Market Street, 6th Floor, North Wing
 Trenton, New Jersey 08625
 ATTN: Honorable Margaret Mary McVeigh

**Re: In re Application by Wells Fargo Bank, N.A. to
 Issue Corrected Notices of Intent to Foreclose on
 Behalf of Identified Foreclosure Plaintiffs in
 Uncontested Cases.
 Docket No. F-09564-12**

Dear Judge McVeigh:

Amicus curiae Legal Services of New Jersey is alarmed by the potential repercussions of Wells Fargo's (and other servicers') failure to prosecute foreclosure actions since at least December, 2010. We recognize the need to resolve these court actions expeditiously and efficiently, just as any other litigation. Permitting Wells Fargo and other loan servicers to effect a mass-correction of false pleadings by way of Order to Show Cause without a balanced measure of relief to homeowners – the vast majority of whom are unrepresented -- denies due process. A review of the individual objections to the Order to Show Cause reveals several serious concerns:

1. Homeowners are at an extreme disadvantage because they are mostly unrepresented, and the Order to Show Cause is too complicated for many pro se litigants to understand. A review of the filed objections demonstrates that the vast majority of people did not understand the Order to Show Cause process; some expressed their confusion outright and for others the confusion is evident in the content of the objection, such as where a homeowner answers as if responding to a new, individual foreclosure complaint. Plaintiff's counsel acknowledges in an October 10, 2012 letter to this court that they received many calls and letters expressing confusion with the Order to Show Cause process itself – including a few from attorneys. A chart attached to that letter seems to indicate that some of those who were confused apparently received letters from the court that their objections were improper. Other foreclosure defendants called plaintiff's counsel to express confusion but did not file objections, perhaps because they remained confused after the telephone call. Still more sought help from housing counselors, court

ombudsmen, and private attorneys who may have been unprepared to assist them effectively with this unusual process. **Necessary response: any communication from a homeowner in response to the Order to Show Cause must be treated as a proper objection and must have an individual hearing as to the appropriate form of relief, notwithstanding that the homeowner may be in default.**

2. It is inequitable to provide relief to a foreclosure plaintiffs that violated the law while simultaneously denying relief to a homeowner in default who seeks to raise defenses to the foreclosure. This matter involves foreclosures filed 2 – 5 years ago, which lenders have failed to prosecute since at least December, 2010. The individual objections to the Order to Show Cause demonstrate that some if not most homeowners did not comprehend that a foreclosure complaint has been pending against them for 2 ½ years with no activity. Their belief is reasonable because:

(1) At no point in time did the New Jersey judiciary order a stay of foreclosure actions As the court is all too aware, the foreclosure backlog is the result of industry-wide filings of false pleadings (known as robo-signing). Neither homeowners nor the court is responsible for the backlog. Following the Supreme Court's December 2010 Order, foreclosure plaintiffs had the option to continue to prosecute these matters either by choosing to file a Certification of Diligent Inquiry or to correct false pleadings. Instead, Wells Fargo and the other servicers did neither. Meanwhile, at no point during this two and a half year voluntary stay did Wells Fargo or any other servicer notify homeowners of the status of their individual foreclosure actions. The individual objections clearly demonstrate that upon receiving Wells Fargo's Order to Show Cause packages, many homeowners were shocked to discover that a foreclosure action has been pending for years.

(2) In any other civil litigation, complaints which have not been prosecuted for this period of time would have been administratively dismissed for non-prosecution pursuant to R. 1:13-7. See also R. 4:64-8.

Necessary response: Some affected homeowners are asking for an opportunity to file an answer and defend against foreclosure on grounds other than the defective notice of intention to foreclose, including standing and servicing practices that violate the Consumer Fraud Act. See Gonzalez v. Wilshire, 207 N.J. 557 (2011). If the court grants Wells Fargo the opportunity to correct the Notice of Intention to Foreclose rather than dismiss the case, it should balance that exercise of equitable power by permitting homeowners to answer what is essentially an amended complaint.

3. The delay has been extremely prejudicial to homeowners and corrosive to home equity in part because servicers such as Wells Fargo routinely seek to impose the contract rate of interest and other fees allegedly incurred during the pendency of the case. These loans which have been in suspended animation have included the most predatory of subprime loans, many are at extremely high rates of interest. Some of our clients have rates of interest that exceed 13%. At the same time the pre-judgment rate of interest set by the Court was 1.5% in 2010, .5% in 2011 and 2012 and will be 0% in 2013 Pressler & Verniero, Current N.J Court Rules, (Gann), Publisher's note, R. 4:42-11.

The court has discretion whether to impose the contract rate of interest or the pre-judgment rate of interest or some other equitable rate or none at all in contract matters including mortgage foreclosure matters. *Pressler & Verniero*, Current N.J. Court Rules, (Gann), R. 4:64-2, Comment 2.1 (“In calculating the amount due, note that there may be three discrete interest periods; until default, assessed at the contract rate; between default and judgment, assessed at either the contract rate or by the court ”) In addition, although routinely added to both the cure amount in the NOI and the request for judgment post complaint, late fees should not be added to the judgment unless expressly provided for in the note and even then under the circumstances of this delay it is inequitable to assess a monthly late fee against homeowners who had absolutely no control over the delay and some of whom pleaded to conclude the matter. The imposition of excessive fees and interest erodes home equity. Even a foreclosed homeowner is entitled to receive the remaining equity in her home. R. 4:64-3 **Necessary Response: This court’s order resolving the Order to Show Cause must reflect that a where servicer relies upon a corrected Notice of Intention to Foreclose the court will impose the pre-judgment interest rate rather than the contract interest rate and will exclude late fees and other alleged property preservation fees from the judgment amount.**

4. Many homeowners challenged the alleged cure amount due in their objections: Wells Fargo has treated their corrected Notices of Intention to Foreclose as if they were being served pre-foreclosure. The cure amounts on the corrected notices should be equal to the homeowners’ monthly mortgage payment plus the monthly late fee; the Fair Foreclosure Act prohibits inclusion of any other fees. N.J.S.A. 2A:50-56(c)(7); N.J.S.A. 2A:50-57. Some homeowners filed objections challenging the amount due. Wells Fargo’s corrected notices fail to provide a breakdown or include an account history. An accurate cure amount is critical even where the homeowner does not have the full amount of cash in hand for purposes of eligibility for state and federal foreclosure prevention programs such as Homekeeper and the Housing Affordable Modification Program. An inflated cure amount may exceed the limits of those programs and render an otherwise preventable foreclosure ineligible. **Necessary response: For those homeowners seeking loan modification or short sale, the court’s order should reflect that Wells Fargo must provide the borrower with a life of loan account history to explain the cure amount and must permit a new thirty day period to cure.**

5. Wells Fargo has failed to engage in good faith negotiation of loan modifications or short sales: The majority of objections express frustration about Wells Fargo’s failure to process loan modification applications properly or to negotiate fairly. Many detail their persistent efforts to reach a resolution and Wells Fargo’s frustration of their efforts. The National Consumer Law Center has called this notorious process a system of “calculated chaos.” National Consumer Law Center, *Rebuilding America: How States Can Save Millions of Homes Through Foreclosure Mediation*, February 2012, at p. 5 available at http://www.nclc.org/images/pdf/foreclosure_mortgage/mediation/report-foreclosure-meditation.pdf.

It is indisputable that loan modification is frequently in the best interest of homeowners, lenders, communities and -- perhaps most important -- the recovery of the overall economy. In the face of Wells Fargo’s misconduct, the options available to the judiciary are not limited to either a free house or a foreclosure. Chancery courts have the equitable authority to order the servicer to provide borrowers with account histories explaining the amount due, or to require the

servicer to prove up the amount due to facilitate loan modification or short sale. They can compel the servicer to process a loan modification application, and, if the loan modification is denied, to require the servicer to provide the homeowner with a basis for denial – without which the homeowner is deprived of the opportunity to challenge a wrongful denial. They can compel a servicer to provide a homeowner with relocation assistance, such as is required by the National Mortgage Settlement. Chancery courts even have the equitable power to modify mortgages in appropriate circumstances, such as where a servicer offers a loan modification and then reneges or where the homeowner is clearly eligible for a loan modification under the HAMP program but is inexplicably or wrongfully denied. See, e.g., Sovereign Bank FSB v Kuelzow, 297 N.J. Super. 187, 198 (App Div. 1997); Sanguini v. Sanguini, 197 N.J. Super. 505, 509 (Ch. Div. 1984). **Necessary Response: Where the homeowner alleges that Wells Fargo failed to process a homeowner's loan modification application properly, the court should either dismiss the foreclosure complaint or refer the matter to the vicinage for adjudication and consideration of appropriate equitable relief.**

6. The Order to Show Cause process violates the requirements of the National Mortgage Settlement and Wells Fargo's federal Housing Affordable Modification Program obligations. In February 2012, Wells Fargo and other servicers entered into an agreement with the Attorneys General of 49 states (including New Jersey) to address allegations that the servicers filed false pleadings ("The National Mortgage Settlement"). The Notice of Intention to Foreclose in these matters is one such false pleading. The National Mortgage Settlement requires Wells Fargo and the other servicers not only to provide homeowners with \$17 billion in principal reduction loan modifications. Moreover, obligates servicers to reform several servicing practices, such as "dual track foreclosures" (i.e., the simultaneous prosecution of a foreclosure action with the negotiation of a loan modification. Where a homeowner has not received a decision on a pending loan modification application, this proceeding runs afoul of the National Mortgage Settlement prohibition against dual track foreclosures. Another required servicing reform is that the servicer must provide the homeowner with a "single point of contact." In this matter, Wells Fargo identified an individual by name as the single point of contact for disputes about the cure amount. Some of the objections and telephone calls to plaintiff's counsel reflect that they tried to reach the contact individual, but were unable to do so. A client of LSNJ reported that the telephone number that Wells Fargo provided for the contact person was actually the telephone number of a general call center, and the representative with whom he spoke never heard of the named individual and could not connect the call. **Necessary Response: Wells Fargo must be required to certify for each matter (1) whether a loan modification was requested; (2) that if a modification was requested, Wells Fargo evaluated it; and (3) if it was denied the reason for the denial. Where the homeowner disputes that Wells Fargo properly processed a loan modification application properly, the court should either dismiss the foreclosure complaint, or refer the matter to the vicinage for adjudication and consideration of appropriate equitable relief.**

Based upon the above, Amicus Legal Services of New Jersey respectfully requests that this court deny the relief sought by the plaintiff without providing the equivalent relief to homeowners as follows:

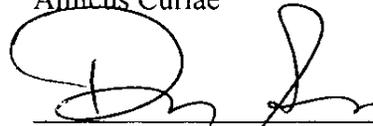
- 1. Any communication from a homeowner in response to the Order to Show Cause must be treated as a proper objection and must have an individual hearing as to**

the appropriate form of relief, notwithstanding that the homeowner may be in default.

- 2. In cases in which a foreclosure plaintiff has been granted an opportunity to file a corrected notice of intention to foreclose, the Order to Show Cause foreclosure defendants may file an answer to the complaint without further moving to vacate default pursuant to R. 4:43.**
- 3. This court's order resolving the Order to Show Cause must reflect that a where servicer relies upon a corrected Notice of Intention to Foreclose the court will impose the pre-judgment interest rate rather than the contract interest rate and will exclude late fees and other alleged property preservation fees from the judgment amount.**
- 4. For those homeowners seeking loan modification or short sale, the court's order should reflect that Wells Fargo must provide the borrower with a life of loan account history to explain the cure amount and must permit a new thirty day period to cure.**
- 5. Where the homeowner alleges that Wells Fargo failed to process a homeowner's loan modification application properly, the court should either dismiss the foreclosure complaint, or refer the matter to the vicinage for adjudication and consideration of appropriate equitable relief.**
- 6. Wells Fargo must be required to certify for each matter (1) whether a loan modification was requested; (2) that if a modification was requested, Wells Fargo evaluated it; and (3) if it was denied the reason for the denial. Where the homeowner disputes that Wells Fargo properly processed a loan modification application properly, the court should either dismiss the foreclosure complaint, or refer the matter to the vicinage for adjudication and consideration of appropriate equitable relief.**

Respectfully submitted,
LEGAL SERVICES OF NEW JERSEY
Amicus Curiae

By:



Rebecca Schore, Esq.

cc: Diane Bettino, Esq.

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Attorneys for *Amicus Curiae* Legal Services of New Jersey
By: Margaret Lambe Jurow

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
:
:

ORDER

THIS MATTER, having been opened to the Court by Wells Fargo Bank, N. A. and Legal Services of New Jersey appearing as amicus curiae in this matter; and the Court having considered the papers and objections and comments filed on behalf of numerous individual foreclosure defendants and for good cause shown;

IT IS on this _____ day of November _____, 2012,

ORDERED, that:

1. Any communication from a homeowner in response to the Order to Show Cause shall be treated as a proper objection and shall be referred to the local vicinage for an individual hearing as to the appropriate form of relief, notwithstanding that the homeowner may be in default.

2. In cases in which a foreclosure plaintiff has been granted an opportunity to file a corrected notice of intention to foreclose, the defendants, listed on Exhibit A annexed hereto, may file an answer to the complaint without further moving to vacate default pursuant to R. 4.43. Any answer must be filed within ___ days of service of this order.

encompassed in this Order to Show Cause shall bear pre-judgment interest rate from the filing of the complaint and not the contract rate of interest and will exclude late fees and other alleged property preservation fees from the judgment amount.

3. Wells Fargo shall provide a life of loan account history to any homeowner affected by this Order to Show Cause with pending loan modification applications within _____ days of the date hereof.

4. Where a homeowner filed an objection or otherwise communicated that Wells Fargo failed to process the homeowner's loan modification application properly in response to the Order to Show Cause, the matter shall be referred to the local vicinage which shall adjudicate the dispute and either dismiss the complaint or order other appropriate equitable relief

5. Wells Fargo shall provide an updated status report and chart similar to that provided on October 10, 2012 and that shall contain the following information: (1) whether a loan modification was requested; (2) that if a modification was requested, Wells Fargo evaluated it; and (3) if it was denied the reason for the denial. In the event of a homeowner disputes the updated status, which shall adjudicate the dispute and either dismiss the complaint or order other appropriate equitable relief.

IT IS FURTHER ORDERED, that a copy of this Order be served on all counsel of record within _____ days of the date hereof.

HON MARGARET MARY MCVEIGH

LEGAL SERVICES OF NEW JERSEY, INC.
Melville D. Miller, Jr., President
100 Metroplex Drive, Suite 402
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Attorneys for *Amicus Curiae* Legal Services of New Jersey
By: Margaret Lambe Jurow

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-9564-12
: Civil Action
: **CERTIFICATION OF SERVICE**

Maria S. Giovene, of full age, hereby certifies as follows

1. I am employed by Legal Services of New Jersey as an Administrative Assistant.
2. On October 18, 2012, the original and a copy of a Letter Brief in lieu of a more formal submission in objection to the Order to Show Cause, proposed form of Order and Certification of Service were sent by JEFIS and by email to Michele Smith michelle.smith1@judiciary.state.nj.us and by Lawyers Service to:

Clerk, Superior Court
Chancery Division – Foreclosure Processing Unit
25 W. Market Street, 6th Floor, North Wing
Trenton, New Jersey 08611

3. On October 18, 2012, the original and a copy of a Letter Brief in lieu of a more formal submission in opposition to the Order to Show Cause, proposed form of Order and Certification of Service were sent to the following by email and Lawyers Service

Honorable Margaret Mary McVeigh, Chief Judge
Superior Court of New Jersey
Passaic County Courthouse
77 Hamilton Street
Paterson, New Jersey 07505

Diane Bettino, Esq
Reed Smith, LLP
136 Main Street, Suite 250
Princeton Forrestal Village
Princeton, New Jersey 08540

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.



Maria S. Giovene

Dated: October 18, 2012