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September 26, 2012

Via Overnight Delivery

The Honorable Margaret Mary McVeigh, P.J. Ch.  
Superior Court of New Jersey  
Passaic County Courthouse, Chambers 100  
71 Hamilton Street  
Paterson, New Jersey 07505

Re: In re Application by JPMorgan Chase Bank, N.A. to Issue Corrected  
Notices of Intent to Foreclose on Behalf of Identified Foreclosure  
Plaintiffs in Uncontested Cases

Dear Judge McVeigh:

This firm represents JPMorgan Chase Bank, N.A. ("JPMC"). As set forth in the enclosed Verified Complaint, JPMC makes this application on behalf of itself and other Foreclosure Plaintiffs for loans for which JPMC acts as servicer, pursuant to the authority granted to JPMC by those Foreclosure Plaintiffs. JPMC seeks an Order from this Court permitting JPMC to issue corrected Notices of Intent to Foreclose ("NOI") as set forth in the New Jersey Supreme Court Order dated April 4, 2012, that was entered following the Court's decision in *U.S. Bank, N.A. v. Guillaume*, 209 N.J. 449 (2012), ("*Guillaume*"). JPMC's application is similar to the application submitted by Wells Fargo on July 17, 2012, which was previously approved by the Court.

By way of background, JPMC services mortgage loans for residential properties in New Jersey. Ver. Comp., ¶ 2. JPMC services loans both where (i) JPMC is the lender and (ii) where another entity is the lender, and JPMC acts as servicer under agreement with the lender. As the servicer of mortgage loans, JPMC undertakes payment collection, loss mitigation and collection efforts, including foreclosure. Id., ¶ 3. JPMC undertakes those tasks in accordance with the contracts that govern its relationship with the owners of the loans as well as the loan documents, Rules of Court and any applicable laws. Id. As the entity collecting and processing payments, JPMC possesses the information relevant to the payments made, escrows, payments that are due and whether a loan is in default and by how much. Id. This information is maintained on

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JPMC's systems of record. *Id.* In cases where JPMC is acting as servicer for another Foreclosure Plaintiff, the Foreclosure Plaintiff is not likely to have possession of the relevant servicing information. *Id.*

One of JPMC's duties as a servicer on a defaulted mortgage is to issue the NOI, in accordance with the Fair Foreclosure Act ("FFA") at N.J.S.A. 2A:50-56. The NOI is prepared based upon current loan information held by JPMC. *Id.*, ¶ 4.

On February 27, 2012, the New Jersey Supreme Court decided *Guillaume* and held that the FFA requires strict adherence to the notice requirements set forth at N.J.S.A. 2A:50-56(c) for all NOIs. The Court also held that a court adjudicating a foreclosure action in which the strict requirements of N.J.S.A. 2A:50-56(c) were not met has the discretion to choose the appropriate remedy, including allowing a corrected NOI to be served.

Following its decision in *Guillaume*, the Supreme Court issued an Order on April 4, 2012 which authorizes this Court to entertain summary actions by Order to Show Cause as to why Plaintiffs who caused deficient NOIs to be served should not be allowed to issue corrected NOIs to defendant/mortgagors and/or parties obligated on the debt ("Foreclosure Defendants") in pending, pre-judgment uncontested foreclosures filed prior to February 27, 2012 in which final judgment has not yet been entered. The April 4th Order also instructed that any corrected NOI must be accompanied by a letter to each Foreclosure Defendant setting forth:

- the reasons why the corrected NOI is being served;
- the procedure to follow in the event a Foreclosure Defendant wishes to object to the corrected NOI;
- the name of a person to contact with any questions; and
- that the receipt of the corrected NOI allows the Foreclosure Defendant 30<sup>1</sup> days in which to object to or cure the default.

In accordance with the decision in *Guillaume*, JPMC has identified a population of foreclosure cases in which the previously served NOIs failed to include the name and address of the lender, as required by N.J.S.A. 2A:50-56(c)(11). JPMC has also determined that it may lack sufficient information to verify the facts surrounding the mailing of the original NOI (*e.g.*, JPMC may lack proof of mailing for an NOI mailed by a vendor; or JPMC may lack a certified mail receipt for an NOI). Accordingly, JPMC seeks an Order from this Court allowing JPMC to serve

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<sup>1</sup> JPMC will provide borrowers 35 days from the date of the corrected NOI, as reflected in the correspondence that will be sent to the borrowers.

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corrected NOIs that will include the name and address of the current lender and for which JPMC will have conclusive proof of mailing so that Certifications of Due Diligence can be signed and the uncontested<sup>2</sup> foreclosures can proceed to final judgment.

JPMC has worked with its New Jersey foreclosure attorneys to compile a list of all pending, uncontested foreclosures in New Jersey in which final judgment has not been entered (the "Corrected NOI List"). This list includes foreclosures in which JPMC served technically deficient NOIs prior to February 12, 2012 that failed to identify the lender and the lender's address and foreclosures for which JPMC may lack sufficient proof of mailing. For each pending case at issue in this application, the Corrected NOI List includes the named Plaintiff, the Docket Number, the first named Foreclosure Defendant and the County. The Corrected NOI List, attached as Exhibits 1 through 45 to the Verified Complaint, is broken down by each named Plaintiff. There are a total of 45 named Plaintiffs for which JPMC seeks to correct previously served NOIs. Those named Plaintiffs (and their affiliated entities) are the following:

1. Advanta Mortgage Corp.
2. Ahmanson Obligation Co.
3. BAC Home Loans
4. Bank of America
5. Capital One
6. Capital Financial Mortgage Corp.
7. Citibank
8. Columbia Bank
9. Commerce Bancorp
10. Countrywide
11. CTX
12. Deutsche Bank
13. Dollar Bank
14. Dynamic Financial
15. Eastern American
16. EMC
17. FHLMC
18. First Horizon
19. FNMA
20. GNMA
21. Homesales, Inc.
22. HSBC
23. Hudson City

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<sup>2</sup> JPMC will file a supplemental motion concerning contested foreclosure files which were subsequently returned to the Office of Foreclosure.

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24. Investor Savings Bank
25. JP Morgan Chase Bank, N.A.
26. LaSalle Bank
27. Lehman Brothers
28. Lex Special Assets
29. MERS
30. Metmor Financial
31. North Fork Bank
32. PNC Bank
33. Raymond James Bank
34. Sovereign Bank
35. Sterling Home Mortgage
36. Sunset Mortgage
37. TD Bank
38. The Bank of New York
39. U.S. Bank
40. Union Federal Mortgage Corp.
41. United Mortgage Corp.
42. Wachovia
43. Washington Mutual
44. Washington Mutual Specialty
45. Wells Fargo

In accordance with the April 4th Order, in conjunction with this Court's guidance, JPMC will also send a form of letter ("Explanatory Letter") to each Foreclosure Defendant on the Corrected NOI List. Attached as Exhibit A to the Verified Complaint is a form of Explanatory Letter that will:

- explain the reason why the corrected NOI is being served;
- explain the procedure to follow in the event that a Foreclosure Defendant wishes to object to the corrected NOI;
- the borrower name, loan number, plaintiff name and docket number for the underlying foreclosure action;
- identify a contact person for any questions; and
- advise the Foreclosure Defendant of their right to object to the corrected NOI as well as the right to cure the default within 35 days of the date of the corrected NOI.

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In further support of this application, JPMC has also supplied, as Exhibit B to the Verified Complaint, the proposed form of corrected NOI which JPMC will serve on each Foreclosure Defendant identified on the Corrected NOI List. The corrected NOI will include, inter alia, information specific to their loan, their default and the lender name and address. In addition, the corrected NOI will also exclude attorneys' fees and costs incurred in the pending foreclosure actions. Permitting JPMC to issue corrected NOIs will provide the Foreclosure Defendants with yet another opportunity to cure their default and reinstate their loans, without the incursion of attorneys' fees and costs that are permitted to be charged after a foreclosure case has been filed. Provision of another opportunity to cure provides a benefit to the Foreclosure Defendants.

Notice will also be provided via publication notice in four newspapers to be chosen by this Court. JPMC will publish the proposed Publication Notice provided with these papers two times in each of the four papers, thereby providing additional notice to Foreclosure Defendants.

Allowing JPMC to cure the deficient NOIs as requested in this application is the correct remedy. In *Guillaume*, the Supreme Court held that when faced with a deficient NOI, the trial court can determine the appropriate remedy and should consider the express purpose of the NOI provision: "to provide notice that makes 'the debtor aware of the situation' and to enable the homeowner to attempt to cure the default." 209 N.J. at 479. The Court stated that in fashioning a remedy, the trial court should "consider the impact of the defect in the notice of intention upon the homeowner's information about the status of the loan, and on his or her opportunity to cure the default." *Id.* In determining that a cure was the appropriate remedy, the trial court in *Guillaume* took such considerations into account when fashioning the remedy, including the nature of the deficiency. *Id.* at 480.

As in *Guillaume*, in this application, JPMC seeks an Order allowing it to issue corrected NOIs to include the name and address of the lender in uncontested foreclosure actions. The trial court in *Guillaume* determined that the nature of that deficiency would allow a cure of the NOI, as opposed to some other remedy, even in the context of a contested foreclosure. In the application before this Court, JPMC seeks to correct the same deficiency but in uncontested foreclosures. In addition, and out of abundance of caution, JPMC seeks to serve corrected NOIs on foreclosures where it may lack sufficient proof of mailing so that counsel can sign Certificates of Diligent Inquiry. The Foreclosure Defendants have already received numerous forms of notice concerning their foreclosure case during their cases and, with the issuance of a corrected NOI, will receive yet another opportunity to cure their defaults and reinstate their loans. Further, there is no indication of prejudice nor could there be because JPMC will waive the attorneys' fees and costs that have been incurred in the foreclosures for purposes of the corrected NOI and possible reinstatement pursuant to this application. Furthermore, as the proposed Explanatory Letter makes clear, to the extent that a Foreclosure Defendant wants to object to the information contained in the corrected NOI itself, the Foreclosure Defendant will have the opportunity to

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raise and voice those objections in their individual foreclosure cases. Moreover, the Order to Show Cause provides a mechanism and process whereby the Foreclosure Defendants can raise directly with this Court any concern, objection or potential prejudice that they believe results from allowing JPMC to correct the deficient NOIs.

For the reasons set forth in JPMC's application, the Supreme Court has issued an Order that is faithful to the decision in *Guillaume*, and provides a mechanism to cure deficient NOIs so that Foreclosure Defendants will receive the notice that they should have received under the FFA and will also allow for the orderly judicial administration in the pending, uncontested foreclosures. For these reasons, it is respectfully requested that this Court:

- (a) Approve the form of Explanatory Letter at Exhibit A to the Verified Complaint;
- (b) Approve the form of corrected NOI at Exhibit B to the Verified Complaint; and
- (c) Allow JPMC to serve corrected NOIs to the Foreclosure Defendants on the Corrected NOI List.

Undersigned counsel appreciates the Court's attention to this application and will be available to the Court to respond to any questions that may arise after review of the material filed today.

Respectfully submitted,



Christopher C. Loeber  
Brian A. Herman (to be admitted pro hac vice)  
Michele A. Coffey (to be admitted pro hac vice)

cc: Jennifer Perez, Superior Court Clerk (via JEFIS)  
Margaret Lambe Jurow, Esquire (via Federal Express)