

REED SMITH LLP

Formed in the State of Delaware

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Attorneys for Franklin Credit Management Corporation

)	SUPERIOR COURT OF NEW JERSEY
	)	CHANCERY DIVISION
IN RE APPLICATION BY FRANKLIN	)	_____ COUNTY
CREDIT MANAGEMENT)	
CORPORATION TO ISSUE	)	DOCKET NO.: F- F -022940-12
CORRECTED NOTICES OF INTENT)	
TO FORECLOSE ON BEHALF OF	)	<u>CIVIL ACTION</u>
IDENTIFIED FORECLOSURE)	
PLAINTIFFS IN UNCONTESTED)	
CASES	)	ORDER TO SHOW CAUSE
)	
)	

THIS MATTER being brought before the Court by Reed Smith LLP, attorneys for Franklin Credit Management Corporation (“Franklin Credit”), authorized to act on behalf of Foreclosure Plaintiffs in pending foreclosure cases in New Jersey, seeking relief by way of summary action for an Order permitting Franklin Credit to issue corrected Notices of Intent to Foreclose (“NOI”) to the defendant mortgagor and/or parties obligated on the debt (“Foreclosure Defendants”) in the pending, pre-judgment, uncontested foreclosure cases listed on the Exhibits 1 through 4 to the Verified Complaint (“Corrected NOI List”) to include the name and address of the lender, and based upon the New Jersey Supreme Court’s decision in US Bank, N.A. v. Guillaume, 209 N.J. 449 (2012), the implementing Order of the New Jersey Supreme Court dated April 4, 2012, and for good cause shown;

It is on this ____ day of _____, 2012 **ORDERED** that the Foreclosure Defendants whose names appear on the Corrected NOI List may appear before the Superior Court at the _____ County Courthouse, _____, New Jersey at ____ o'clock, on the _____ day of _____, 2012 to object to this Court's Order allowing Franklin Credit to issue corrected NOIs pursuant to this Order to Show Cause.

AND IT IS FURTHER ORDERED THAT FOR EACH FORECLOSURE ACTION IN WHICH FRANKLIN CREDIT ISSUES A CORRECTED NOI TO A FORECLOSURE DEFENDANT:

1. Franklin Credit will issue a letter ("Explanatory Letter") to each Foreclosure Defendant in the form attached as Exhibit A to the Verified Complaint. The Explanatory Letter will explain:

- the reasons why the corrected NOI is being served;
- the procedure to follow in the event a Foreclosure Defendant wishes to object to the NOI;
- the individuals to contact with any questions; and
- their right to object to the corrected NOI or their right to cure the default within 30 days of the date of the corrected NOI.

2. Franklin Credit will issue a corrected NOI in the form attached as Exhibit B to the Verified Complaint and shall attach such NOI to the Explanatory Letter referenced in paragraph 1 above. The corrected NOI will exclude attorneys' fees and foreclosure costs that have been incurred in the pending foreclosure cases. In accordance with the servicing guidelines and as required by N.J.S.A. 2A:50-56(e), the Explanatory Letter and corrected NOI will be sent by Franklin Credit, the servicing agent.

3. Franklin Credit will serve the corrected NOI, the Explanatory Letter, the Verified Complaint without the attached Exhibits and a copy of this Order to Show Cause (collectively, the "OSC Package"), via certified mail, return receipt requested and regular mail at the last known address of the Foreclosure Defendant. For purposes of this Order to Show Cause, Franklin Credit may serve each marital couple residing at the same address with one OSC Package via certified mail and regular mail.¹

4. A copy of Franklin Credit's complete application to this Court shall be loaded onto the New Jersey Courts website within 5 days of the date of this Order where it will be available for review by the general public at the website link -- <http://www.judiciary.state.nj.us/> and all attachments will be provided in searchable PDF files.

5. In addition to providing service of the OSC Package by certified and regular mail, Franklin Credit will, within 2 days prior to _____, 2012, provide publication notice two (2) times in each of the following four (4) daily newspapers in a manner consistent with similar legal notices: (1) The Star Ledger; (2) The Bergen Record; (3) The Press of Atlantic City; and (4) The Courier Post.

6. Franklin Credit shall file with the Court its proof of service of the OSC Package on Foreclosure Defendants on the Corrected NOI List in the manner consistent with this Order no later than nine (9) days before the return date.

7. You [Foreclosure Defendants] have the right to object in this proceeding to this Order to Show Cause (the process by which this Court gave Franklin Credit permission to serve the corrected NOI). To do so, you must file a written objection under the docket number listed _____

¹ In the event Franklin Credit has been provided an address for the estate of a deceased Foreclosure Defendant, the OSC Package shall be mailed to the address of the estate and/or the executor or administrator, if known and available.

on the first page of this Order for this case. You must set forth with specificity the basis for your objection and file your objection with the Superior Court Clerk's Office at the following address on or before _____, 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

You must also serve a copy of the objection on Franklin Credit's attorney, Diane A. Bettino, Esquire at Reed Smith LLP, Princeton Forrestal Village, 136 Main Street, Princeton, New Jersey 08540, and mail a copy of your objection to Judge _____ at the Superior Court of New Jersey, _____ County Courthouse, _____, New Jersey 07505.

8. You [Foreclosure Defendants] also have the right to object to the corrected NOI that you will receive. You will also have 30 days from service of the OSC Package to cure your default. If you object to any of the contents of your corrected NOI, you must file a written objection under the docket number for your foreclosure action. If you are unsure of the docket number for your foreclosure action, you can access that information on the Court's website on the attached exhibits to the verified complaint or by calling the Franklin Credit representative listed on the Explanatory Letter that will be sent with the corrected NOI. You must set forth with specificity the basis for your objection and file your objection with the Superior Court Clerk's Office at the following address on or before _____, 2012:

Superior Court Clerk's Office, Foreclosure Processing Services
P.O. Box 971
Trenton, New Jersey 08625

You must also serve a copy of the objection on Franklin Credit's attorney, Diane A. Bettino, Esquire at Reed Smith LLP, Princeton Forrestal Village, 136 Main Street, Princeton, New Jersey

08540, and mail a copy of your objection to Judge _____ at the Superior Court of New Jersey, _____ County Courthouse, _____, New Jersey _____.

9. Franklin Credit may file and serve any written reply to any opposition papers received by _____, 2012. The reply papers must be filed with the Clerk of the Superior Court in Mercer County, with a copy to Judge _____ and to each Foreclosure Defendant who filed an opposition.

10. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live. A list of these offices is provided with the corrected NOI.

11. A proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the Court by Franklin Credit no later than nine (9) days before the return date.

12. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause.

13. In the event a foreclosure action has been suspended or stayed as a result of a bankruptcy filing, the OSC Package shall not be sent unless and until the stay is lifted. In such circumstances, the following procedure shall be used. Franklin Credit shall mail the OSC Package within 45 days of the lifting of the stay of the foreclosure action. You [Foreclosure Defendants] will have 30 days in which to object to the corrected NOI or 30 days from service of the OSC Package to cure your default. Any objections to the relief set forth in this Order to Show Cause shall be made in writing to the Court in the County in which your foreclosure action is pending. You must also send a copy of your written papers to Franklin Credit's attorneys, Diane A. Bettino, Esquire, Reed Smith LLP, Princeton Forrestal Village, 136 Main Street,

Princeton, New Jersey 08540, or the Court handling your foreclosure action will not be able to consider your objection.

J.S.C.

Diane A. Bettino
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136 Main Street - Suite 250
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+1 609 987 0050
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reedsmith.com

October 9, 2012

Via Overnight Delivery

Superior Court Clerk's Office
Superior Court of New Jersey
25 Market Street
Trenton, New Jersey 08611

***Re: In re Application by Franklin Credit Management Corporation to Issue Corrected Notices of Intent to Foreclose on Behalf of Identified Foreclosure Plaintiffs in Uncontested Cases
Docket Number F-***

Your Honor:

This firm represents Franklin Credit Management Corporation ("Franklin Credit"). As is set forth in the Verified Complaint, Franklin Credit makes this application on behalf of Foreclosure Plaintiffs pursuant to the authority granted to Franklin Credit by those Foreclosure Plaintiffs. Franklin Credit seeks an Order from this Court permitting it 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").

Franklin Credit services mortgage loans for residential properties in New Jersey. *Ver. Comp.*, ¶ 2. As the servicer of mortgage loans, Franklin Credit undertakes payment collection, loss mitigation and collection efforts, including foreclosure. *Id.*, ¶ 3. Franklin Credit 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, Franklin Credit 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 Franklin Credit's systems of record. *Id.* The Foreclosure Plaintiff is not likely to have possession of the relevant servicing information in cases in which the servicing of the loan is being handled by Franklin Credit. *Id.*

One of Franklin Credit'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 Franklin Credit. *Id.*, ¶ 4.

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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 days in which to object to or cure the default.

In accordance with the decision in Guillaume, Franklin Credit has identified a small 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). Franklin Credit seeks an Order from this Court allowing Franklin Credit to serve corrected NOIs that will include the name and address of the current lender so that Certifications of Due Diligence can be signed and the uncontested foreclosures can proceed to final judgment.

Franklin Credit 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 and in which Franklin Credit served technically deficient NOIs prior to February 12, 2012 that failed to identify the lender and the lender's address ("Corrected NOI List").¹ 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.² The Corrected NOI List, attached as Exhibits 1 through 3 to

¹ The Corrected NOI List also identifies actions in which the bankruptcy stay might apply. Ver. Comp., ¶ 24, Exh. 4.

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the Verified Complaint, is broken down by each Named Plaintiff. There are a total of 3 Named Plaintiffs for which Franklin Credit seeks to correct previously served NOIs. Those Named Plaintiffs (and their affiliated entities) are the following:

1. Huntingdon National Bank³
2. Tribeca Lending Corporation
3. Wells Fargo Bank, N.A.

Also included with the Corrected NOI List are foreclosure cases that may have at one point been contested cases that were sent back to the Office of Foreclosure after resolution of the contesting issues, pursuant to N.J. Court Rule 4:64(1)(c)(3). Franklin Credit has included all cases within this application because the current application offers an additional benefit to any of these Foreclosure Defendants and will allow them to raise whatever objections they have to the process allowing the issuance of the corrected NOI or to the NOI itself, which can be asserted in their individual foreclosure action. Excluding such Foreclosure Defendants from this process will only leave those cases in a limbo state, which is not beneficial for the Parties or the Court.

In accordance with the April 4th Order, in conjunction with this Court's guidance, Franklin Credit 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;
- the procedure to follow in the event that a Foreclosure Defendant wishes to object to the corrected NOI;
- identifies a contact person for any questions; and
- advises the Foreclosure Defendant of their right to object to the corrected NOI as well as the right to cure the default within 30 days of the date of the corrected NOI.⁴

² Because considerable time has passed since NOIs were originally served for the foreclosure actions, the lender initially identified in the foreclosure action as the plaintiff may not be the current lender listed in the corrected NOI. For sake of clarity, the corrected NOI will list the current lender and lender's address and Franklin Credit will require that its counsel take the appropriate steps to change the plaintiff in affected foreclosure actions where required.

³ Count 4 of the Verified Complaint and the corresponding Exhibit 4 reference to the pending foreclosure actions that are currently impacted by the Bankruptcy Stay. Franklin Credit will be seeking to issue corrected NOIs in those cases at the appropriate time and in accordance with the procedures set forth in the Order to Show Cause.

⁴ The Explanatory Letter will inform the Foreclosure Defendants that if they are unsure of their individual foreclosure docket numbers, they may access that information on the Court's website by using the search function and entering their names. In addition, the Explanatory Letter will provide the contact information for a Franklin Credit representative who can assist with

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In further support of this application, Franklin Credit has also supplied the proposed form of corrected NOI as Exhibit B to the Verified Complaint which Franklin Credit 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 Franklin Credit 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 as set forth in the Order to Show Cause. Franklin Credit 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 Franklin Credit 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, Franklin Credit 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, Franklin Credit seeks to correct the same deficiency but in uncontested foreclosures. 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 Franklin Credit 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 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

providing the docket number for the foreclosure actions. Thus, the Explanatory Letter will include all of the elements required by the Supreme Court's April 4, 2012 Order and will be consumer friendly in the ways required by this Court.

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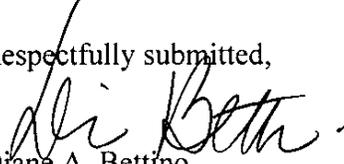
directly with this Court any concern, objection or potential prejudice that they believe results from allowing Franklin Credit to correct the deficient NOIs.

For the reasons set forth in Franklin Credit'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 Franklin Credit 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,


Diane A. Bettino

cc: Jennifer Perez, Superior Court Clerk (via Hand Delivery)

LEGAL NOTICE

If you are a defendant in a pending foreclosure action in New Jersey, this notice may concern your case.

Why Franklin Credit Management Corporation Is Running This Notice: The New Jersey Supreme Court recently held that any Notice of Intent to Foreclose in New Jersey must include the name and address of the lender. Many Notices of Intent issued in the past have only included this information for the servicer of the mortgage loan. Those Notices of Intent did not comply with New Jersey's Fair Foreclosure Act.

What This Means To You: Franklin Credit has filed a lawsuit with the Court and has requested permission to issue corrected Notices of Intent. The New Jersey court has given Franklin Credit permission to serve corrected Notices of Intent. These corrected Notices of Intent are being sent to certain defendant mortgagors/parties obligated on the debt in pending foreclosure actions being serviced by Franklin Credit that were filed before February 28, 2012. You may receive a Notice with copies of the verified complaint and the order of the Court permitting Franklin Credit to issue the corrected Notices. All of the documents relating to this Franklin Credit lawsuit will be made available on the New Jersey Courts web site at <http://www.judiciary.state.nj.us/>.

Your Right To Cure: If you receive a corrected Notice of Intent, you will have an additional 30 days to cure the default on your mortgage that is in foreclosure in New Jersey without being required to pay the plaintiff's court costs and attorneys' fees in your foreclosure case. If you fail to cure the default by the date set forth in the corrected Notice of Intent, the pending foreclosure case against you may proceed ahead.

Your Right To Object To This Process: You also have the right to file an objection to this process of sending corrected Notices of Intent. Your objection must be in writing, and must say specifically what you object to. You must file any such objection by **[date]**. You must file and send any objection 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

You must also send copies to Judge _____ at the Superior Court of New Jersey, _____ County Courthouse, _____, NJ _____ and to the attorney for Franklin Credit, Diane Bettino, Esquire, Reed Smith LLP, Princeton Forrestal Village, 136 Main Street, Princeton, NJ 08540.

Your Right To Object To The Corrected Notice of Intent: You also have the right to object to the specific Notice of Intent that is sent to you. To do so, you must file a written objection on the docket in your individual foreclosure case. You must also serve a copy of that objection on

Plaintiff's attorney in the foreclosure case. If you are unsure of the docket number for your foreclosure action, you can access that information on the court's website on the attached exhibits to the verified complaint in the Franklin Credit Order to Show Cause case or you can contact the Franklin Credit representative identified in the documents you may receive pursuant to the Court's order.

If You Have Any Questions: Please visit the New Jersey Courts On-Line Self-Help Center at <http://www.judiciary.state.nj.us/prose/index.htm>. You may also contact the Superior Court Clerk's Office at (609)-421-6100, or at SCCOForeclosure.Mailbox.judiciary.state.nj.us.

REED SMITH LLP

Formed in the State of Delaware

Diane A. Bettino, Esquire
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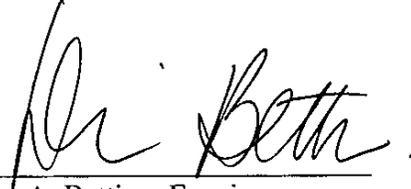
Attorneys for Franklin Credit Management Corporation

)	SUPERIOR COURT OF NEW JERSEY
	)	CHANCERY DIVISION
IN RE APPLICATION BY FRANKLIN	)	_____ COUNTY
CREDIT MANAGEMENT)	
CORPORATION TO ISSUE	)	DOCKET NO.: F-
CORRECTED NOTICES OF INTENT)	
TO FORECLOSE ON BEHALF OF	)	<u>CIVIL ACTION</u>
IDENTIFIED FORECLOSURE)	
PLAINTIFFS IN UNCONTESTED)	
CASES	)	CERTIFICATION OF SERVICE
)	

I hereby certify that on this date, I caused the original and two (2) copies of the following documents to be sent for filing via Overnight Delivery on Jennifer Perez, Clerk of the Superior Court, Superior Court of New Jersey:

1. Order to Show Cause;
2. Verified Complaint with Exhibits;
3. Letter Brief in Support of Application;
4. Proposed Publication Notice; and
5. This Certification of Service.

The foregoing statements made by me are true and correct to the best of my knowledge. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

A handwritten signature in cursive script, appearing to read "Diane A. Bettino". The signature is written in black ink on a white background.

Diane A. Bettino, Esquire

Dated: October 9, 2012