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*Formed in the State of Delaware*

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**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**

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) **SUPERIOR COURT OF NEW JERSEY**  
) **CHANCERY DIVISION**  
) **MERCER COUNTY**  
) **DOCKET NO.: F-22940-12**  
) **CIVIL ACTION**  
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**FRANKLIN CREDIT MANAGEMENT CORPORATION'S BRIEF IN  
FURTHER SUPPORT OF THE APPLICATION TO ISSUE CORRECTED  
NOTICES OF INTENT TO FORECLOSE**

## **I. PRELIMINARY STATEMENT**

Franklin Credit Management Corporation (“Franklin Credit”), pursuant to the authority granted to it by the Foreclosure Plaintiffs and so that Certifications of Due Diligence can be signed and the uncontested foreclosures can proceed to final judgment, seeks an Order from this Court allowing service of corrected Notices of Intent to Foreclose on the Foreclosure Defendants in uncontested, pre-judgment residential foreclosure actions.

This Brief summarizes the following:

- work performed by the Court and Franklin Credit in anticipation of the February 14, 2013 Final Hearing date;
- two written objections that Foreclosure Defendants filed in response to the Order to Show Cause (“OSC”) issued by this Court;
- written replies prepared by counsel for Franklin Credit to such submissions; and
- why this Court should approve the process of sending corrected NOIs.

## **II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL HISTORY**

On April 20, 2011, the Appellate Division decided U.S. Bank National Association v. Guillaume, 2011 WL 1485258 (App. Div. April 20, 2011). Thereafter, the borrowers filed a petition for certification to the New Jersey Supreme Court, which was accepted and expedited in the fall of 2011. The Court heard argument on November 30, 2011, and decided the matter on February 27, 2012. U.S. Bank National Association v. Guillaume, 209 N.J. 449 (2012). The decision overruled Bank of New York v. Laks, 422 N.J. Super. 201 (App. Div. 2011) and set forth the proper remedy for a technical violation of the Fair Foreclosure Act (“FFA”).

In Guillaume, the Court held that FFA requires that a Notice of Intention to Foreclose “include the name and address of the actual lender, in addition to contact information for any loan servicer who is charged by the lender with the responsibility to accept mortgage payments and/or negotiate a resolution of the dispute between the lender and the homeowner.” Id. at 475. The Court’s decision applied to pending cases, and it applies prospectively. Id. The Court also held that the remedies available for a violation of N.J.S.A. 2A:50-56(c)(11) include dismissal without prejudice, service of a corrected NOI, or another remedy appropriate to the circumstances, in the discretion of the trial court. Id. at 476.

To implement the Supreme Court’s decision, on April 4, 2012, Chief Justice Rabner entered an Order authorizing the Honorable Margaret Mary McVeigh, P.J.Ch. and the Honorable Paul Innes, P.J.Ch. to entertain summary actions by Order to Show Cause as to why corrected NOI should not be allowed to be served in pending pre-judgment, uncontested foreclosure cases. April 4, 2012 Order. The Office of Foreclosure is empowered to recommend entry of final judgment in uncontested actions where the procedures of the Court’s April 4, 2012 Order have been followed. Id.

As authorized by Chief Justice Rabner’s Order, Franklin Credit filed its Complaint and Order to Show Cause on October 10, 2012. The matter was assigned to the Honorable Paul Innes, P.J.Ch. This Court entered the Order to Show Cause on November 2, 2012. OSC.

Foreclosure Defendants were permitted to file objections to the process by which the Court gave Wells Fargo permission to serve the corrected NOI by October 18, 2012. Amended OSC, ¶7. Foreclosure Defendants who objected to the contents of the corrected NOI were required to file written objection under the docket number for their individual foreclosure action by October 28, 2012. OSC, ¶8.

Since the issuance of the OSC on November 2, 2012, this Court and Franklin Credit have worked diligently toward the February 14, 2013 Final Hearing date. The work performed in this matter includes the following:

- Franklin Credit worked with its Foreclosure Counsel to identify the population of pre-judgment, uncontested foreclosures that were pending as of February 27, 2012.
- During the week of November 20, 2012, Franklin Credit mailed 113 OSC Packages to the previously identified Foreclosure Defendants on the Corrected NOI List by certified, return receipt requested, and regular mail.
- Franklin Credit received two written submissions from Foreclosure Defendants, one on December 7, 2012 from Robert J. Haak, and another on January 7, 2013 from Ronald and Linda Taylor.
- On January 22, 2013, Franklin Credit timely responded to both objections.
- On November 26, 2012 and November 29, 2012, the Publication Notice was published in the “Star Ledger,” the “Bergen County Record” and the “Press of Atlantic City”.
- On November 27, 2012, the Publication Notice was published in the “Courier-Post”.<sup>1</sup>

As concerns the two objections that were served, neither of the objections actually contest the OSC process. As such, Franklin Credit requests that this Court approve the process of reserving the NOIs to Foreclosure Defendants who initially received NOIs that did not comply with N.J.S.A. 2A:50-56(c)(11).

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<sup>1</sup> Courier Post was directed to publish the Publication Notice two times but for an inexplicable reason they have been unable to explain to the undersigned, only published one time.

### **III. LEGAL ARGUMENT**

Franklin Credit mailed the OSC Package to 113 Foreclosure Defendants via certified and regular mail. Again, only two of those Foreclosure Defendants filed written objections to the OSC, and Franklin Credit has responded to both of them. But neither of the objections should stand in the way of the Supreme Court's directive – evidenced in *Guillaume* and Chief Justice Rabner's April 4, 2012 Order – to allow the longstanding uncontested foreclosure cases to finally move forward to final judgment, which is in the best interests of all parties, including the Foreclosure Defendants, the Court system, the lenders and the New Jersey housing market and economy.

#### **A. Objection Relating to the Individual Foreclosure Action**

Pursuant to the Order to Show Cause filed November 2, 2012, Foreclosure Defendants had two bases for objection in this proceeding: First, Foreclosure Defendants could object to this OSC process and Wells Fargo's request to issue corrected NOIs in order to cure the failure to include the name of the lender and lender's address in the previously served NOIs; and second, Foreclosure Defendants had the right to raise individual objections to the content of the Corrected NOIs served on them. Any objections involving issues in individual foreclosure cases, rather than the two valid bases for objecting, must be addressed, if necessary, in the individual foreclosure cases.

##### **i. Inquiry as to the Amount Due on the Corrected NOI**

Of the 113 Foreclosure Defendants that Franklin Credit served with Corrected NOIs, only Ronald and Linda Taylor raised an objection as to the amounts listed in the Corrected NOI. See

Objection filed by Ronald and Linda Taylor. For three reasons, this Objection should have no bearing on Franklin Credit's request to serve Corrected NOIs.

First, issues regarding the amount due should be resolved in the individual foreclosure action, as such issues do not relate to determining the appropriate remedy for a violation of N.J.S.A. 2A:50-56(c)(11). Thus, as defined by our Supreme Court and this Court, Mr. and Mrs. Taylor's objection regarding the amount due is improper.

Furthermore, it bears mentioning that, in accordance with the New Jersey Court Rules, the Foreclosure Defendants will have the opportunity to contest the amounts due when the respective Foreclosure Plaintiff applies for final judgment.

Even though this is an individualized, non-systemic concern, Franklin Credit will provide additional detail on the amounts due and owing.

**ii. Issues Regarding Origination**

In his objection, Mr. Robert Haak raised origination issues. See Objection filed by Robert Haak. Specifically, he contends that he was the subject of predatory lending. This objection does not relate to the Order to Show Cause process. To the extent he seeks to raise issues regarding predatory lending, Mr. Haak must take the appropriate action in his individual foreclosure case.

**iii. Issues Regarding Loan Modification**

Mr. Haak also noted, in his objection, that he has unavailingly attempted to modify his loan. See Objection filed by Robert Haak. This issue, like the origination issue, does not relate to the process of re-serving Foreclosure Defendants with Corrected NOIs. As such, this aspect of Mr. Haak's objection is likewise improper.

To the extent he seeks to raise any individual issue with respect to his modification attempts, it must be raised elsewhere. Such issues cannot derail this OSC proceeding.

**B. Exclusion of Cases That Are Not Part of the OSC**

As set forth above, Wells Fargo worked with its New Jersey foreclosure attorneys to compile a list of all pending, uncontested, pre-judgment foreclosures in New Jersey in which Franklin Credit served technically deficient NOIs that failed to identify the lender and the lender's address ("Corrected NOI List"). The Corrected NOI List was attached as Exhibits 1-3 to the Verified Complaint.

**i. The OSC Applies to Uncontested Cases, Like Mr. and Mrs. Taylor's**

As detailed in Franklin Credit's response to Mr. and Mrs. Taylor's objection to the OSC, those Foreclosure Defendants never properly filed an Answer and never contested their foreclosure action. Although Mr. and Mrs. Taylor contend that they filed an Answer, neither the JEFIS docket nor Parker McCay, foreclosure counsel in Mr. and Mrs. Taylor's foreclosure case, has any record of Mr. and Mrs. Taylor ever having filed an Answer. In fact, the JEFIS docket reflects that the Court entered default, meaning the foreclosure matter is uncontested. See R. 4:64-1(c) ("An action to foreclose a mortgage . . . shall be deemed uncontested if . . . (1) a default has been entered as the result of failure to plead or otherwise defend."). Further, in their opposition to the OSC, Mr. and Mrs. Taylor provide absolutely no evidence that they filed an Answer.

Mr. and Mrs. Taylor's foreclosure case is uncontested and therefore, properly part of this OSC.

**ii. Corrected NOIs Will Be Issued Once The Bankruptcy Stay Is Lifted.**

In the event a Foreclosure Defendant has obtained an automatic stay as a result of filing for bankruptcy protection, Franklin Credit will mail the OSC Package within 45 days of the lifting of the stay. Those Foreclosure Defendants will have the opportunity to object or cure within 30 days, as provided in the Order to Show Cause. *OSC*, ¶13.

**C. Re-serving Corrected NOIs Constitutes the Appropriate Remedy In this Matter.**

As previously discussed, in Guillaume, the Supreme Court held that dismissal did not constitute the exclusive remedy for a lender's non-compliance with N.J.S.A. 2A:50-56(c)(11). Rather, the possible remedies include service of a corrected NOI, dismissal without prejudice, or another remedy appropriate to the circumstances. Id. at 476. Further, the Court evaluated the trial court's remedy of a corrected NOI and determined that re-serving the NOI constituted an appropriate remedy. Id. at 480 (finding that "the trial court's remedy of a cure constituted a proper exercise of its discretion").

Subsequent to Guillaume, Chief Justice Stuart Rabner issued the April 4, 2012 Order, which authorized the present proceeding. In particular, the Order authorized OSC proceedings seeking to serve corrective NOIs. April 4, 2012 Order. Thus, both Guillaume and Chief Justice Rabner's April 4, 2012 Order permit lenders to seek to serve corrective NOIs on Foreclosure Defendants.

Importantly, both the April 4, 2012 Order and the OSC gave Foreclosure Defendants the right to object. Again, only two Foreclosure Defendants submitted objections. And neither of those objections raised any issues that should impede the process of re-serving NOIs. Further, if those or any other Foreclosure Defendants have individualized issues that they wish to raise, they may still do so in their individual foreclosure actions, as the present proceeding only concerns the process of remedying a technical violation of N.J.S.A. 2A:50-56(c)(11).

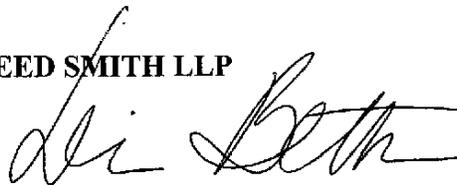
Beyond addressing objections, Franklin Credit has complied with the OSC and other pertinent laws. That is, Franklin Credit sent explanatory letters that complied with the first paragraph of the OSC and mailed corrected NOIs that met the requirements of the FFA.

Finally, the process of re-serving NOIs has been particularly fair for Foreclosure Defendants. The corrected NOIs excluded attorneys' fees and foreclosure costs associated with the pending foreclosure cases. And, by virtue of receiving the corrective NOIs, all of the Foreclosure Defendants had yet another opportunity to reinstate their loans.

**IV. CONCLUSION**

For all of the foregoing reasons, and as detailed in its moving papers and the individual responses to the two objections, Franklin Credit Fargo asks that this Court permit Franklin Credit to serve corrected NOIs so that CODIs can be signed and these uncontested foreclosures can proceed to final judgment.

**REED SMITH LLP**



Diane A. Bettino

Dated: January 22, 2013