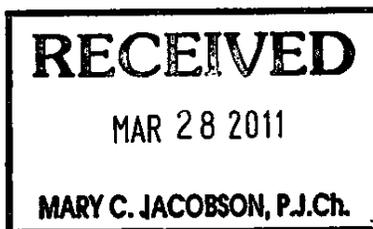


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March 28, 2011

Via Hand-Delivery

Acting Clerk of the Superior Court of New Jersey
25 Market Street
Trenton, New Jersey 08625

***In Re: The Matter of Residential Mortgage Foreclosure Pleading and Document
Irregularities
Docket No.: F-059553-10***

Dear Sir/Madam:

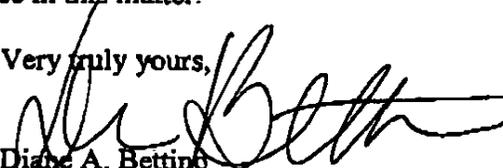
This firm represents Wells Fargo Bank, N.A. in the above-referenced matter. On behalf of all of the Respondents in the above-referenced matter, enclosed please find the original and two copies of:

1. Joint Opposition to the Motions to Intervene filed by Legal Services of New Jersey and the Seton Hall University School of Law Center for Social Justice; and
2. Certification of Service.

Kindly file same and return a filed stamped copy to me in the enclosed self-addressed stamped envelope. Please charge our Superior Court account # 141013 for any filing fees.

Thank you for your time and assistance in this matter.

Very truly yours,


Diane A. Bettino

Enclosures

cc: The Chambers of the Honorable Mary C. Jacobson, P.J.Ch. (*Via Hand-Delivery*)
Edward J. Dauber, Esquire (*Via Facsimile*)
Rebecca Schore, Esquire (*Via Facsimile*)
Linda E. Fisher, Esquire (*Via Facsimile*)

NEW YORK • LONDON • HONG KONG • CHICAGO • WASHINGTON, D.C. • BEIJING • PARIS • LOS ANGELES • SAN FRANCISCO • PHILADELPHIA • PITTSBURGH
OAKLAND • MUNICH • ABU DHABI • PRINCETON • NORTHERN VIRGINIA • WILMINGTON • SILICON VALLEY • DUBAI • CENTURY CITY • RICHMOND • GREECE

Nanette W. Mantel • Office Administrative Partner • A Limited Liability Partnership formed in the State of Delaware

allowed for the submission of comments from such groups as Legal Services of New Jersey (“LSNJ”), the Center for Social Justice at Seton Hall Law School (“the Center”), servicers, banks and foreclosure attorneys. No party has been silenced. Every party and every interest group has been given a full opportunity to be heard.

Nonetheless, through their motions, the movants seek at the eleventh hour to dramatically expand the OTSC beyond its express terms and beyond what it was designed by the judiciary to address. As written, the OTSC specifically focused upon uncontested foreclosures. The movants seek to intervene, however, on behalf of delinquent borrowers, through some still-unexplained form of individual or group-wide representation. By purporting to represent homeowners and contest the handling of their foreclosures, the intervenors are, by definition, outside the scope of the OTSC. Moreover, contrary to the implication in the moving papers, the Stipulation does nothing to affect the rights of any borrowers – represented or not – to contest any issue in any individual proceeding. The present motions for intervention – in addition to being untimely – must therefore be denied because:

- (1) The issues raised in the motions are well beyond the scope of the OTSC and instead, can be addressed more effectively and appropriately in other cases where they are germane;
- (2) The movants have no direct interest or standing that would allow them to participate in this OTSC;
- (3) The movants lack associational standing;

(4) The issues raised by LSNJ as purported “class” issues are at odds with the design of the OTSC and do not even have facial plausibility for the named New Jersey homeowners;¹

(5) LSNJ and the Center regularly appear in New Jersey’s court rooms on behalf of delinquent home mortgage borrowers. Neither of these organizations nor any of their clients is being limited or barred in whatever advocacy they deem to be appropriate;²

(6) The proposed intervention would undermine the coordinated effort comprised of this OTSC, Administrative Order 01-2010, and the Supreme Court’s Rule Revisions which already provided an opportunity for the movants to be heard; and

(7) The proposed intervention would substantially delay the present proceedings and necessarily harm the public by expanding the period of time during which the “shadow inventory” of homes in the foreclosure pipeline causes uncertainty in the real estate market and depresses home prices. There has been a *de facto* suspension of foreclosures in New Jersey since December 20, 2010 during which “tens of thousands of properties as to which there are uncontested foreclosure proceedings in New Jersey are in limbo.” Dauber at 8. This *de facto*

¹ For example, Quentin McKenzie, one of the borrowers included by LSNJ as a “class representative”, has filed a Contesting Answer and is currently litigating his defenses and claims in that case. See Contesting Answer filed by Quentin McKenzie, Docket No. F-32489-10, attached hereto as Exhibit “A.” Therefore, Mr. McKenzie is – by definition – outside of the scope of the OTSC’s sole focus on uncontested foreclosures and cannot be heard (individually or as a class representative) to complain about a Stipulation focused exclusively on the handling of uncontested foreclosures.

² With respect to LSNJ’s advocacy, see, e.g., PHH v. Antonio English, Jr., Docket N. F-055505-10; Wells Fargo Bank, N.A. v. Nubia Dominguez, et al., Docket No. F-48760-09. The same is true for the Center, which likewise interposes affirmative claims and defenses, including affirmative claims alleging fraud, and violations of the New Jersey Consumer Fraud Act. See, e.g., US Bank National Association, as Trustee for CSFB Mortgage-backed pass-through certificates, series 2006-3 v. Jarell Jones, Docket No. F-23939-06; US Bank National Association v. Sandra Hughery, Docket No. F-9309-07; and DLJ Mortgage Capital, et al. v. Raquel James, et al. Docket No. F-22652-06.

suspension has been to the detriment of “the Judiciary, New Jersey citizens and communities, the residential housing market, and the broader economy.” *Id.*

Moreover, if LSNJ and the Center were permitted to intervene at this late date, it could be viewed as an invitation to other groups, including various trade groups associated with the banking and mortgage business or other legal groups claiming to represent the interests of borrowers or even private companies with an economic stake in the mortgage industry to insist on their equal right to participate and push their own agenda. This is completely at odds with the approach the judiciary spent months carefully crafting.³ And had this Court concluded that the presence of other groups was desired or necessary in the OTSC, it would have so ordered – especially in view of the fact that the Court was well familiar with LSNJ and the interests it serves.

II. PROCEDURAL HISTORY

On December 20, 2010, Judge Grant, the Acting Administrator of the Administrative Office of the Courts, entered Order 01-2010. On the same day, the New Jersey Supreme Court issued formal revisions to the Court Rules and Judge Jacobson issued the OTSC. On January 5, 2011, the Respondents filed their formal responses to the OTSC, all of which were posted publicly on the New Jersey Courts website. On January 31, 2011, the Supreme Court initiated the notice-and-comment period, which closed on February 28, 2011. On January 12, 2011,

³ Although there is no denying that the OTSC, Administrative Order 01-2010, and the Supreme Court’s Rule Revisions have been an integrated, well-organized, and highly coordinated effort by the judiciary, the Respondents named in the OTSC have reserved their rights regarding the potential constitutional and other infirmities of the current proceedings. *See, e.g.,* Wells Fargo January 5th Response to OTSC. Notwithstanding these significant concerns and disagreements, the Respondents and the counsel-to-the-Court have worked together in good faith and a spirit of cooperation to resolve the OTSC without protracted litigation. *See* Dauber at 4-5. Intervention by these or other parties would not aid that effort.

January 28, 2011, February 9, 2011 and March 11, 2011, Mr. Dauber sought and obtained extensions from the Court for the express purpose of providing additional time for the extended negotiation process with the Respondents. See

<http://www.judiciary.state.nj.us/superior/documents.htm>. Following this extended period, on March 18, 2011, Dauber filed the Recommended Stipulation together with a supporting brief.

III. LEGAL ARGUMENT

A. LSNJ and the Center Do Not Meet the Exacting Standard for Intervention in Administrative Proceedings

New Jersey case law provides stricter requirements for intervening in administrative proceedings than in typical civil actions. One may only intervene in an administrative proceeding where he/she is "substantially, specifically and directly affected by the outcome." See I/M/O McCauley, 2007 WL 92583 at 4 (2007) (unpublished).⁴

Although the OTSC does not arise under the New Jersey Administrative Procedure Act, it is nonetheless administrative in nature because it concerns the Court's supervisory control over the litigation *process*, not the rights, claims or defenses of individual homeowners. The individual interests of those homeowners are in no way negatively impacted by the OTSC, which concerns the uncontested foreclosure process.

The OTSC expressly applies only to uncontested proceedings; as represented parties, these borrowers clearly have the opportunity to contest their proceedings. The Court's focus was to ensure that it was satisfied with the reliability and integrity of submissions to the Court. As a result, this proceeding is properly only between the Court and the Respondents. Nonetheless, the Court clearly had in mind the collateral benefit to individual borrowers, and it established a

⁴ *See also* N.J.A.C 1:1-16.1.

mechanism to ensure that cases would not proceed until a process was in place in which the Court had confidence. It thus appointed Edward Dauber as its representative to achieve that goal. Mr. Dauber negotiated the Stipulation in consultation with the Court.

Nothing in the Recommended Stipulation even remotely suggests that homeowners in individual foreclosures would somehow lose their right to file an answer, object to entry of final judgment, file a motion to vacate, or otherwise defend or participate in any given case. The two-step Special Master process established in the Recommended Stipulation is a mechanism for each Respondent to first satisfy the judiciary that it has processes and procedures in place to ensure that foreclosure actions are appropriately initiated against borrowers in default, and that the factual information submitted to the Court in support of those actions is reliable and personally reviewed. Once the judiciary is so satisfied, each individual Respondent will be permitted to proceed, and the Special Master will have a period of twelve months to sample in order to ensure that the processes described in Step One are being followed. See Recommended Stipulation at ¶ 2. The Special Master will not oversee or involve himself in individual cases (except to the extent documents in any given case are selected by Special Master for sampling) and nothing in the Recommended Stipulation can reasonably be construed as altering the civil practice rights of litigants to answer, contest, move, or otherwise participate. *Id.*

There is no dispute as to the fine work that the movants do on behalf of New Jersey's economically disadvantaged. The OTSC, however, is simply designed to ensure the integrity of the judicial process and it is administrative in nature. It does not affect at all – much less substantially and directly – the rights of individual borrowers, and the motions to intervene therefore should be denied. None of the individuals LSNJ or the Center purport to represent are disadvantaged by this; to the contrary, they retain all of their rights in every individual case in

which they are directly affected, and benefit from a strengthened process which the judiciary has put in place.

B. LSNJ and the Center Are Not Entitled To Intervene as of Right⁵

New Jersey Court Rule 4:33-1 governs Intervention of Right. Rule 4:33-1 provides that intervention is allowed as of right where the applicant “claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.” *Id.*

1. The Movants have No Property or Transaction which is the Subject of the OTSC

Owing again to the administrative nature of the present matter and its focus on uncontested proceedings in general, there is no specific “property or transaction” which is the subject of the OTSC. Instead, as already noted, the OTSC is solely concerned with the judicial process as it relates to the reliability and veracity of documents submitted by servicers, banks, mortgage companies, and their attorneys. It therefore goes almost without saying that there is no property or transaction which is the subject of the OTSC for any party represented now or in the future by LSNJ or the Center, or those entities themselves. Thus, the first requirement for intervention as of right has not, and cannot, be satisfied by the movants.

⁵ Even in the event that the standard for intervention in administrative cases does not apply, LSNJ and the Center still fall far short of meeting the standards for intervention in private actions, as explained herein.

2. Disposition of the OTSC will Not Impair the Rights of Any Borrowers

If this Court enters the Recommended Stipulation, it will not impair or impede the rights of the movants or any homeowners with regard to their individual cases or their rights. The OTSC does not purport to reach those individual matters in any respect. Indeed, the resolution of the OTSC will restore confidence in the judicial foreclosure process. To the extent that any homeowners – appearing *pro se* or represented by one of the movants – seek to proceed with individual issues or challenges, they may readily do so in the context of their individual cases.

3. In the Alternative, the Interests of the Movants are being Adequately Represented

Although the Respondents do not believe that movants have an interest in the OTSC that would allow them to intervene, to the extent that such an interest were found, that interest is being more than adequately represented by the Court and the Special Master who will be appointed upon entry of the Recommended Stipulation. See Recommended Stipulation at ¶¶ 2-7. As is well known to this Court, both Mr. Dauber and retired Judge Williams are highly experienced and well regarded for their years of service on a variety of high profile and high stakes public issues. Neither LSNJ nor the Center can plausibly dispute this record of public service, and nothing in the movants' submissions provides this Court with any basis to question the adequacy of the work done to date on the important issues raised in the OTSC.

4. The Applications are Not Timely

The OTSC was issued on December 20, 2010 and responses were filed by the Respondents on January 5, 2011. Movants have known since December 20, 2010 that Special Counsel Edward Dauber was appointed by the Court not to represent the interests of individual borrowers, but rather, to represent the broader Court system's interests and to address Respondents' contentions concerning the Court's proposal for a Special Master. Movants'

protest that they could not have appreciated the need for intervention until Respondents and Mr. Dauber proposed the Recommended Stipulation is not persuasive. In fact, in public filings, the Court has kept the general public informed about Mr. Dauber's efforts and those of the Respondents to produce a consent order or stipulation. Given the interests that movants claim to represent, they should have sought intervention long ago, rather than on the eve of the long-scheduled hearing.

B. LSNJ and the Center Have Not Satisfied the Requirements to Obtain Permissive Intervention

New Jersey Court Rule 4:33-2 governs permissive intervention. Rule 4:33-2 permits intervention where the intervenor's claim or defense and the main action share a common question of law or fact. R. 4:33-2. In addition, Rule 4:33-2 provides that an application to intervene must be timely.

1. There is no common question of law or fact.

To the extent that the homeowners referenced by LSNJ have pending foreclosure matters – whether contested or uncontested – there is no issue of law or fact in those particular matters that are common to the issues in this OTSC. The OTSC and the Recommended Stipulation seek to set forth a broadly applicable and robust process that will restore confidence in the integrity of filings in judicial foreclosures. The OTSC and Recommended Stipulation do not seek – nor could they – to make determinations regarding any issue of law or fact relating to individual foreclosure cases. There is no overlap between the OTSC and the individual foreclosure cases and the other actions that are either referenced or contemplated by the movants. Permissive intervention is therefore unavailable as a matter of law.

2. The Applications are untimely.

See the above argument concerning the untimeliness of the applications to intervene.

3. Granting the Applications would cause undue delay.

The Recommended Stipulation, if adopted by this Court on March 29, 2011, sets forth an immediate process which would begin on April 1, 2011. On that date, each of the Respondents would make a *prima facie* showing to the Special Master to demonstrate that their processes will ensure the integrity of submissions in uncontested judicial foreclosures. Thereafter, the Special Master will review those submissions and if he is satisfied, will recommend that this Court permit some or all of the Respondents to resume foreclosures. The recommencement of judicial foreclosures inures to the benefit of the public at large in restoring a functioning real estate market to the State of New Jersey. Because the Court can also consider public interest in determining whether to grant a motion to intervene, See Evesham Tp. Bd. of Adj. v. Evesham Tp., 86 N.J. 295 (1981), this is a separate and independent ground upon which the motions to intervene should be denied.

To allow the movants to intervene and potentially derail the process envisioned by the Recommended Stipulation will cause undue delay and will ultimately harm the general public.

C. LSNJ and the Center Have Not Satisfied the Requirements for Associational Standing

Neither LSNJ nor the Center has standing to intervene in this case. "In order to possess standing, the [intervenor] must have [1] a sufficient stake in the outcome of the litigation, [2] a real adverseness with respect to the subject matter, and [3] there must be a substantial likelihood that the [intervenor] will suffer harm in the event of an unfavorable decision." Committee for a Better Twin Rivers v. Twin Rivers Homeowners Ass'n, 383 N.J. Super 22 (App. Div. 2006) vac'd and rev'd in part on other grounds, 192 N.J. 344 (2007). See also Crescent Park Tenants Ass'n v. Realty Equities Corp of NY, 58 N.J. 98, 107-108 (1971).

LSNJ and the Center meet none of the requirements for organizational standing. First, they have no stake in the outcome of the litigation. "All that is required for an association to assert a claim *on its members' behalf* is a common economic interest in the challenged action." [Emphasis added.] New Jersey Hospice and Palliative Care Org. v. Guhl, 414 N.J. Super 42, 48-49 (App. Div. 2010) citing Crescent Park, 58 N.J. at 107-12. See also Community Hosp. Group, Inc. v. Blume Goldfede Berkowitz Donnelly Fried & Forte, P.C. 381 N.J. Super. 119 (App. Div. 2005) modified on other grounds after remand 384 N.J. Super 251 (App. Div. 2006) (holding that a hospital did not have standing to enjoin the use of confidential health information of its patients). "The Center is a clinical legal education program, where law students and professors work together on public interest litigation and advocacy." Certification of Lori A. Nessel ("Nessel Cert."), ¶ 2. Although it represents lower-income New Jersey homeowners in residential foreclosure cases, Nessel Cert. ¶¶ 5-6, the Center itself does not have any stake in the litigation. Likewise, none of its law students or professors are parties in the litigation or have a stake in the outcome. Instead, the Center seeks to assert the interests of an ill-defined class of individuals, some of whom the Center represents in litigation or may represent in possible future litigation.

For the same reasons, movants cannot show that they have real adverseness with respect to the subject matter of this case or a substantial likelihood that it will suffer harm in the event of an unfavorable decision. Neither movant is a party in litigation with any of the Respondents. While they may sometimes represent parties that are adverse to the Respondents, they have no interest, themselves, in the litigation, and thus are not adverse to the Respondents and will not suffer any harm in the event of an unfavorable outcome. Movants speculate about the consequences their present or future clients may face, but that does not amount to any actual

harm being suffered by the organizations themselves if the Recommended Stipulation is approved.

New Jersey Courts will not “entertain proceedings by plaintiffs who are mere intermeddlers, or are merely interlopers or strangers to the dispute.” Crescent Park, 58 N.J. at 107-108 [internal citations and quotations omitted.]. Permitting movants to intervene in this case would be tantamount to permitting a private law firm to assert claims on behalf of its clients without the clients themselves participating in the litigation. Movants have no direct interest in the outcome; instead they want to step into the shoes of a vague class of individuals, the vast majority of whom have not authorized the movants to speak for them.

The cases that the Center cites in support of its argument for standing are distinguishable from these facts. Each of those cases involved an organization asserting claims on behalf of its *members* and their discrete, identifiable interests. Crescent Park involved a nonprofit organization created for the protection and mutual benefit of the tenants residing in the Crescent Apartment House. 58 N.J. at 99. The Court permitted the Association to assert claims *on behalf of its member tenants*. Id. at 109. In People for Open Gov't v. Roberts, the organization was an “unincorporated, non-partisan political committee” asserting claims on behalf of its *members*, many of whom were also parties to the litigation. 397 N.J. Super 502, 507 (App. Div. 2008). “Because of the individual plaintiffs’ standing, the organizational plaintiff, POG, of which they are members, has standing as well.” Id. at 515. Warner Co. v. Sutton was a land use case brought by environmental groups with many *members* residing in or adjacent to the land at dispute. 270 N.J. Super. 658, 660 (App. Div. 1994). In New Jersey Citizen Action v. Riviera Motel Corp., a not-for-profit corporation whose *members* consisted of disabled individuals, organizations dedicated to the rights of the disabled, and organizations whose members include

the disabled, brought suit to force compliance with federal and state laws governing accessibility to public accommodations by the disabled. 296 N.J. Super 402, 407 (App. Div. 1997). In all of these cases, an organization or association was permitted to assert claims on behalf of discrete, identifiable interests of *members* of the organization or association. Here, the Center is not representing the discrete, identifiable interest of its members. Rather, it seeks to represent the generalized interests of unidentified clients and the public. It therefore lacks standing to intervene in this case.

In short, neither LSNJ nor the Center can demonstrate associational standing to intervene in this case.

D. LSNJ Has Not and Cannot Satisfy the Requirements for Representing a Class

In its motion, LSNJ states that it seeks to proceed with a class action. However, LSNJ cannot meet the requirements for a class – even at the pleading stage.⁶ There is no discrete claim or *res* that is even envisioned that would provide a tether for LSNJ to cling to in support of a “class.” Nor does LSNJ make any attempt to plead or prove the requirements set forth in the Court Rules for a “class” to proceed. See Rule 4:32-1, *et seq.* Instead, LSNJ simply mentions the word “class” as if by incantation, such treatment would be appropriate and dispenses with all of the other deficiencies of its motion to intervene. But, this is not nearly good enough given the stakes. To wit: (1) there is no complaint setting forth the basic elements under Rule 4:32-1, *et seq.* (2) there are no allegations regarding individual borrowers that would support a suggestion that they are similarly situated such that class treatment would be appropriate and, (3) there is no motion for class certification. Finally, the interests that are being pursued by the movants is comprised of borrower relief, either collectively or individually. The OTSC, however, as

⁶ Neither of the movants has submitted a complaint/pleading as required by Rule 4:33-3.

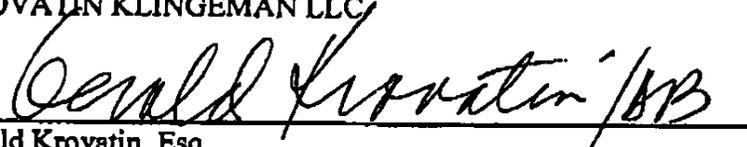
previously noted, is not about borrower relief, but rather about judicial process issues relating to the submission of documents and other materials by the Respondents.

At no point did the OTSC purport to go beyond the administrative realm and seek to address claims against the Respondents that might be litigated in individual foreclosure cases. The Court was obviously well aware that such individual actions and claims exist in New Jersey. To the extent borrowers want to pursue their individual claims, they can do that in the various venues available to them. To the extent that LSNJ and the Center have broader policy concerns than provided for in the OTSC, legislative channels are also available. Such inclusion here would frustrate the purpose of the OTSC and the potential resolution as set forth in the Recommended Stipulation.

IV. CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court deny the Motions to Intervene.

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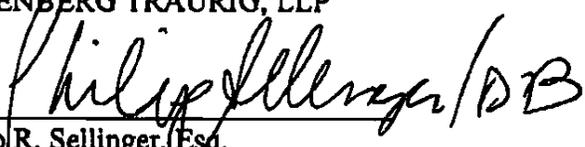
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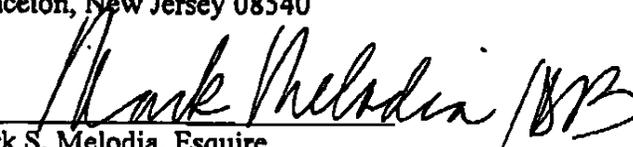
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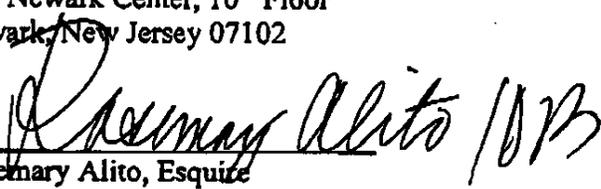
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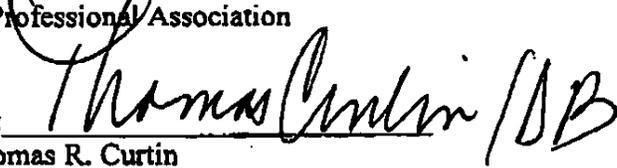
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EXHIBIT A

Capelli D. Contesting Answer, Defenses and Counterclaims - Page 1 of 5
Kme
10-2788
Cont. answer

NAME: Quentin McKenzie
ADDRESS: 100 Jewett Ave
Jersey City, NJ 07305
TELEPHONE: 201-413-5407
Defendant Pro Se

: SUPERIOR COURT OF NEW JERSEY
: CHANCERY DIVISION
: Hudson COUNTY
: (County where the foreclosure complaint was filed)

Wells Fargo Bank N.A.
(Name of company or bank that filed the foreclosure complaint)

Plaintiff,

: DOCKET NO. F-32489-10
: (Assigned by the court at the time of the filing of the
: foreclosure complaint)

vs.

: Civil Action

Quentin McKenzie
(Name of homeowner)

Defendant,

: **CONTESTING ANSWER, DEFENSES
: AND COUNTERCLAIMS**

CONTESTING ANSWER

Defendant by way of Answer to the Complaint in Foreclosure says:

AS TO THE FIRST COUNT:

Defendant admits the allegations in the following paragraphs of the first count of the
complaint: 12, except that defendant *denies* the following *parts* of these
(list the numbers of the paragraphs)

allegations: Due dates of Obligation, Default date
(write out the parts of the allegations that you deny)

Defendant denies the allegations in the following paragraphs of the first count of the
complaint: 1-F, 1-I
(list the numbers of the paragraphs)

Defendant does not have enough knowledge or information to answer the following

paragraphs of the second count of the complaint: 6,7,10
(list the numbers of the paragraphs with allegations that defendant

needs more information about)

AS TO THE SECOND COUNT

Defendant admits the allegations in the following paragraphs of the second count of the complaint: 3, except that defendant *denies* the following *parts* of these
(list the numbers of the paragraphs)

allegations: 2-A Date June 25 2009
(write out the parts of the allegations that you deny)

Defendant denies the allegations in the following paragraphs of the second count of the complaint: 2-A
(list the numbers of the paragraphs)

Defendant does not have enough knowledge or information to answer the following paragraphs of the second count of the complaint: 1 and 3
(list the numbers of the paragraphs with allegations that defendant

needs more information about)

DEFENSES

(INSTRUCTIONS: CROSS OUT ANY PARAGRAPHS UNDER "DEFENSES" THAT DO NOT APPLY TO YOU (DEFENDANT))

**FIRST SEPARATE DEFENSE
(Fair Foreclosure Act)**

1. Plaintiff's Complaint seeks to foreclose upon a "residential mortgage" as defined by the New Jersey Fair Foreclosure Act, N.J.S.A. 2A:50-53 *et. seq.*, and therefore Defendant is entitled to the protections and requirements set forth in the Fair Foreclosure Act.

2. Plaintiff failed to comply with the Fair Foreclosure Act in some or all of the following ways:

(a) Plaintiff failed to serve Defendant with a proper Notice of Intent to Foreclose, by registered or certified mail, return receipt requested at least thirty (30) days in advance of the filing of the Complaint; and/or

(b) To the extent that a Notice of Intent to Foreclose was served upon Defendants, that Notice did not comply with the requirements of the Fair Foreclosure Act as enumerated in N.J.S.A. 2A:50-56(c).

3. Based on the foregoing, the court lacks subject matter jurisdiction to hear Plaintiff's Complaint for Foreclosure.

WHEREFORE, Defendant demands judgment dismissing the Complaint without prejudice for lack of subject matter jurisdiction and/or failure to state a claim upon which relief may be granted.

SECOND SEPARATE DEFENSE

The alleged mortgage is void and unenforceable and Plaintiff's claim is barred because the mortgage was procured by fraud and/or any alleged loss to the Plaintiff is caused by the fraud of the Plaintiff and/or the fraud of third parties over which the Defendant has no control.

THIRD SEPARATE DEFENSE (Truth in Lending Act)

1. The transaction alleged in Plaintiff's Complaint is a consumer transaction that involved a non-purchase money mortgage secured by Defendant's primary residence.

2. At all times relevant hereto, Plaintiff or Plaintiff's alleged assignor was a creditor under the federal Truth in Lending Act, 15 U.S.C.A. § 1601 *et seq.* ("TILA") that was required to provide notices of the right to rescind the mortgage and deliver material disclosures to Defendant.

3. Plaintiff or Plaintiff's alleged assignor failed to comply with TILA by failing to

provide Defendant with proper and accurate written rescission notices and accurate material disclosures as required by TILA.

4. The TILA violations complained of herein were apparent on the face of the assigned documents, resulting in assignee liability pursuant to 15 U.S.C. § 1641(e).

5. In light of these violations, Defendant was and is entitled to rescind the mortgage.

6. Defendant exercised his/her right to rescind the mortgage on or about

8-6-2010

by sending a Notice of Rescission of

(Date on which defendant mailed rescission notice to plaintiff)

Mortgage to Plaintiff, by certified mail, return receipt requested.

7. By virtue of the foregoing, the mortgage which is the basis of Plaintiff's Complaint is rescinded, and Plaintiff's alleged security interest in Defendant's primary residence is void by operation of law.

WHEREFORE, Defendant demands judgment dismissing the Complaint with prejudice, and awarding actual and statutory damages, attorneys fees and costs pursuant 15 U.S.C. § 1640(a)(2)(A)(iii).

FOURTH SEPARATE DEFENSE

The Plaintiff's claim is barred because any alleged loss to the Plaintiff is caused by its own negligence, or the negligence of third parties over which the Defendant has no control.

FIFTH SEPARATE DEFENSE

The Plaintiff's claim is barred because of the doctrine of unclean hands.

UNIVERSITY OF CALIFORNIA, MERCED, DEBTOR AND EQUITY HOLDERS, Plaintiff

SIXTH SEPARATE DEFENSE

The Plaintiff's claim is barred because of the Plaintiff's failure to add indispensable parties.

SEVENTH SEPARATE DEFENSE

The Plaintiff's claim is barred because the Plaintiff lacks standing and/or is not a real party in interest.

EIGHTH SEPARATE DEFENSE

The Plaintiff's claim is barred because of the Entire Controversy Doctrine.

NINTH SEPARATE DEFENSE

Defendant contests the amount Plaintiff claims is due for any or all of the following reasons:

1. interest was not calculated in the manner prescribed by the note;
2. the amount claimed due does not account for payments made by Defendant;
3. the amount claimed due includes unreasonable and excessive fees not permitted by the note and/or not actually incurred by the Plaintiff.

COUNTERCLAIMS

(INSTRUCTIONS: CROSS OUT ANY PARAGRAPHS UNDER "DEFENSES" THAT DO NOT APPLY TO YOU (DEFENDANT))

**FIRST COUNT
(Consumer Fraud)**

1. Defendant repeats and realleges all paragraphs above as if fully set forth herein.
2. Plaintiff or Plaintiff's predecessor in interest engaged in unconscionable

commercial practices, deception, fraud, false pretense, false promise and/or misrepresentations with regard to the subject mortgage.

3. Alternatively, or in addition, Plaintiff or Plaintiff's predecessor in interest engaged in acts of omission, including but not limited to knowing concealment, suppression and omissions of material facts in connection with the subject mortgage.

4. Specifically,

We was told that our interest rate would be 6.50% and that our payments would go up every year.

(Insert specific and detailed facts about any unfair or deceptive action that you think made your loan unfair (predatory))

Our payments went up before the year and higher then what was on the payment chart. We called

our lender to see if we could modify our loan, they informed us no to make anymore payments until

the modification was done. We never received anything from them in regards to the modification.

5. The foregoing acts of Plaintiff constitute violations of New Jersey's Consumer Fraud Act, N.J.S.A. 56:8-2 at seq., as a result of which Defendant suffered ascertainable loss.

WHEREFORE, Defendant seeks judgment against Plaintiff as follows:

- A. Declaratory and injunctive relief declaring the mortgage void and unenforceable;
- B. Declaratory and injunctive relief rescinding and/or reforming the mortgage;
- C. Awarding actual damages;
- D. Awarding treble damages;
- E. Awarding costs and attorneys fees; and
- F. Granting such other relief as the court deems just and equitable.

SECOND COUNT
(Violations of the Truth in Lending Act)

- 1. Defendant repeats and realleges all paragraphs above as if fully set forth herein.
- 2. The transaction alleged in Plaintiff's Complaint is a consumer transaction that

involved a non-purchase money mortgage secured by Defendant's primary residence.

3. At all times relevant Plaintiff or Plaintiff's assignor was a creditor under the federal Truth in Lending Act, 15 U.S.C.A. § 1601 *et seq.* ("TILA") that was required to provide notices of the right to rescind the mortgage and deliver material disclosures to Defendants.

4. Plaintiff or Plaintiff's alleged assignor failed to comply with TILA by failing to provide Defendant with proper and accurate written rescission notices and accurate material disclosures as required by TILA.

5. The TILA violations complained of herein were apparent on the face of the assigned documents, resulting in assignee liability pursuant to 15 U.S.C. § 1641(e).

6. In light of these violations, Defendant was and is entitled to rescind the mortgage.

7. Defendant exercised his/her right to rescind the mortgage on or about

8-06-2010 by sending a Notice of Rescission of Mortgage to
(Date defendant mailed rescission notice to plaintiff)

Plaintiff via regular and certified mail, return receipt requested.

8. Plaintiff failed to comply with its rescission obligations under TILA.

WHEREFORE, Defendant seeks a judgment as follows:

A. Declaratory and injunctive relief enforcing rescission of the mortgage, including a declaration that Defendant is not liable for any finance charge or other charge imposed in connection with the transaction;

B. Declaratory and injunctive relief voiding the mortgage;

C. Awarding actual damages;

E. Awarding statutory damages;

F. Awarding attorneys fees and costs; and

Form No. 10-1 (Rev. 10/01) Answer, Defenses and Counterclaims (No. 10-1)

G. Granting such other relief as the court deems just and equitable.

Dated: _____
(Date on which defendant signs this document)

By: _____
(Defendant's signature) Defendant *Pro Se*

Quentin McKenzie
(Defendant's name printed)

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned does hereby certify that the matter in controversy is not the subject of any other pending lawsuits, proceedings or arbitrations in existence or currently contemplated of which I am aware.

SERVICE UPON ATTORNEY GENERAL

Service of a copy of the Answer, Defenses, and Counterclaims in this matter is being made upon the Attorney General of the State of New Jersey, pursuant to the Consumer Fraud Act for the purpose of encouraging intervention, by mailing a copy of said complaint to Anne Milgram, Attorney General, Office of the Attorney General, Hughes Justice Complex, P.O. Box 080, 25 West Market Street, Trenton, NJ 08625-0080.

Dated: 8-6-2010
(Date on which defendant signs this document)

By: Quentin McKenzie
(Defendant's signature) Defendant *Pro Se*

Quentin McKenzie
(Defendant's name printed)

Appendix XII-B4

FORECLOSURE CASE INFORMATION STATEMENT (FCIS)		<small>FOR USE BY CLERK'S OFFICE ONLY</small>		
 <p>Use for initial Chancery Division — General Equity foreclosure pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-6(c), if information is not furnished or if attorney's signature is not affixed.</p>	PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA <input type="checkbox"/> MO		RECEIPT NO:	
	AMOUNT:		OVERPAYMENT:	
	BATCH NUMBER:		BATCH DATE:	
	SECTION A: TO BE COMPLETED BY ALL PARTIES			
	CAPTION Quentin Mckenzie vs. Wells Fargo Bank N.A	COUNTY OF VENUE Hudson	DOCKET NUMBER (When available) F-32489-10	
	NAME(S) OF FILING PARTY(IES)(e.g., John Doe, Plaintiff) Quentin McKenzie, Defendant(s)	DOCUMENT TYPE <input type="checkbox"/> COMPLAINT <input checked="" type="checkbox"/> ANSWER <input type="checkbox"/> OTHER	ATTORNEY NAME (IF APPLICABLE)	
MAILING ADDRESS	FIRM NAME (If applicable)	DAYTIME TELEPHONE NUMBER (201) 413-5407		
SECTION B: TO BE COMPLETED BY PLAINTIFF TO INITIAL COMPLAINT				
FORECLOSURE CASE TYPE NUMBER <input type="checkbox"/> 088 IN PERSONAM TAX FORECLOSURE <input type="checkbox"/> 089 IN REM TAX FORECLOSURE <input checked="" type="checkbox"/> 0RF RESIDENTIAL MORTGAGE FORECLOSURE <input type="checkbox"/> 0CF COMMERCIAL MORTGAGE FORECLOSURE <input type="checkbox"/> 0CD CONDOMINIUM OR HOMEOWNER'S ASSOCIATION LIEN FORECLOSURE <input type="checkbox"/> 091 STRICT FORECLOSURE <input type="checkbox"/> 0FP OPTIONAL FORECLOSURE PROCEDURE (NO SALE)	IS THIS A HIGH RISK MORTGAGE PURSUANT TO P.L.2009,c.84 AND P.L.2008,c.127 <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO PURCHASE MONEY MORTGAGE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO RELATED PENDING CASE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, LIST DOCKET NUMBERS:			
FULL PHYSICAL STREET ADDRESS OF PROPERTY: 100 Jewett Ave, Jersey City,NJ ZIP CODE: 07304 COUNTY: Hudson	MUNICIPALITY CODE(*) 0906 MUNICIPAL BLOCK: 1911 (LOTS): 25			
ALL FILING PARTIES MUST SIGN AND PRINT NAMES(S) AND DATE THE FORM BELOW				
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).				
ATTORNEY/SELF REPRESENTED SIGNATURE	PRINT ATTORNEY/SELF REPRESENTED NAME	DATE 08/08/2010		

*The Municipality Codes are available at http://www.judiciary.state.nj.us/forms/CN11343_municodes_11-9-2009.pdf

Mail the Clerk's copy to:

Office of Foreclosure
Superior Court of New Jersey
Office of the Clerk
Attn: Foreclosure Unit
Hughes Justice Complex,
25 West Market Street, CN 971
Trenton, New Jersey 08625

Mail the lender's copy to the lender's attorney. The address appears on the top left of the complaint.

Mail the Attorney General's copy to:

Anne Milgram, Attorney General
Office of the Attorney General
Hughes Justice Complex
P.O. Box 080
25 West Market Street
Trenton, New Jersey 08625-0080

REED SMITH LLP

Formed in the State of Delaware

Dianne A. Bettino, Esquire

Princeton Forrestal Village

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Princeton, New Jersey 08540

Tel. (609) 514-5973

Fax (609) 951-0824

Attorneys for Wells Fargo Bank, N.A.

**IN THE MATTER OF RESIDENTIAL
MORTGAGE FORECLOSURE
PLEADING AND DOCUMENT
IRREGULARITIES**

**SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION-
GENERAL EQUITY PART
MERCER COUNTY**

DOCKET NO. F-059553-10

CIVIL ACTION

CERTIFICATION OF SERVICE

I certify that on this date, I caused the original and two copies of the following documents to be sent for filing via hand-delivery to the Acting Clerk of the Superior Court, 25 Market Street, Trenton, New Jersey 08625:

1. Joint Opposition on behalf of all of the Respondents to the Motions to Intervene filed by Legal Services of New Jersey and the Seton Hall University School of Law Center for Social Justice; and
2. This Certification of Service.

I further certify that on this date, I caused copies of the foregoing documents to be served via hand-delivery on:

The Chambers of the Honorable Mary C. Jacobson, P.J.Ch.
210 South Broad Street
Trenton, New Jersey 08625

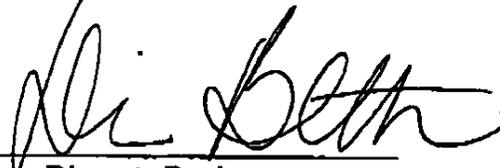
I further certify that on this date, I caused copies of the foregoing documents to be served
via facsimile on:

Edward J. Dauber, Esquire
Greenberg, Dauber, Epstein & Tucker
One Gateway Center, Suite 600
Newark, New Jersey 07102

Rebecca Schore, Esquire
Legal Services of New Jersey
100 Metroplex Drive at Plainfield Avenue
P.O. Box 1357
Edison, New Jersey 08818-1357

Linda E. Fisher, Esquire
Seton Hall University School of Law, Center for Social Justice
833 McCarter Highway
Newark, New Jersey 07102

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.



Diane A. Bettino

Dated: March 28, 2011