LSNJ
45 Years
...just justice

Legal Services of New Jersey
100 Metroplex Drive at Plainfield Avenue
Suite 402, P.O. Box 1357
Edison, New Jersey 08818-1357
Phone: (732) 572-9100
Fax: (732) 572-0066
www.lsnj.org
www.lsnjlaw.org

October 27, 2011

Sent Same Day Delivery
Via New Jersey Lawyers Service

Mark Neary, Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 West Market St.
Trenton, NJ 08625

Re: US Bank National Association, As Trustee for CSAB Mortgage-Back Pass-Through Certificates 2006-3 vs. Maryse Guillaume; Mr. Guillaume, Husband of Maryse Guillaume; Emilio Guillaume; Mrs. Emilio Guillaume, His Wife; City of East Orange
Docket No: 068176

Dear Mr. Neary:

Please accept this letter in lieu of a more formal pleading in response to the various motions now pending and in compliance with the order issued by the court on Monday October 24, 2011.

Enclosed please find an original and nine copies of the Defendants/Petitioners' proposed Supplemental Brief, in the above-captioned matter. Please accept this in further support of Defendants' Motion to file a Supplemental Brief.

We have no objection to the plaintiff's Motion to file a supplemental brief.

We have no objection to the participation of any proposed amicus.

We request that the court allow us until November 7, 2011 to file responses to any amicus or the plaintiff's supplemental brief that the court allows.

With respect to this matter, would you kindly file pursuant to Rule 1:13-2(a) and return a filed copy for our records. A self-addressed, stamped envelope is enclosed for your convenience.

Respectfully Submitted,
LEGAL SERVICES OF NEW JERSEY

Margaret Jurow

Margaret Lambe Jurow, Esq.

cc:
Henry F. Reichner, Esq., via Lawyers Service
Mark S. Melodia, Esq., via Email and next day Lawyers Service
Diane A. Bettino, Esq., via Email and next day Lawyers Service
Linda E. Fisher, Esq., via Email and next day Lawyers Service
Kyle Rosenkrans, Esq., via Email and next day Lawyers Service
Michael M. Horn, Esq., via Email and next day Lawyers Service
Douglas S. Brierley, Esq., via Email and next day Lawyers Service
Shari Seffer Esq., via Email and next day Lawyers Service
Michael H. Hanusek, Esq., via Email and next day Lawyers Service
Vladimir Palma, Esq., via Email and next day Lawyers Service
Edward W. Kirn, Esq., via Email and next day Lawyers Service
Brian C. Nicholas, Esq., via Email and next day Lawyers Service
Jaime R. Ackerman, Esq., via Email and next day Lawyers Service
Alan J. Baldwin, Esq., via Email and next day Lawyers Service
City of East Orange, via Email and next day Lawyers Service

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CSAB MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-3	:	SUPREME COURT OF NEW JERSEY
	:	DOCKET NO. 068176
	:	Civil Action
Plaintiff/Respondent,	:	
	:	Sat Below:
v.	:	
	:	Trial Court:
MARYSE GUILLAUME; MR. GUILLAUME, HUSBAND OF MARYSE GUILLAUME; EMILIO GUILLAUME; MRS. EMILIO GUILLAUME, HIS WIFE; CITY OF EAST ORANGE,	:	Harriet Farber Klein, J.S.C.
	:	Appellate Division:
	:	Clarkson S. Fisher, Jr., J.A.D.
	:	Douglas M. Fasciale, J.A.D.
Defendants/Petitioners.	:	

DEFENDANTS/PETITIONERS SUPPLEMENTAL BRIEF

LEGAL SERVICES OF NEW JERSEY
MELVILLE D. MILLER, JR., President
100 METROPLEX DRIVE, SUITE 402
P.O. Box 1357
EDISON, NEW JERSEY 08818-1357
Phone Number: (732) 572-9100
Fax Number: (732) 572-0066

ATTORNEYS FOR DEFENDANTS /PETITIONERS

On the Brief:

Rebecca Schore
RSchore@lsnj.org

Margaret Lambe Jurow
MJurow@lsnj.org

Melville D. Miller, Jr.
DMiller@lsnj.org

Engy Abdelkader
EAbdelkader@lsnj.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes, Regulations and Court Rules **Page**

Other Authorities **Page**

INTRODUCTION

On May 20, 2011, Maryse and Emilio Guillaume (hereinafter, "the Guillaumes" or "defendants") filed a petition seeking certification to this Court of five questions related to the denial of their application to vacate a default judgment to litigate this matter on its merits and save their home. This Court granted that petition without limitation. Defendants rely on their Petition for Certification, Reply and Appellate Division brief, but submit this supplemental brief in addition to provide defendants' analysis of Bank of NY v. Laks, ___ N.J. Super ___, 2011 WL 342983 (App. Div. August 8, 2011) (Approved for Publication), decided after defendants filed their Petition for Certification, and its effect on one of the certified questions regarding the jurisdictional nature of Fair Foreclosure Act. This supplemental brief also addresses the application of the substantial compliance doctrine which was not briefed below, but which was the basis of the trial court and Appellate Division decisions, and which plaintiff briefed for the first time in its October 21, 2011 Supplemental Brief to this Court.

Laks properly held that the failure to identify the lender in the pre-suit notice of intention to foreclosure is a fatal defect which requires the foreclosure complaint to be dismissed. Not only is Laks correct on the law but it is also correct on a

practical level because the identity of the "lender" -- as defined by the FFA and as distinct from the servicer -- is critical to a homeowner seeking to negotiate a loan modification, dispute a wrongful denial of a loan modification, or challenge an illegitimate foreclosure. However, the Laks court wrongly opined that its decision should have prospective application only, except where the homeowner raised the issue prior to entry of judgment. Because compliance with the Fair Foreclosure Act is jurisdictional and because its decision did not create a new rule of law, prospectivity is inappropriate.

ARGUMENT

I. THE PLAIN LANGUAGE OF THE FAIR FORECLOSURE ACT CLEARLY AND UNAMBIGUOUSLY DEFINES THE TERM "LENDER" AND REQUIRES ITS IDENTIFICATION

As Laks reasons, the FFA requirement that the Notice of Intention to Foreclose (hereinafter, "NOI") include the name and address of the lender is clear and unambiguous. The principles of statutory construction are firmly established. Analysis of a statute begins with its plain language. See, e.g., In re Philadelphia Newspapers, 599 F.3d 298, 304 (3d Cir. 2010) ("When the words of a statute are unambiguous, then this first canon is also the last; judicial inquiry is complete"). It is well settled that when a statute's language is clear, "'the sole function of the courts is to enforce it according to its

terms.'" Hubbard ex rel. Hubbard v. Reed, 168 N.J. 387, 392, (2001)(quoting Sheeran v. Nationwide Mut. Ins. Co., 80 N.J. 548, 556 (1979)(quoting Caminetti v. United States, 242 U.S. 470, 485, 37 S.Ct. 192, 194, 61 L.Ed. 442, 452 (1917))).

Here, the clear, unambiguous statutory language requires the plaintiff's NOI to identify both the "lender" and "the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default." N.J.S.A. 2A:5-56(c)(11) (emphasis added). Even more significantly, the statute expressly defines the term "lender" - eliminating any possible doubt as to the legislature's intention -- to mean "any . . . entity which makes or holds a residential mortgage, and any . . . entity to which such residential mortgage is assigned." N.J.S.A. 2A:50-55 (Definitions). No ambiguity in the definition is created by the practice of securitizing mortgages.

The FFA mandates the specific contents of the NOI. The language is mandatory, not permissive. The Act provides:

> a. Upon failure to perform any obligation of a residential mortgage by the residential mortgage debtor *and before any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure*

or other legal action to take possession of the residential property which is the subject of the mortgage, the residential mortgage lender **shall** give the residential mortgage debtor notice of such intention *at least 30 days in advance of such action* **as provided in this section.**

b. Notice of intention to take action **shall** be in writing . . . .

c. The written notice **shall** clearly and conspicuously state in a manner calculated to make the debtor aware of the situation: . . .

(11) the name and address of the lender and the telephone number of a representative of the lender whom the debtor may contact if the debtor disagrees with the lender's assertion that a default has occurred or the correctness of the mortgage lender's calculation of the amount required to cure the default.

[N.J.S.A. 2A:50-56(a), (b), (c)(11) (emphasis added).]

Only "[w]hen a statute is subject to more than one plausible reading," does the court's role become "'to effectuate the legislative intent in light of the language used and the objects sought to be achieved.' " Velazquez ex rel. Velazquez v. Jiminez, 172 N.J. 240, 256, (2002)(quoting State v. Hoffman, 149 N.J. 564, 578, (1997)(internal citations omitted)). Even by this measure, the statute clearly expresses the legislative intent that the NOI must identify the lender. In Laks, the court recognized, "in three different ways, the statutory language indicates that the Legislature intended for a lender to provide its name and address in order to satisfy its obligation pursuant to subsection (c)(11)."

> First, as a general rule a statutory "definition which declares what a term 'means,' excludes any meaning that is not stated. . . . The legislature declared what the term lender means in the context of the Act, and that meaning does not include servicers. . . . **The definition is drafted to encompass only the entity that has standing to bring a foreclosure action.**
>
> Second, if the legislature intended the name of a mortgage servicer to suffice, then the first appearance of the phase "of the lender" in subsection (c)(11) is meaningless. The statute requires "the name and address of the lender" and "the telephone number of a representative of the lender." If the Legislature did not deem the name and address "of the lender" important, then it could have excluded those words and required the lender provide "the name and address and the telephone number of a representative of the lender." Courts strive to avoid interpretations that treat statutory terms as "mere surplusage" . . . . We see no reason to disregard that guiding principle here.
>
> Third, if the Legislature wanted to let a lender's agent suffice under subsection (c)(11), it knew how to say so. Subsection (c)(5) requires that the notice of intention state 'the name and address and phone number of a person to whom payment or tender shall be made [to cure default]' without any requirement that the name and address be that of the lender. It could have used the same construction in subsection (c)(11) but did not. Courts also 'refrain from concluding . . . that the differing language in the two subsections has the same meaning in each.'"
>
> [Laks, slip op. at 11-12 (citations omitted, bold emphasis added, underlined emphasis in original).

A. THE FAIR FORECLOSURE ACT DEFINITION OF THE TERM "LENDER" DOES NOT ENCOMPASS THE SERVICER OR PERMIT THE SERVICER TO FALSELY CLAIM IT HOLDS THE MORTGAGE

As set forth above, there is absolutely no ambiguity in the FFA's definition of the term "lender," and there is no

legitimate reading of the statute where a servicer meets that definition, particularly where the statute distinguishes between the "lender" and a "representative of the lender" and requires identification of both. Even if the FFA's wording and intention were less clear, there is no conceivable legitimate reading of the statute that would permit a servicer to misrepresent itself to a homeowner as the lender. Yet, the servicer did exactly that in this matter. Its May 2008 NOI falsely states, "America's Servicing Company **holds a Conventional mortgage** (hereafter, "the Mortgage")in the original principal amount of $210,000 on the residential property commonly known as 542 Prospect St., East Orange, NJ (hereafter, "the Property"), which Mortgage was made on September 7, 2006." (Da 37 emphasis added)). It is undisputed that America's Servicing Company (ASC) was not the lender at the time the NOI was sent, or at any other time at all.

Neither the plaintiff nor the courts may substitute their own judgment for that of the legislature. Thus, the suggestion by the courts below and the plaintiff that identifying the lender would confuse borrowers is not only erroneous, it is immaterial. Even assuming that the plaintiff were genuine in its concern for homeowners' ability to comprehend the NOI, the proper course is not to disobey the law and misrepresent the

identity of the lender, but to seek revision of the statute in the legislature.

B. IDENTIFICATION OF THE LENDER IS AN IMPORTANT CONSUMER PROTECTION THAT IS MADE MORE ESSENTIAL BY SECURITIZATION

1. NEITHER THE MORTGAGE STABLIZATION AND RELIEF ACT NOR THE EMERGENT AMENDMENTS TO R. 4:64 SUGGEST THAT THE SERVICER IS INTERCHANGEABLE WITH THE LENDER FOR FFA PURPOSES OR AUTHORIZE THE PLAINTIFF TO OBFUSCATE THE IDENTITY OF THE LENDER

The plaintiff rationalizes that the Mortgage Stabilization and Relief Act (MSRA) and the recently adopted emergent amendments to Rules 4:64-1 and R. 4:64-2 somehow support its position that for FFA purposes the servicer is interchangeable with the lender. That reading distorts the statute and rules. The MSRA was enacted to encourage loan modification and to provide help to homeowners - not to take away or curtail homeowner rights under the FFA. The emergent amendments require foreclosure attorneys to certify that they diligently inquired of their clients into the truth of their pleadings. The rule was adopted in response to widespread submission of evidentially deficient, false and misleading proofs in support of foreclosure judgments -- despite the rule that all attorneys in all matters file only truthful pleading based on evidence. R. 1:4-8. That attorneys may verify the accuracy of the pleadings with the servicer reflects this Court's recognition that the servicer may

be (and often is) the entity in possession of the account history and therefore the best source of information related to the amount due. (Most servicers including this one have no personal knowledge or ability to access the necessary documents to demonstrate who holds the note or has been assigned the mortgage.) However, that does not negate the FFA or give license to obfuscate the identity of the lender. The emergent amendments were designed to make proofs presented to the court more reliable, not less reliable.

2. THE IDENTITY OF THE LENDER - AS A SEPARATE AND DISTINCT ENTITY FROM THE SERVICER -- IS CRITICAL TO A HOMEOWNER SEEKING TO NEGOTIATE A LOAN MODIFICATION, DISPUTE AN IMPROPER MODIFICATION DENIAL OR CHALLENGE A WRONGFUL FORECLOSURE.

The identity of the lender - as a separate and distinct entity from the servicer -- is critical to a homeowner seeking to negotiate a loan modification, dispute an improper modification denial or challenge a wrongful foreclosure. This is so because loan modification parameters and restrictions are controlled by the lender, not the servicer, and the interests of the lender and servicer with regard to loan modification or foreclosure are frequently at odds.

In a securitized loan, securitization documents such as the Pooling and Servicing Agreement set out loan modification parameters and restrictions. For loans that have been assigned

to Fannie Mae and Freddie Mac, servicing guides containing that information are incorporated by reference into contracts with servicers. In either instance, they are inaccessible to the homeowner unless the homeowner is aware that his or her loan has been securitized or assigned to a Government Sponsored Entity, and knows the identity of the lender. This information can help the homeowner ascertain whether a loan modification is feasible or to challenge an illegitimate denial. For a homeowner who knows the name of the lender, the loan modification parameters are only an internet click away.

Wells Fargo, the parent company of the servicer in this matter, received $25 billion in federal bailout funds in 2008 through the Troubled Asset Relief Program (TARP), the centerpiece of the Obama administration's effort to mitigate the financial impact of the foreclosure crisis and preserve home ownership. Special Inspector General, Troubled Asset Relief Program, Quarterly Report to Congress 39 (2009). In exchange, Wells Fargo agreed to participate in the Making Home Affordable Program, including the "Home Affordable Mortgage Program" (HAMP) mortgage modification program. Foreclosure Prevention Part II: Are Loan Servicers Honoring Their Commitment to Help Preserve Homeownership?: Hearing Before the H. Comm. on Oversight and Government Reform, 111th Cong. 53 (2010) (testimony of Michael

J. Heid, Co-president, Wells Fargo Home Mortgage, Wells Fargo & Co.) HAMP requires the servicer to undertake a "Net Present Value" (NPV) test, comparing the economic consequences of foreclosure to loan modification in order to determine which course of action is more profitable for the owners of the loan. HAMP requires modification of the mortgage if the NPV test is positive unless there is fraud by the homeowner or a prohibition in the securitization contract. Id. at 73, 83, 85. If modification is prohibited by contract, servicers are required to use reasonable efforts to obtain a waiver.

Numerous media reports and lawsuits - including some involving Wells Fargo - detail outrageous stories of families who endure the frustrating HAMP application process, and are finally told that they qualify for a loan modification, only to have the servicer renege on the modification (often after accepting several payments from the homeowner) with the excuse that the modification was denied because of some anonymous and undisclosed "investor guidelines." See, e.g., Wells Fargo v. Meyers 913 N.Y.S.2d 500, 502 (Sup. Ct. 2010) (where Wells Fargo reneged on a HAMP modification after having deemed borrowers eligible -- following a convoluted application process in which it repeatedly lost the homeowner's supporting documents -- and after accepting substantial payments, the court finds that Wells Fargo acted in bad faith, and, in view of the Court's broad

equitable powers, finds that the appropriate remedy is to compel specific performance of the original modification agreement proposed by the plaintiff and accepted by the defendants); Salgado v. America's Servicing Company, No. CV-10-1909-PHX-GMS, 2011 WL 3903072 (D. Ariz. Sept. 6, 2011) (homeowner's allegation of negligent misrepresentation that Wells Fargo engaged in misleading practices by failing to disclose "investor guidelines" based upon which it denied his application for a HAMP loan modification survives motion to dismiss); see also, Catherine Curan, Hamp-ered Loans, New York Post, May 31, 2010, http://goo.gl/hMKE7 (Noting that "thousands of Americans expecting to keep their homes after starting trial modifications on troubled mortgages could wind up in foreclosure anyway, thanks to a murky technicality known as the investor-based denial," and in particular the experience of the Reyes family who negotiated a loan modification with Wells Fargo, made several payments but was the rejected due to unspecified investor guidelines. "Reyes had no idea what exactly the investor's contract stipulated or even who the investor was. She's still trying to find out").

It is wholly illegitimate for the plaintiff to argue that the identity of the lender is irrelevant where it has repeatedly denied homeowners affordable loan modifications because of anonymous and undisclosed "investor guidelines."

3. THE INTERESTS OF THE SERVICER AND THE LENDER OFTEN CONFLICT WITH REGARD TO LOAN MODIFICATION AND FORECLOSURE

In their article, Mortgage Servicing, authors Adam J. Levitin and Tara Twomey demonstrate that "servicers' compensation structure creates a principal-agent conflict between them and . . . investors." 28 Yale J. on Reg. 1 (2011). They explain that the "core of this principal-agent conflict is that servicers' incentives in managing a loan diverge from that of investors." Id. at 69. They show that, "[s]ervicers have no stake in the performance of mortgage loans, so they do not share investors' interest in maximizing the net present value of the loan. Instead, servicers' decision of whether to foreclose or modify a loan is based on their own cost and income structure, which is skewed toward foreclosure." Id. At 1.

Without any citation to the record, plaintiff asserts that the Guillaumes cannot effectuate a cure so that a reversal by this Court would be a futility. In fact, the record indicates that the Guillaumes qualified for a loan modification that would provide more value to the plaintiff's investors than a foreclosure sale (Da153-162), but were nevertheless denied a loan modification, an apparent demonstration of the inherent conflict between the lender and servicer. (Da 162)

Specifically, the plaintiff's attorney produced an excerpt of the servicer's communication log in opposition to the motion to vacate default judgment. (Da 153-162) According to the servicer's own notes, on November 20, 2008, the Guillaumes called the servicer, which determined that that "further review shows eligible for mod." (Da162) Further, the notes show the results of the net present value (NPV) test (the test to determine whether a loan modification is in the investor's financial interest), that a loan modification would be good for the investor too. The NPV test of a foreclosure sale was the worst option yielding a value of $153,128, followed by a Deed in Lieu of Foreclosure at $165,068, then a short sale at $200,903 and finally -- the most lucrative for the investor and what the homeowner sought -- a modification at $295,440. (Da162) Yet, the Guillaumes were not offered a modification. Instead, eventually the Guillaumes were told that they did not qualify for a loan modification after their application was around for so long it was deemed stale.

A notation in the communication log notes on the same day as the NPV test says that a "partial claim" has been made on this file. (Da161) The notation of a partial claim is an indication that the servicer or lender has submitted the loan to an insurer or other indemnitor to make up anticipated losses

from a foreclosure sale. Presumably, the failure to offer the loan modification will not impair the partial claim.

4. THE FEDERAL GOVERNMENT RECOGNIZES THE IMPORTANCE OF DISCLOSING THE NAME OF THE LENDER IN ORDER TO PREVENT FORECLOSURE AND FACILITATE LOAN MODIFICATIONS

In 2009, the United States Congress and the President of the United States recognized the importance of providing homeowners with the name of the lender. Among a number of measures designed to encourage loan modification and prevent foreclosure, the Helping Families Save their Homes Act of 2009 amended the Truth in Lending Act to require notification to the homeowner upon a change in ownership or assignment of the mortgage. See Preventing Mortgage Foreclosures And Enhancing Mortgage Credit Availability, Pub. L. 111-22, 123 Stat. 1632 (2009). The new amendment provides:

> (a) IN GENERAL.—Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by adding at the end the following:
>
> (g) NOTICE OF NEW CREDITOR.—
>
> (1) IN GENERAL.—In addition to other disclosures required by this title, not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer, including—
>
> (A) the identity, address, telephone number of the new creditor;
>
> (B) the date of transfer;
>
> (C) how to reach an agent or party having authority to act on behalf of the new creditor;

(D) the location of the place where transfer of ownership of the debt is recorded; and

(E) any other relevant information regarding the new creditor.

(2) DEFINITION.—As used in this subsection, the term 'mortgage loan' means any consumer credit transaction that is secured by the principal dwelling of a consumer.

[Id. At 1634]

The legislative history of the Amendment makes clear that Congress recognized that the identity of the lender is crucial to homeowners fighting illegitimate foreclosures or negotiating loan modifications:

Mrs. BOXER.

It seems like common sense if you have a mortgage on your home, you ought to know who holds the mortgage. . . . It is very easy: When your mortgage is sold or transferred, the homeowner must be informed who owns that mortgage. . . .

I want to give you the example of James and Mary Meyers, who took out a high-rate home loan with Argent Mortgage in 2004. Because the loan violated the truth-in-lending laws, they later attempted to exercise their Federal rights to cancel the loan. But the servicer, who happened to be Countrywide at the time, refused to identify who owned the loan. So by the time the Meyers discovered that the current noteholder was Deutsche Bank, the deadline for canceling the loan had passed. The court dismissed the Meyers' claim, even though it found that there were grounds, legitimately, for the Meyers to cancel the loan.

So this kind of hide-and-seek situation has real-life ramifications. It certainly does with the President's plan now that says, if someone has a mortgage that is under water, they can renegotiate, they have a chance. But if they do not know who holds the mortgage, it is a hollow kind of plan. . . .

[S]ervicers routinely ignore requests from homeowners for information on the noteholder. . . .

The Boxer amendment provides borrowers with the

> basic right to know who owns their loan. . . This amendment . . . provides transparency and gives borrowers an additional tool to fight illegitimate foreclosures or to negotiate loan modifications that would keep them in their homes.. . .
>
> This is a very narrowly targeted amendment with little cost to the industry. But the benefit to homeowners and communities would be absolutely enormous. . . .
>
> [155 Cong. Rec. S5097-02 (2009) (debate on the Helping Families Save Their Home Act of 2009).]

5. THE IDENTITY OF THE LENDER IS SIGNIFICANT TO A BORROWER'S ABILITY TO VINDICATE RIGHTS UNDER TILA.

Identification of the lender is significant to a borrower's ability to vindicate rights under TILA. Where a homeowner is entitled to rescind a loan, TILA requires the rescission notice to be served on the "creditor" 15 U.S.C. § 1635(a), 12 C.F.R. § 226.23(a)(2). The statute defines a "creditor" as "the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness. . . ." 15 U.S.C. § 1602(f)(2). Neither the statute nor the regulations make clear who the borrower must notify if the debt has been transferred or assigned, but at least one court has held that sending the rescission notice to the servicer is not effective, even where the homeowner did not know that the mortgage had been assigned or to whom it had been assigned, and the only entity with whom the borrower had contact was the

mortgage servicer. Miguel v. Country Funding Corp., 309 F.3d 1161 (9th Cir. 2002). The Ninth Circuit held, "[w]hile the Bank's servicing agent, Countrywide, received notice of cancellation within the relevant three year period, no authority supports the proposition that notice to Countrywide should suffice for notice to the Bank." Id. at 1165.

II. SERVICE OF A PROPER NOI IS A JURISDICTIONAL PRE-CONDITION TO A FORECLOSURE ACTION AND FAILURE TO DO SO RENDERS THE JUDGMENT VOID

Where, as here, a court's authority to grant a judgment is subject to a statutory notice pre-requisite, a plaintiff's failure to comply deprives the court of jurisdiction to enter judgment. A brief history of the development of foreclosure law and practice demonstrates the jurisdictional nature of the FFA.

At its inception in common-law, a mortgage gave legal title to the mortgagee, which the mortgagor could only recover after fully paying the mortgage debt:

> Foreclosure practice has its origins in English common law, where the . . . mortgagee became vested with simple title to the mortgaged premises and, upon default in payment of the mortgage, possession of the mortgaged premises. The . . . mortgagor . . . had no estate or interest in the mortgaged premises and, after default in the payment of the mortgage, no right to possession either. A mortgagor who timely paid his mortgage debt could recover title to the

> mortgaged premises, while a mortgagor who defaulted could not.

Tross, N.J. Foreclosure Law & Practice § 1-1 (2001). The mortgagee was entitled to possession of the premises upon default. Thereafter, in what Professor Pomeroy has called "the most magnificent triumph of equity over the injustice of the common law," the English courts of chancery created the "equity of redemption," which was conceived in order to "mitigate the rigors of the common law conception of a mortgage as a conveyance of the legal title upon condition in the nature of defeasance, i.e., the payment of the debt on the very day stipulated, in default of which the conveyance ipso facto became absolute and the mortgagee's estate ripened into an indefeasible legal title in consonance with the terms of the conveyance." Sears, Roebuck and Co. v. Camp, 124 N.J. Eq. 403 (E & A 1938).

In 1820, the New Jersey Legislature enacted a law authorizing - but not requiring -- foreclosure by judicial sale in all cases as a means of terminating the equity of redemption so that the mortgagee could convey clear title to the property. Thereafter, it became the common practice to foreclose by judicial sale, but judicial sale was not mandatory.

Finally, enacted in 1995, the FFA provided a comprehensive statutory scheme for residential mortgage foreclosures. The centerpiece of the statute is the elimination of acceleration of

the debt upon default and the creation of a right to cure and reinstate the mortgage. The FFA provided the homeowner the right to cure a default through the entry of final judgment and required specific notices to homeowners to encourage them to exercise that right. But the FFA "is more than just arrearages legislation giving the residential mortgage debtor a statutory right to cure the default and reinstate the loan up until entry of judgment. The act is comprehensive. It establishes much needed uniform sheriff's sale procedures to be used in *all* mortgage foreclosure actions in New Jersey (not just residential foreclosures), a uniform sheriff's deed, [and] an optional or strict foreclosure procedure without sale. . . ." Weinstein Vol. 30 § 24.1 (emphasis in original). In that uniformity, it streamlines sales and expedites the post-judgment process.

In three different ways, the FFA makes clear that the NOI is a mandatory condition precedent to subject matter jurisdiction to grant a foreclosure judgment: (1) it requires the lender to serve the notice "**before** any residential mortgage lender may accelerate the maturity of any residential mortgage obligation and commence any foreclosure or other legal action" N.J.S.A. 2A:50-56(a)(emphasis added); (2) it requires that "compliance with [the notice requirements of the FFA] shall be set forth in the pleadings of any legal action . . . ."

N.J.S.A. 2A:50-56(f); and (3) it expressly prohibits waivers of its protections. In that regard it provides:

> Waivers by the debtor of rights provided pursuant to this act are against public policy, unlawful, and void, unless given after default pursuant to a workout agreement in a separate written document signed by the debtor.
>
> N.J.S.A. 2A:50-61.

As the Appellate Division recognized more than eight years ago in Cho Hung Bank v. Kim:

> The Legislature has signaled the importance with which it regards the foregoing rights of the debtor under FFA by declaring that even waivers by the debtor of rights under that Act are "against public policy, unlawful, and void...." If the debtor cannot waive the statute, we would hesitate to endorse its judicial waiver or modification . . . .

Cho Hung Bank v. Kim, 361 N.J. Super 331, 346 (2003).

The FFA was modeled after Pennsylvania's "Act 6," as the Chancery Division notes in Capital Mortgage Servs. v. Weisman, 339 N.J. Super 590 (Ch. Div. 2000). Pennsylvania ultimately recognized the Act 6 notice to be jurisdictional. In re Soto, 221 B.R. 343, 351-53 (E.D. Pa. 1998), citing Marra v. Stocler, 615 A.2d 326 (Pa. 1998) (setting aside sheriff's sale as null and void where the foreclosing mortgagee failed to comply with the notice requirements of Act 6).

In New Jersey jurisprudence, in similar instances where a statutory notice requirement is a condition precedent to filing

a complaint, this Court has recognized compliance as a jurisdictional pre-requisite. For example, in the analogous context of residential tenancy evictions, it is well-settled that compliance with pre-suit notice requirements is a mandatory condition precedent to exercise of the court's jurisdiction. Carteret Properties v. Variety Donuts, 49 N.J. 116 (1967)("since jurisdiction of the district court to apply the stern remedy of dispossession stems from the statute, courts have always demanded strict compliance with its terms and conditions. Departures therefrom invariably result in dismissal of the action"); Hous. Auth. of Newark v. Raindrop, 287 N.J. Super 222, 227 (App. Div. 1996) (even where Housing Authority sought to evict tenant alleging a serious safety concern, the Housing Authority's "lack of strict compliance" with the statutory notice requirements "invariably requires dismissal of a dispossess action"); Hous. Auth. of Bayonne v. Isler, 127 N.J. Super 568 (App. Div. 1974) (landlord's omission of part of a federally required notice terminating lease was "fatal" and a "jurisdictional infirmity" requiring dismissal of the eviction complaint); see generally, Hous. Auth. of Morristown v. Little, 135 N.J. 274 (1994). This is so because, like the Fair Foreclosure Act, New Jersey's Anti-Eviction Act is remedial legislation that modifies the common law and specifies the

conditions precedent to the court's authority to enter a judgment.

Similarly, in the context of citizen suits under the Clean Air Act, federal courts have held that strict compliance with statutory notice requirements is a mandatory jurisdictional prerequisite to maintaining suit. See, e.g., Greene v. Reilly, 956 F.2d 593, 594 (6th Cir. 1992); Walls v. Waste Resource Corp., 761 F.2d 311, 316-317 (6th Cir. 1985); Nat'l Parks Conservation Assn. v. Tennessee Valley Authority, 175 F.Supp.2d 1071 (E.D. Tenn. 2001).

In contrast, in the only case cited by plaintiff on the matter, a North Dakota case, Nw. Nat'l Life Insurance Company v. Delzer, 425 N.W.2d 365 (N.D. Sup. Ct. 1988), the court held that a statutory pre-foreclosure notice was not jurisdictional and the judgment was not void **where the legislature expressly deleted the language** stating that any foreclosure action commenced without proper pre-foreclosure notice "**shall be void**," and where North Dakota's jurisdictional jurisprudence was not the same as New Jersey's.

III. THE FAIR FORECLOSURE ACT IS 15 YEAR OLD STATUTE, NOT A NEW RULE OF LAW WHICH MAY BE ONLY PROSPECTIVELY APPLIED

The Laks court opined that if the practice of filing false and defective NOIs was widespread, only those homeowners who raised the misrepresentation or defect prior to the entry of judgment should receive relief. In this the court erred.

Here, because the FFA imposes a jurisdictional pre-condition to the institution of a foreclosure action, the ruling should under no circumstances be made prospective only.

> [B]y definition, a jurisdictional ruling may never be made prospective only. Since the Court of Appeals properly held petitioner's notice of appeal from the decision on the merits to be untimely, and since the taking of an appeal within the prescribed time is mandatory and jurisdictional, the Court of Appeals was without jurisdiction to review the decision on the merits.

Budinich v. Becton Dickinson & Co., 486 U.S. 196, 203, 108 S. Ct. 1717, 1722, 100 L.Ed. 2d 178 (1988).

Moreover, it is well-settled that a prospectivity analysis is appropriate only where a decision announces a new rule of law; where the Court's ruling merely confirms the meaning of a clear statute, there is no reason to limit the ruling to prospective occurrences of the wrongdoing. See, e.g., State v. Burstein, 85 N.J. 394 (1981). The FFA was a new rule prohibiting the acceleration of residential mortgage debt prior to the issuance of an NOI when it was

enacted in 1995, over 15 years ago. Court decisions applying the FFA are not new rules and should not be limited to prospective application. State v. Henderson, 208 N.J. 208, 300 (2011) (the retroactivity doctrine should only be employed if the holding "is sufficiently novel and unanticipated.")

Moreover, reversing the court below will not overrule any prior published decision. Thus, this court should not even reach the question of whether to prospectively limit its holding here. As set forth in the Petition for Certification, every published opinion on point, from the inception of the FFA through Laks, unanimously recognizes that the FFA requires strict compliance with the NOI requirements. In Cho Hung Bank v. Kim the Appellate Division explicitly eschewed and rejected the trial court's "subjective analysis" that the NOI was "incomplete but sufficient because it looked to the purpose of the act." Cho Hung Bank at 344. Thereafter, in EMC Mortgage Corp. v. Chaudhri, 400 N.J. Super 126, 138 (App. Div. 2008) the Appellate Division held that "a lender's 'substantial compliance' with the contents of a notice of intent . . . was not authorized by the statute's terms." In Chaudhri, the Appellate Division made clear that the proper remedy for failure to comply with the FFA is dismissal of the foreclosure complaint. The Chaudhri court

expressly disapproved of the Chancery Court's failure to require dismissal of a foreclosure complaint in the matter of GE Capital Mortgage Servs. v. Weisman, 339 N.J. Super 590 (Ch. Div. 2000) where the lender claimed it sent the debtor a NOI but was unable to produce proof, and where, as here, the Chancery Division had permitted the lender to cure the notice deficiency instead of dismissing the complaint. Chaudhri 400 N.J. Super at 139 ("We disapprove of the remedy employed in that case, and reinforce the statutory mandate that lenders send proper notice . . . . The Legislature specifically intended that lenders faithfully comply with the FFA provisions. . . ."). Just prior to the publication of Laks, the matter of Bank of N.Y. Mellon v. Elghossain, ___ N.J. Super ___ (Ch. Div. 2010) (slip op. at 2) was decided and approved for publication. In that matter too, the court held that the "Lenders' substantial compliance with the FFA is not enough; strict compliance is required." The Elghossain court recognized that dismissal of the foreclosure complaint as the appropriate remedy, noting, "[m]erely re-serving the NOI would eviscerate the statute's plain meaning and effectively reward plaintiff for its neglect, regardless of how benign it may appear." Elghossain, slip op. at 3-4.

Thus, no published opinion has sanctioned anything other than strict compliance with the statute. The only point of

departure was whether to afford the lender a post-filing opportunity to correct the notice or whether to dismiss the complaint. Clearly, the result proposed by the trial court in Guillaume of staying the sheriff's sale action until the lender complies with the Act has not served as an adequate deterrent to concern the industry enough to correct its notices.

In suggesting that its decision should be limited to prospective NOIs and instances where the homeowner attempted to raise the issue of the defective NOI prior to entry of judgment, the Laks court relied upon the case of Srocynski v. Milek, 197 N.J. 36 (2008). In Srocynski, although the requirements of the applicable statute were clear and unambiguous the industry failed to comply relying instructions of the New Jersey Compensation Rating and Inspection Bureau (CRIB), a quasi-governmental body which overstepped its authority and advised the persons it regulated that they could deviate from the statute. In light of these extraordinary circumstances the Court held that even though the doctrine of substantial compliance was not applicable it would apply the holding prospectively. Justice Rivera Soto issued a separate decision concurring in part and dissenting in part in which he criticizes the majority for imposing an involuntary waiver on other injured

workers who would be impacted by the prospective limitation as "logically and rationally untenable." Id. at 65.

This Court's decision in Srocynski created an exception focused on two factors neither of which is present here: (1) the good-faith reliance of the industry on official government regulator issued directives, and (2) that the information necessary to comply with the statute had in many cases been destroyed. Not only was the lender's failure not based on reliance on anything any regulator told them; indeed it was in contravention of every single reported opinion on point. No party or *amici* has stated that they don't know or have the name of the lender, instead they say that they deliberately withheld it because -- substituting their judgment for the legislature -- they thought it would be confusing to the homeowners. Even this explanation falls flat where here given nearly a year to file a proper accurate NOI, the plaintiff failed to do so.

The Guillaumes' experience demonstrates why this isn't a just result. A miniscule percentage of homeowners file answers, many, like the Guillaumes, because they are confused, afraid, uneducated, unaware of their rights, in financial distress and unable to afford an attorney and powerless. They rely on the Court to enforce the law. Depriving homeowners of the right that the legislature gave them to condition acceleration of the debt

and a foreclosure action upon a proper NOI unless they raised the issue prior to the entry of judgment would be manifestly unfair and would usurp the legislature's authority.

The Laks court stated in *dicta* that it did not believe the practice of serving false and defective notices of intention to foreclose was widespread. The foreclosure firms that control nearly 80% of the foreclosure legal market, prospective *amici* in this matter, admit otherwise. In stating that they oversaw the serving of defective and false NOIs in nearly all of their cases (they say 120,000, Fannie Mae says 30,000) *amici* posit -- in an attempt to threaten this court into issuing a decision not warranted by law -- that if this court does not limit its decision here enforcing the FFA to prospective application or to homeowners who raised the issue before judgment entered that the industry will be thrown into chaos. This court should not bow to that threat.

The Supreme Court of Massachusetts was unbowed in the face of similar threats. In U.S. Bank, N.A. v. Ibanez, the Massachusetts Supreme Court invalidated foreclosure sales where the assignments of the mortgages to the foreclosing mortgagee were neither executed nor recorded in the registry of deeds until after the foreclosure sales. Regardless of how widespread

the practice, the court declined to apply its decision prospectively:

> Finally, we reject the plaintiffs' request that our ruling be prospective in its application. A prospective ruling is only appropriate, in limited circumstances, when we made a significant change in the common law. . . We have not done so here. The legal principles and requirements we set forth are well established in our case law and our statutes. All that has changed is the plaintiffs' apparent failure to abide by those principles and requirements in the rush to sell mortgage-backed securities.

941 N.E.2d 40, 55 (Mass. 2011). Following Ibanez, in Bevilacqua v. Rodriguez, ___N.E.2d ___, 2011 WL 4908845 (Mass. October 18, 2011), a third party purchaser of a property at a foreclosure sale brought suit to quiet title to a property purchased at foreclosure sale with the same infirmity as in Ibanez. The court affirmed the dismissal of the third party purchaser's suit, finding that because the sale of the property to him was void he lacked standing. Despite these two important decisions, no chaos has ensued in Massachusetts. There have been no media reports of any deluge of mortgagors seeking to invalidate foreclosure sales.

Lenders and investors in affected securitized mortgage pools should look to their attorneys and servicing agents for compensation if they suffer financial losses as a result of lender or servicer misconduct, but homeowners should not be denied the rights provided them by the legislature more than 15

years ago and upon which decisional law has clearly required strict compliance with the law. See, e.g., Settlement Agreement Between the United States of America, Steven J. Baum, P.C. and Pillar Processing, LLC, available at: http://www.nylj.com/nylawyer/adgifs/decisions/100711baumsettlement.pdf (law firm investigated for improper foreclosure-related practices agrees to pay a $2 Million fine and, among other relief, agrees not to file any pleading in a mortgage foreclosure action asserting that its client is the owner, holder or servicer of a mortgage and note unless it has personally reviewed the original promissory note in question or has received a notarized statement from someone who has personally reviewed it).

It is well known that the vast majority of foreclosure cases are "uncontested." Homeowners are discouraged from filing answers and raising any issue other than fraud in the origination of the mortgage. Only fewer than 6% of homeowners effectively file contesting answers. Even if double as many sought to preserve their right to de-accelerate their debt and cure prior to foreclosure and the negative credit consequences attendant with that, there would not be chaos. The distinction between contested and uncontested cases is unique to foreclosure and harkens from the time before the 1948 Constitution that the

foreclosure or possession action was maintained separately from the amount due. Since the enactment of the FFA and the institution of the right to cure such a distinction may be inappropriate. In any event, in current practice, answers or responses that are anything short of a formal answer asserting that the mortgage is invalid are routinely stricken and treated as defaulting even though the homeowner has appeared in the case -- or worse returned to the homeowner unfiled. Sorting through whether the homeowner "raised" the NOI issue prior to judgment will in all likelihood create more chaos than the simple dismissal and refilling of an action in compliance with the law.

Nearly all the delay that plaintiff complains of is occasioned not by following the rules and the law but because the plaintiff and others like it did **not** follow the law and did not negotiate loan modifications with the homeowner in good faith. Properly prosecuted and without opposition, a judicial foreclosure should take under a year from the time of issuing the NOI to the end of the redemption period, even including two statutory adjournments of the sheriff's sale. Homeowners like the Guillaumes seek affordable loan modifications. Lenders have only to offer them to eliminate the backlog they claim to dread.

IV. A SUBSTANTIAL COMPLIANCE ANALYSIS IS INAPPROPRIATE HERE AND WAS NOT EMPLOYED BY THE COURTS BELOW

Neither the trial court nor the Appellate Division actually employed the test to determine the applicability of the "substantial compliance" doctrine despite ruling that the NOI in the case at bar substantially complied with the requirements of the FFA. In Galik v. Clara Maass Med. Ctr., 167 N.J. 341, 357 (2001), this Court noted that establishing the elements of substantial compliance "is a heavy burden." It is the plaintiff's burden, and the plaintiff here utterly failed to meet it. In any event, when properly examined, it is clear that this is not an instance where the doctrine of substantial compliance applies.

The purpose of the substantial compliance doctrine is to "avoid the harsh consequences that flow from *technically inadequate* actions that nonetheless meet a statute's underlying purpose." Id. at 352 (emphasis added). As a preliminary issue, an intentional misstatement or omission of fact, such as the one at issue here, is not a "technical" misstep, but a deliberate misrepresentation made because the lender believes it to be contrary to its interest or too expensive to comply with the law.

The application of the substantial compliance doctrine is a two-step process: first, to determine whether the legislature

indicated an "intent to preclude a substantial compliance analysis;" and second, only if the legislature did not intend to preclude the analysis, to examine five criteria: (i) the lack of prejudice to the defending party; (ii) a series of steps taken by the proponent to comply with the statute involved; (iii) a general compliance with the purpose of the statute; (iv) a reasonable notice of the proponent's claim; and (v) a reasonable explanation why the proponent did not comply with the statute." Id. at 35-59.

For the reasons set forth in Points I and II above, the FFA evidences a clear legislative intent to preclude application of the substantial compliance doctrine. As such, this matter does not satisfy the threshold test, and the substantial doctrine is inapplicable.

Plaintiff similarly fails to meet the balance of the test for application of the strict compliance doctrine. First, there can be no question that the homeowner is prejudiced when the plaintiff omits or obfuscates the name of the lender, as fully set forth in Point I, above. In contrast, the plaintiff has articulated no reason why identifying the lender would harm the plaintiff. Contrary to its claim that strict compliance with the FFA would make the foreclosure process take longer, in fact strict compliance is far more efficient than a case-by-case

application of the substantial compliance doctrine. If a trial court had to undertake a substantial compliance analysis each time a homeowner challenged a NOI, that would prolong the process exponentially, because a proper analysis requires the presentation of evidence at a plenary hearing.

As to the second criteria, the plaintiff failed to show that it took a series of steps to comply with the statute. The plaintiff did not even attempt to explain to the court below what steps it took to comply with the statute's requirement to identify the lender. Even now, the plaintiff does not indicate that it took any steps to identify the lender but could not due to some sort of confusion or difficulty. In its best light, plaintiff simply took no steps at all to comply with the requirement to identify the lender. At worst, it affirmatively elected not to reveal the lender, either because (as it claims now) that in its judgment the information would confuse the homeowner or for some other reason that it has not divulged to this Court.

Similarly, the plaintiff fails to meet the third criteria for application of the substantial compliance doctrine because it has failed to show a general compliance with the purpose of the statute. Misidentification of the servicer as the holder of the mortgage (or non-identification of the lender for that

matter) does not generally comply with the FFA's requirement to identify the lender. As set forth above in Point I, the servicer and the lender are not interchangeable. Failure to identify the lender frustrates the purpose of the statute to facilitate cure and preserve homeownership.

The plaintiff fails to meet the fourth criteria insofar as it failed to give the homeowner ANY notice whatsoever of its claim, since it represented that the claim was the servicer's not the plaintiff's.

Finally, plaintiff fails to meet the fifth criteria because it has failed completely to provide a reasonable explanation why there was not strict compliance with the statute. Here, Plaintiff has never alleged that it made an unintentional, good faith error when it misidentified itself as the lender.

Where "the clear requirements" of a statute are not satisfied, a party cannot avail itself of the doctrine of substantial compliance, even where a party acts in "good faith," such as when it receives conflicting or confusing instructions from a government agency. Sroczynski v. Milek, 197 N.J. 36, 44 (2008). Where, as here, the failure to satisfy the clear requirements of the statute is intentional - i.e., neither a "good faith" error nor a "technical misstep," - a ruling that substantial compliance of this nature is sufficient is

tantamount to ruling that lenders are free to pick and choose which laws they want to follow and to what extent so as to accommodate their own business practices or to substitute their judgment for that of the legislature.

The substantial compliance doctrine is most often applied in the context of the requirements for Affidavits of Merit, where a failure to apply the doctrine would have the harsh consequence of completely barring the plaintiff from its day in court. See, e.g., Fink v. Thompson, 167 N.J. 551, 562 (2001). Here, there is no harsh consequence to the plaintiff. At worst, the complaint is dismissed without prejudice, the plaintiff serves a proper NOI, and both the plaintiff and the defendant can have their day in court.

CONCLUSION

For the foregoing reasons and those expressed in the Petition for Certification, Reply and Appellate Division briefs, the Guillaumes respectfully request that this Court reverse the decisions below and remand to the trial court to allow the Guillaumes to answer and file their counterclaim and ultimately seek dismissal of the complaint.

Respectfully submitted,
LEGAL SERVICES OF NEW JERSEY

DATED: October 28, 2011

By: _____
Rebecca Schore

LEGAL SERVICES OF NEW JERSEY, INC.
Melville D. Miller, Jr., President
100 Metroplex Drive, Suite 402
Edison, NJ 08818-1357
Tel.: (732) 572-9100 Fax: (732) 572-0066
Attorneys for Defendants/Petitioners, Maryse Guillaume and Emilio Guillaume
By: Margaret Lambe Jurow

US BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CSAB MORTGAGE-BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-3 Plaintiff/Respondent, v. MARYSE GUILLAUME; MR. GUILLAUME, HUSBAND OF MARYSE GUILLAUME; EMILIO GUILLAUME; MRS. EMILIO GUILLAUME, HIS WIFE; CITY OF EAST ORANGE, Defendants/Petitioners.	SUPREME COURT OF NEW JERSEY DOCKET NO. 068176 Civil Action Sat Below: Trial Court: Harriet Farber Klein, J.C.D. Appellate Division: Clarkson S. Fisher, Jr., J.A.D. Douglas M. Fasciale, J.A.D. **CERTIFICATION OF SERVICE**

Kellie Davis, of full age, hereby certifies as follows:

1. I am employed by Legal Services of New Jersey as an Administrative Assistant.

2. On Friday, October 28, 2011, I arranged same day delivery, via New Jersey Lawyer's Service, of one original and 9 copies of the enclosed Defendants/Petitioners Supplemental Brief to the below named people:

Mark Neary, Clerk
Supreme Court of New Jersey
Appellate Division
Richard J. Hughes Justice Complex

3. On Friday, October 28, 2011, I arranged delivery, via New Jersey Lawyer's Service, of 2 copies of the enclosed Defendants/Petitioners Supplemental Brief to the below named people:

Henry F. Reichner, Esq.
hreichner@reedsmith.com
Mark S. Melodia, Esq.
mmelodia@reedsmith.com
Diane A. Bettino, Esq.
dbettino@reedsmith.com
Reed Smith, LLP
136 Main Street, Suite 250
Princeton Forrestal Village
Princeton, New Jersey 07540

Linda E. Fisher, Esq.
Linda.Fisher@shu.edu
Kyle Rosenkrans, Esq.
Kyle.rosenkrans@shu.edu
Seton Hall University School of Law
Center for Social Justice
Civil Litigation Unit
833 McCarter Highway
Newark, New Jersey 07102

Michael M. Horn, Esq.
mhorn@mccarter.com
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, New Jersey 07102

Douglas S. Brierley, Esq.
dbrierley@scarincihollenbeck.com
Scarinci & Hollenbeck, LLC
1100 Valley Brook Avenue
P.O. Box 790
Lyndhurst, NJ 07071-0790

Shari Seffer Esq.
sseffer@feinsuch.com
Michael H. Hanusek, Esq.
Fein, Such, Kahn & Shepard, P.C.

7 Century Drive, Suite 201
Parsippany, New Jersey 07054

Vladimir Palma, Esq.
Vladimir.Palma@fedphe.com
Phelan Hallinan & Schmeig
400 Fellowship Road
Mount Laurel, New Jersey 08054

Edward W. Kirn, Esq.
ed.kirn@powerskirn.com
Powers Kirn, LLC
728 Marne Highway, Suite 200
Moorestown, New Jersey 08057

Brian C. Nicholas, Esq.
bnicholas@zuckergoldberg.com
Jaime R. Ackerman
jackerman@zuckergoldberg.com
Zucker, Goldberg and Ackerman, LLC
200 Sheffield Street
Suite 301
Mountainside, New Jersey 07092

Jaime R. Ackerman
jackerman@zuckergoldberg.com
Zucker, Goldberg and Ackerman, LLC
200 Sheffield Street
Suite 301
Mountainside, New Jersey 07092

Alan J. Baldwin, Esq.
ajbaldwin@bnjlawyers.com
Broderick, Newmark & Grather
20 South Street, Suite 3
Morristown, New Jersey 07960

City of East Orange
Office of the Corporation Counsel
44 City Hall Plaza
East Orange, New Jersey 07019
Jason@ci.east-orange.nj.us

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

Kellie Davis

DATED: October 28, 2011