

SUPREME COURT: STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

Wells Fargo Bank, NA, etc.,

Plaintiff,

Docket No. 2022-03172

-against-

Christina Vassallo,

Defendant.

(Index No. 135743/2014)

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION TO REARGUE AND RENEW**

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TABLE OF CONTENTS

	<u>Page</u>
I. PRELIMINARY STATEMENT.....	1
II. FACTS AND PROCEDURAL HISTORY.....	2
- The 2006 Foreclosure Accelerated the Statute of Limitations.....	2
- The 2014 Foreclosure was Time Barred and Omitted Proof of Standing.....	2
- The Note Was Not Endorsed and RPAPL 1304 Notice Was Omitted.....	4
- The Lower Court Ignored the Documentary Evidence Proving Wells Fargo Lacked Standing, Then Issued a Foreclosure Judgment Without Subject Matter Jurisdiction.....	4
- Vassallo’s Counsel Unlawfully Abandoned This Appeal, Then Wells Fargo Filed Opposition Rife With Misrepresentations to Have This Court Deny a Late Brief.....	5
- Vassallo’s Disability Warrants Permission for Late Filing of the Brief.....	5
- Vassallo Now Has Competent Appellate and Foreclosure Counsel to File Her Brief.....	6
III. STANDARD OF LAW.....	6
- Leave to Reargue and Renew is Timely and Meritorious.....	6
IV. LAW AND ARGUMENT.....	7
A. As A Matter of Law, Vassallo Has a Meritorious Appeal to Save Her Home Considering Moulton and DeFeo.....	7
B. Wells Fargo Lacked Standing in the Lower Court, Which that Court Then Lacked Subject Matter Jurisdiction That Voids the Foreclosure Judgment....	7
C. As A Matter of Equity and Law, This Court Has Inherent Power to Permit a Late Filed Brief Considering Wells Fargo’s Fraud to Obtaining a Void Judgment and the Resulting Injustice of Vassallo Losing Her Home.....	9
D. As A Matter of Equity and Law, This Court Has Inherent Power to Permit a Late Filed Brief Considering Vassallo’s Counsel Abandoned the Appeal.....	12
i. As A Matter of Law, The Foreclosure Is Illegal Because Wells Fargo Never Proved an Allonge Was Affixed to the Note.....	13
ii. The Allonge Was Never Affixed Because The Note Was Lost.....	16

iii. As A Matter of Law, The Foreclosure Is Illegal as RPAPL 3104 Was Violated.....	17
E. Vassallo’s Disability Tolled 22 NYCRR 1250.10.....	18
IV. CONCLUSION	19

TABLE OF AUTHORITIES

Augusta v Kwortnik, 161 AD3d 1401,1403 (3d Dept 2018).....	5
Ashley v Ashley, 139 AD3d 650, 651 (2d Dept 2016).....	11
Bank One Natl.Assn. v Osorio, 26 AD3d 452, 453 (2006).....	9
Berlin v Sordillo, 179 AD2d 717, 719 (1992).....	9
CDR Créances S.A.S. v Cohen, 23 NY3d 307, 318 (2014).....	9
CarMo v PM Realty Group, 16 AD3d 611 (2d Dept 2005).....	6
Citimortgage, Inc. v. Espinal, 136 AD 3d 857,858 (2nd Dept. 2016).....	7
Cohn v PROF-2013-M4 Legal Tit. Tr., 211 AD3d 805, 806 (2d Dept 2022).....	10
Federal Home Loan Mtge. Corp. v MacPherson, 277 AD2d 418, 419 (2000).....	9
Glicksman vBoard of Educ./Cent., 278 AD2d 364 (2d Dept 2000).....	7
Hirsch v Syrota's Auto Wreckers, 211 AD2d 621, 622 (1995).....	9
Horvath vGrid Realty Corp., 64 AD2d 691 (1978).....	9
HSBC Bank USA, N.A. v. Krebs, 219 AD 3d 1417, 1419 (2d Dept 2023).....	6
Ladd v Stevenson, 112 NY 325, 332 (1889)	10
Lombardi v. Station Sq. Inn Apts. Corp., 94 A.D.3d 717,942 N.Y.S.2d 116(2d Dept 2012).....	1
Jones v. Park Front Apartments, LLC, 73 AD 3d 612 (1st Dept. 2010).....	1
Johnson v. Johnson, 220 AD 3d 482,483(1st Dept. 2023).....	1
Lacks v. Lacks, 41 N.Y.2d 71, 390 N.Y.S.2d 875, 359 N.E.2d 384 (1976).....	8

Lane v Lane, 175 AD2d 103, 105-06 (2d Dept 1991).....	10
Matter of MHS Venture Mgt. Corp. v Utilisave, LLC, 63 AD3d 840, 841 [2009].....	9
Matter of Weintrob v Weintrob, 87 AD3d 749, 750 (2d Dept 2011).....	11
McMullen v Arnone, 79 AD2d 496, 499 (1981).....	9
Morrison v. Budget Rent A Car 230 A.D.2d 253, 657 N.Y.S.2d 721 [2nd Dept. 1991]....	8
Manhattan Telecom v. H & A Locksmith, 21 N.Y.3d 200, 969 N.Y.S.2d 424 (2013).....	8
Paoli v Sullcraft Mfg. Co., 104 AD2d 333, 334 (1st Dept 1984).....	13
Paulus v. Christopher Vacirca, 128 A.D.3d 116, 6 N. Y.S.3d 572 [2nd Dept. 2015].....	.9
Ralph C. Sutro Co. v Valenzuela, 113 AD2d 793 (1985).....	9
Santiago v. Honcrat, 79 AD 3d 847 (2d Dept 2010).....	11
State of New York v Kama, 267 AD2d 225, 225 (2d Dept 1999).....	11
U.S. Bank, N.A. v Bernhardt, 88 AD3d 871, 872 (2d Dept 2011)...	9
U.S. Bank Nat. Ass'n v Losner, 145 AD3d 935, 938 (2d Dept 2016)....	10
US Bank N.A. v Moulton, 179 A.D.3d 734, 737 (2d Dept 2020...	2,8-10,13
Wells Fargo Bank, N.A. v DeFeo, 200 AD3d 1105 (2d Dept 2021)...	2,8-10, 13
Woodson v Mendon Leasing Corp., 100 NY2d 62, 68 (Ct. App. 2003)....	10

Other Authorities

3-30 Bergman on New York Mortgage Foreclosures § 30.06 (2011).....	9
2A Weinstein-Korn-Miller, NY Civ Prac ¶ 2004.03.....	1
RPAPL §1304.....	in passim
22 NYCRR 1250.10.....	in passim
CPLR § 213[4].....	3
CPLR 5501(a);.....	5
CPLR §2221.....	6
CPLR 5015 (a) (1).....	10
22 NYCRR §1250.10.....	11,12

I. PRELIMINARY STATEMENT

There is a strong public interest to be served by enforcing the law and prohibiting judgments procured by fraud. This court has that power in this case.

Christina Vassallo (“Vassallo”) is a mother of two daughters living at their home in Staten Island for over 25 years when tragedy struck. Their father, a former New York Police Detective, died during Covid. Then Vassallo was diagnosed with a rare and incurable disease that mimics a brain tumor, disabled her, and she has only several years to live. 2/4/25 Vassallo Aff.

During those tragedies, Vassallo fights for the justice she deserves in this appellate court against Wells Fargo that obtained a foreclosure on her home by fraud and continues the fraud in this court. Wells Fargo knowingly misrepresents to both courts that it had an “endorsed note” that gave it standing to foreclose, when in fact it purportedly had an “allonge” that did not give Wells Fargo standing for a foreclosure. They are two very different documents that the law treats differently. Wells Fargo knowingly continues this material misrepresentation in this court by string citing cases related to an endorsed note to deceive this court that an allonge is an endorsed note, and concealing the law directed to an allonge that proves Wells Fargo had no standing. DE 10 ¶ 21. Wells Fargo further knowingly misrepresents to this court that losing a home is not irreparable harm by concealing the law holding that it is irreparable.¹ These frauds deceived the lower court and this appellate court to make Vassallo and her daughters homeless by obtaining an illegal foreclosure, as this motion proves. This motion also addresses Vassallo’s former attorney’s abandonment of her meritorious appeal after the 22 NYCRR 1250.10 time for an extension expired. She is blameless for the misconduct of Wells Fargo and then her own

¹ *Lombardi v. Station Sq. Inn Apts. Corp.*, 94 A.D.3d 717, 723, 942 N.Y.S.2d 116, 121 (2d Dep’t 2012); *Jones v. Park Front Apartments, LLC*, 73 AD 3d 612 (1st Dept. 2010); *Johnson v. Johnson*, 220 AD 3d 482,483(1st Dept. 2023)(“there is no question that plaintiff will suffer irreparable harm if he is evicted from his home of more than 40 years”).

attorney, and a late filed brief should be permitted by Vassallo who has a meritorious appeal on two fronts that are the exact facts in this case.

First, in *US Bank N.A. v Moulton*, 179 A.D.3d 734, 737 (2d Dept 2020) this court reversed a foreclosure when a bank failed to certify that an allonge was “firmly affixed” to the note. Second, in *Wells Fargo Bank, N.A. v DeFeo*, 200 AD3d 1105 (2d Dept 2021) this court prohibited a foreclosure when the bank violated RPAPL 1304’s strict prohibition against including other documents in its 90-day mailing. Under *Moulton* and *DeFeo*, Wells Fargo never had standing to file the complaint. Without standing, the lower court lacked subject matter jurisdiction which voids the foreclosure judgment. *U.S. Bank, N.A. v Bernhardt*, 88 AD3d 871, 872 (2d Dept 2011).

Considering the above, Vassallo respectfully submits this combined motion to renew and reargue for good cause.

II. FACTS AND PROCEDURAL HISTORY

- The 2006 Foreclosure Accelerated the Statute of Limitations

In 2006, a foreclosure was commenced on Vassallo’s property by the original mortgagee, Option One Mortgage, that admitted Option One lost the Note. Exhibit A. On April 29, 2010, a discontinuance claimed there was a loan modification. Exhibit B, see also 10/30/24 Vassallo Aff ¶ 2 on this docket. Notably, the discontinuance never attached proof of a Loan Modification or an affidavit from Vassallo affirming to one because the actual reason for discontinuing was that the Note was lost. 2/4/25 Vassallo Aff.

- The 2014 Foreclosure was Time Barred and Omitted Proof of Standing

Over eight years after the 2006 foreclosure, on September 25, 2014, a new Plaintiff, Wells Fargo, filed a foreclosure complaint on the exact Note previously admitted as lost by now stating alternative excuses of how Wells Fargo *might* possess the Note, to wit: “Plaintiff directly or

through an agent has possession of said note” that “is either made payable to Plaintiff or is duly indorsed.” Exhibit C, ¶ 3. Alternative excuses of possible possession do not make a prima facie case. Wells Fargo never affirmatively alleged it physically possessed the Note that eight years before was established as lost. Remarkably, Wells Fargo’s complaint attached a purported copy of a January 16, 2004 Note between Option One and Vassallo consisting of three pages, with each page paginated as 1 of 3, 2 of 3 and 3 of 3, and the third page is the signature line *with five inches of empty white space below it*. *Id.* There was no endorsement in that five inches of space. After that third page, Wells Fargo added a separate page entitled “Allonge to Note” that is not dated and in blank, allegedly signed by the original mortgagee’s, Option One, representative. *Id.*

Nowhere in the 2014 Wells Fargo complaint does it identify the allonge or that it was firmly affixed to the Note. Rather it says Wells Fargo or some unidentified agent of Wells Fargo might have possessed the Note. The complaint also does not identify a loan modification and only states it is filed against the original Note and mortgage. The ruse continues as the complaint paragraph 13 blatantly misrepresents that no other proceeding was filed before when in fact a 2006 foreclosure on the exact Note was filed by Option One and was discontinued. *see* Exh. A.

- The Note Was Not Endorsed and RPAPL 1304 Notice Was Omitted.

Vassallo answered the complaint with defenses that Wells Fargo lacked standing and, in a motion to amend, raised statute of limitations because the 2006 foreclosure accelerated the debt that time barred the the 2014 foreclosure filed eight-years later.² Wells Fargo responded by manufacturing documents and facts never alleged in its complaint. For example, Wells Fargo produced a Loan Modification that was not notarized, not initialed on each page nor dated as required by the mortgagee’s instructions for modification and claimed that was the debt it was

² CPLR § 213[4] directs a six-year statute of limitations for foreclosure.

foreclosing on when the complaint never states that. Wells Fargo also misrepresented in its summary judgment motion and affidavits that it had standing because it had an endorsed Note when the Note was not endorsed. *see* Exh. C hereto of the complaint and attached Note. In fact, Wells Fargo's complaint attached an unendorsed Note and after that someone added a separate page of an undated "allonge" in blank, that was never identified in the complaint. Nor do any of Wells Fargo's filings with the lower court state that allonge "was firmly affixed" to the Note, as required by law. Obviously it could not be affixed to anything when eight years before, in the 2006 foreclosure by Option One, it was admitted that the Note was lost.

- The Lower Court Ignored the Documentary Evidence Proving Wells Fargo Lacked Standing, Then Issued a Foreclosure Judgment Without Subject Matter Jurisdiction.

Despite the documentary evidence proving (i) the Note was not endorsed, (ii) nothing affirmed the allonge was firmly affixed to it, (iii) RPAPL § 1304 notice was violated and (iv) no proof existed of how the lost Note was suddenly found eight years later, on December 14, 2018 the lower court threw evidence and reason out the window and granted Wells Fargo summary judgment by finding it had standing solely because "an allonge endorsed in blank existed," - which is false. Exhibit D, at p.3. On April 6, 2022, judgment of foreclosure issued. Exhibit E.

Both the summary judgment and foreclosure judgment decisions relied on an affidavit of Jennifer Jeudy, an Ocwen Loan servicer representative. Exhibit F. Jeudy never certified that the allonge was "firmly affixed" to the Note and an Exhibit A to her affidavit shows documents unrelated to RPAPL §1304 were unlawfully included in the RPAPL §1304 envelope in violation of § 1304's strict service mandates prohibiting such inclusion. Jeudy's affidavit also failed to state that she had personal knowledge of Ocwen's mailing procedures related to the RPAPL §1304 mailing. She only certified that her knowledge was limited to record keeping, not mailing. All of that too was ignored by the lower court when it granted the foreclosure.

- **Vassallo's Counsel Unlawfully Abandoned This Appeal, Then Wells Fargo Filed Opposition Rife With Misrepresentations to Have This Court Deny a Late Brief**

On May 3, 2022, Vassallo's attorney Allyn Crawford timely filed this appeal³ and on October 14, 2022 he filed for an extension that was granted February 14, 2023 for his brief filing by April 11, 2023. DE 1,3,6.⁴ Crawford remained counsel of record the entire time, but he never filed the brief pursuant to this court's order. He also never filed the requisite 22 NYCRR 1250.2 (c) notice to discontinue the appeal because Vassallo never intended to withdraw her meritorious appeal. Crawford simply did nothing until October 30, 2024, a year six months after the April 11, 2023 date to file the brief, when the clerk of this court called him to sign a substitution of counsel for Vassallo to act *pro se* and Crawford left her to desperately file that day an Order to Show Cause seeking a late brief filing so her home would not be illegally taken. DE 7,8, 2/4/25 Vassallo Aff. Then on October 31, 2024 Wells Fargo filed opposition repeating its same material misrepresentations in the lower court of having an endorsed note and string cited cases related to an endorsed note while concealing the actual law related to an allonge and its specific requirements that Wells Fargo failed to follow. DE 10. Those misrepresentations caused this court's January 10, 2025 order denying Vassallo to file a late brief. DE 11.

- **Vassallo's Disability Warrants Permission for Late Filing of the Brief**

Vassallo's October 30, 2024 motion provided her medical records and explained the extent of her serious disability making her incapable of discovering that her former counsel abandoned this appeal. DE 9, 2/4/25 Vassallo and Shye MD Affs. However, she promptly filed for a late

³ The notice of appeal from the final judgment encompasses the summary judgment as any issues raised regarding that summary judgment order necessarily affects the final order that would have never happened without the summary judgment erroneously finding standing; accordingly, that judgment may be brought up for review on the appeal from that final paper. CPLR 5501(a); *Augusta v Kwornik*, 161 AD3d 1401, 1403 (3d Dept 2018).

filing upon discovering he abandoned her appeal. *Id.* This court has the inherent power to excuse her being 6 months late after 22 NYCRR 1250.10's one year period for a late filing as she has a meritorious appeal, the foreclosure judgment is illegal and she is blameless for the misrepresentations of Wells Fargo causing the illegal judgment and her attorney then abandoning this appeal. her unable to discover her former counsel.

- Vassallo Now Has Competent Appellate and Foreclosure Counsel to File Her Brief

Vassallo promptly found competent appellate and foreclosure counsel, Susan Chana Lask, Esq., who has reviewed and digested the entire lower court and appellate filings, researched the issues and is prepared to file a concise brief for Vassallo. 2/4/25 Vassallo and Lask Affs. This motion shows the appeal is meritorious and obviously Ms. Lask completed her work to file a brief promptly.

III. STANDARD OF LAW

- Leave to Reargue and Renew is Timely and Meritorious

A CPLR §2221 motion to reargue is based on matters of fact or law overlooked or misapprehended by the court that led to a mistakenly arrived decision of the court, and shall be made within thirty days of service of a copy of the order and written notice of its entry. *CarMo v PM Realty Group*, 16 AD3d 611 (2d Dept 2005); CPLR 2221(d). This motion is timely and, as shown below, as matter of law Vassallo has a meritorious appeal

A motion for leave to renew "shall be based upon new facts not offered on the prior motion that would change the prior determination" and "shall contain reasonable justification for the failure to present such facts on the prior motion." CPLR 2221[e]; *HSBC Bank USA, N.A. v. Krebs*, 219 AD 3d 1417, 1419 (2d Dept 2023). The rule is not inflexible, and the court, in its discretion, may also grant renewal, *in the interest of justice*, upon facts which were known to the

movant at the time the original motion was made. *Citimortgage, Inc. v. Espinal*, 136 AD 3d 857,858 (2nd Dept. 2016). CPLR 2221 does not impose a time limit for a motion for leave to renew, except if it is based upon a change in the law, which is not the case here. *Id*; *Glicksman v Board of Educ./Cent. School Bd. of Comsewogue Union Free School Dist.*, 278 AD2d 364 (2d Dept 2000). This motion is timely and, as shown below, meritorious as Vassallo's counsel abandoned the appeal without her knowledge, Wells Fargo's opposition to her motion to file late was rife with misrepresentations and she was unable to explain that in her original motion for an extension or file a reply. Also, Wells Fargo filed a fraudulent opposition which the *pro se* Vassallo also could not reply to. 2/3/25 Vassallo Aff.

IV. LAW AND ARGUMENT

A. As A Matter of Law, Vassallo Has a Meritorious Appeal to Save Her Home Considering *Moulton* and *DeFeo*

Vassallo's rights were undermined in the lower court and again in this appellate court by Wells Fargo repeatedly and knowingly misrepresenting that it had an endorsed Note when the documentary evidence proves that is demonstrably false. In other words, Wells Fargo repeatedly committed fraud on both courts. Wells Fargo and its attorneys know the foreclosure law very well and are is before the courts all the time on the very issues here. They knows that the law distinguishes between endorsed notes and allonges and that the law mandates an allonge must be certified as "firmly affixed" to the Note by someone with personal knowledge. Wells Fargo deliberately misrepresented to the lower court and this court that the Note was endorsed and refused to affirm a so-called allonge was firmly affixed to the Note because it was not.

This fact of Wells Fargo materially misrepresenting it had an endorsed note supports Vassallo's motion to reargue as it was overlooked or misapprehended by this court because this court justifiably relied on the bank's counsel's affirmation of that "fact". That misrepresentation

obviously was meant to confuse this court to believe that Vassallo did not have a meritorious appeal, as argued in Wells Fargo's October 31, 2024 opposition. And it worked as this court denied Vassallo's request in its January 10, 2025 Order. Nevertheless, the law provides Vassallo relief as she has a meritorious appeal and, as later shown, this court has the inherent power to let her file a brief considering Wells Fargo's frauds caused an illegal judgment.

As a matter of law, Vassallo has a meritorious appeal on two fronts. First, this Department holds in *US Bank N.A. v Moulton*, 179 A.D.3d 734, 737 (2d Dept 2020), a case with identical facts as this one, that a bank cannot designate an allonge as an endorsement *on the note*, and its failure to affirm the allonge was "firmly affixed" to the note prohibits foreclosure. Second, and again with identical facts, this Department holds in *Wells Fargo Bank, N.A. v DeFeo*, 200 AD3d 1105 (2d Dept 2021) that the bank's inclusion of other documents with its RPAPL 1304 notice violates the statute's strict procedures and prohibits foreclosure. Accordingly, Vassallo's motion to extend filing her brief to save her home should have been granted but for Wells Fargo's material misrepresentations of fact and law that they had an endorsed note.

B. Wells Fargo Lacked Standing in the Lower Court, Which that Court Then Lacked Subject Matter Jurisdiction That Voids the Foreclosure Judgment.

Standing is a threshold issue before anyone can obtain relief from the court. Considering *Moulton* and *DiFeo*, then Wells Fargo lacked standing to walk through the courthouse doors and the lower court lacked the fundamental requirement of subject matter jurisdiction to issue any judgment or order. It is well settled law in New York that a judgment or order rendered without subject matter jurisdiction is void and the defect may be raised at any time. *Lacks v. Lacks*, 41 N.Y.2d 71, 390 N.Y.S.2d 875, 359 N.E.2d 384 (1976); *Morrison v. Budget Rent A Car Systems, Inc.*, 230 A.D.2d 253, 657 N.Y.S.2d 721 [2nd Dept. 1991]; *Manhattan Telecom Corp. v. H & A Locksmith, Inc.*, 21 N.Y.3d 200, 969 N.Y.S.2d 424, 991 N.E.2d 198 (2013);

Paulus v. Christopher Vacirca, Inc., 128 A.D.3d 116, 6 N. Y.S.3d 572 [2nd Dept. 2015]. "A judgment or order issued without subject matter jurisdiction is void." *Matter of MHS Venture Mgt. Corp. v Utilisave, LLC*, 63 AD3d 840, 841 [2009], quoting *Editorial Photocolor Archives v Granger Collection*, 61 NY2d 517, 523 (1984).

It does not matter who was affected by the unlawful judgment after it was issued- void means void and anyone involved with a void judgment has no rights. Hence, when a deed is issued in execution upon a void judgment, that deed is similarly void. *U.S. Bank, N.A. v Bernhardt*, 88 AD3d 871, 872 (2d Dept 2011); *Hirsch v Syrota's Auto Wreckers*, 211 AD2d 621, 622 (1995); *Berlin v Sordillo*, 179 AD2d 717, 719 (1992); *McMullen v Arnone*, 79 AD2d 496, 499 (1981); 3-30 *Bergman on New York Mortgage Foreclosures* § 30.06 (2011).

Consequently, cases direct that once the Supreme Court concludes that personal jurisdiction was lacking, it should have granted a party's motion to set aside a foreclosure sale. *Bank One Natl. Assn. v Osorio*, 26 AD3d 452, 453 (2006); *Federal Home Loan Mtge. Corp. v MacPherson*, 277 AD2d 418, 419 (2000); *Ralph C. Sutro Co. v Valenzuela*, 113 AD2d 793 (1985); *Horvath v Grid Realty Corp.*, 64 AD2d 691 (1978). It does not matter how far anyone went with the void judgment as even purchasing a foreclosed home based on a void judgment will lead to reversing the sale.

C. As A Matter of Equity and Law, This Court Has Inherent Power to Permit a Late Filed Brief Considering Wells Fargo's Fraud to Obtaining a Void Judgment and the Resulting Injustice of Vassallo Losing Her Home.

"[A] court has inherent power to address actions which are meant to undermine the truth-seeking function of the judicial system and place in question the integrity of the courts and our system of justice." *CDR Créances S.A.S. v Cohen*, 23 NY3d 307, 318 (2014). Generally, "a court's inherent power to exercise control over its judgments is not plenary, and should be

resorted to only to relieve a party from judgments taken through fraud, mistake, inadvertence, surprise or excusable neglect.” *Cohn v PROF-2013-M4 Legal Tit. Tr.*, 211 AD3d 805, 806 (2d Dept 2022). The Court possesses the inherent power to “vacate its own judgment for sufficient reason and in the interests of substantial justice.” *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 68 (Ct. App. 2003).

According to the Advisory Committee on Practice and Procedure, “[t]he court's inherent power to relieve a party from the operation of a judgment in the interest of substantial justice is not limited in any way by the proposed rules. “The whole power of the court to relieve from judgments taken through ‘mistake, inadvertence or excusable neglect’ is not limited...but in the exercise of its control over its judgments it may open them upon the applications of anyone for sufficient reason, in the furtherance of justice. Its power to do so does not depend upon any statute but is inherent” (3rd Preliminary Report of Advisory Comm on Prac and Proc, Title 50, at 204 [Mar. 1, 1959], quoting *Ladd v Stevenson*, 112 NY 325, 332 (1889). This inherent power is especially warranted in the interests of justice when a judgment gives rise to an injustice. *U.S. Bank Nat. Ass’n v Losner*, 145 AD3d 935, 938 (2d Dept 2016). Nothing is more unjust than Vassallo losing her rights in the courts and her home based on frauds by a bank to obtain a judgment of foreclosure in the lower court and continuing the fraud in this appellate court to undermine Vassallo’s right to appeal the fraudulently obtained judgment.

Considering Wells Fargo’s fraud, this court can vacate its January 10, 2025 decision denying Vassallo to file her brief late. “It is well established that, independent of statutory provisions, the court rendering a judgment, in its inherent power and control over its own proceedings, may vacate that judgment where it appears that substantial justice will be subserved and injustice prevented thereby.” *Lane v Lane*, 175 AD2d 103, 105-06 (2d Dept 1991). Although

those principles many times relate to default judgments, they equally apply to any injustice deserving to be rectified. For example, this Department upholds the inherent powers of the courts to further justice even after a statutory period has expired, provided a reasonable excuse is proffered, and there is a meritorious action, as “Supreme Court has the inherent authority to vacate a judgment in the interest of justice, even where the statutory one-year period under CPLR 5015 (a) (1) has expired.” *State of New York v Kama*, 267 AD2d 225, 225 (2d Dept 1999); *Santiago v. Honcrat*, 79 AD 3d 847 (2d Dept 2010); *Matter of Weintrob v Weintrob*, 87 AD3d 749, 750 (2d Dept 2011); *Ashley v Ashley*, 139 AD3d 650, 651 (2d Dept 2016). The same inherent powers are applicable to this Department, and respectfully should be applied to Vassallo to file her brief after the 22 NYCRR § 1250.10 one-year period expired considering she is not at fault. Notably, CPLR § 2004 provides that a Court may grant an extension of time “upon such terms as may be just and upon good cause shown”. In considering CPLR § 2004, the Court may properly consider factors such as the length of the delay, whether the opposing party has been prejudiced by the delay, the reason given for the delay, whether the moving party was in default before seeking the extension, and, if so, the presence or absence of an affidavit of merit. 2A Weinstein-Korn-Miller, NY Civ Prac ¶ 2004.03.

Considering all of the factors of prejudice, length of delay and reasonable excuse, Vassallo should be permitted to file her brief after the 1250.10 time period. First, it was Wells Fargo’s fraudulent filings here and in the lower court that caused the judgment and now the denial for Vassallo to file her meritorious appeal. Wells Fargo certainly cannot complain of prejudice for someone proving they obtained a foreclosure illegally by their own unclean hands. Next, the delay is six months past the 1250.10 period not by any fault of Vassallo’s as, shown in the next section, her attorney abandoned the appeal without her knowledge and left her trying to comply

with 1250.10 as soon as she discovered the brief was not timely filed. It was only six months after the 1250.10 period that is not prejudicial to anyone considering that as a matter of law the foreclosure should have never been issued in the first place. The only person prejudiced here is Vassallo fighting for her rights under the law that should not be ignored under any circumstances.

D. As A Matter of Equity and Law, This Court Has Inherent Power to Permit a Late Filed Brief Considering Vassallo's Counsel Abandoned the Appeal

Another equitable consideration supporting vacating the January 10, 2025 denial so Vassallo can file a late brief is her former attorney's abandonment of her and this appeal. Although 22 NYCRR § 1250.10(c) provides a mechanism for an appellant to vacate a dismissal of the appeal within one year of the dismissal date, unfortunately, and due to no fault of her own, Vassallo's attorney abandoned this appeal and lost her right to file within one year of April, 2023. He resurfaced only recently on October 20, 2024 when the appellate clerk directed him to sign a substitution for Vassallo to represent herself *pro se* rather than protect her rights on appeal. 2/4/25 Vassallo Aff. It was only six months after the one-year time period to vacate the dismissal, and by no fault of her own, that Vassallo filed for an extension as soon as she discovered her attorney failed her.

This fact of her attorney disappearing supports this motion to reargue and renew. As to re-argument, the appellate docket shows Vassallo's counsel requesting and obtaining extensions then disappearing without filing the requisite §1250.2(b)(1) of the NYCRR and the Practice Rules of the Appellate Division to withdraw the Notice of Appeal he filed or substitute himself from the case. Usually, this court will demand the attorney to show cause why he failed to file the brief or withdraw, but this case was overlooked likely, and understandably, due to the court's busy docket. Nevertheless, it is a fact that when one reviews the docket would note something is amiss with Vassallo's counsel letting the appeal languish without any notification to the court. Considering

this in regards to the renew portion of this motion, Vassallo was unable to comprehend or clarify this important fact of abandonment by her own lawyer when she initially filed her motion on October 30, 2024 that she is now able to clarify with her new counsel. 2/4/25 Vassallo Aff.

Clearly, Vassallo never evinced an intent to abandon her appeal as she immediately filed her OSC in this court to file her brief once she discovered her attorney did nothing. *Id.* An additional fact to this request is that Vassallo now has competent foreclosure defense and appellate counsel who will not abandon her, has already reviewed the complete file and completed her research and will file a brief within a reasonable time of the court's order vacating it January 10, 2025 order. 2/4/25 Lask Aff. Consistent with the purpose of a motion to renew, these facts would change the prior determination denying Vassallo leave to file a late brief.

Notably, “[a] client should not be deprived of his day in court by his attorney's neglect or inadvertent error, especially where the other party cannot show prejudice ... [and] the complaint has merit.” *Paoli v Sullcraft Mfg. Co.*, 104 AD2d 333, 334 (1st Dept 1984). Vassallo should not be punished to lose her home because of her prior counsel's misconduct when as a matter of law there should have never been a foreclosure judgment. Wells Fargo cannot show prejudice in allowing Vassallo to file her brief at this time because the law prohibited Wells Fargo's foreclosure on two fronts in the first place. First, in *US Bank N.A. v Moulton*, 179 A.D.3d 734, 737 (2d Dept 2020) this court held in the exact circumstances of this case that a bank must affirmatively state an allonge was “firmly affixed” to the note. Wells Fargo never affirmed that. Rather, Wells Fargo pursued a fraud in the lower court and this court by repeatedly swearing that the Note was endorsed when it was not. Second, RPAPL 3104 prohibits Wells Fargo's foreclosure because it included other documents in its mailing. *Wells Fargo Bank, N.A. v DeFeo*, 200 AD3d 1105 (2d Dept 2021). Thus, Wells Fargo never had standing, the lower court never had

jurisdiction and the foreclosure judgment was obtained by Wells Fargo's own frauds, which it cannot claim it would be prejudiced if Vassallo files a brief to enforce the law in her favor, as shown below.

i. As A Matter of Law, The Foreclosure Is Illegal Because Wells Fargo Never Proved an Allonge Was Affixed to the Note.

"Holder status is established where the plaintiff possesses a note that, on its face or by allonge, contains an indorsement in blank or bears a special indorsement payable to the order of the plaintiff. *Wells Fargo Bank, NA v Ostiguy*, 127 A.D.3d 1375, 1376 (2d Dept 2015). The endorsement must be made either on the face of the note or on an allonge "so firmly affixed thereto as to become a part thereof. UCC §3-202(2). As the endorsement was not on the Note, then the law regarding allonges applies. The law is well-settled in this Department that proof an allonge was "firmly affixed" to the note must be made by an affidavit of a person with personal knowledge and details when they saw the note and allonge. *Wells Fargo Bank v Mitselmakher*, 216 AD3d 1056, 1058 (2d Dept 2023); *Nationstar Mtge., LLC v Calomarde*, 201 AD3d 940, 942 (2d Dept 2022); *JPMorgan Chase Bank, N.A. v Grennan*, 175 AD3d 1513 (2d Dept 2019); *Deutsche Bank Natl. Trust Co. v Weiss*, 133 AD3d 704, 705 (2d Dept 2015). No such affidavit was produced in the case at bar.

As this court held in *US Bank N.A. v Moulton*, 179 A.D.3d 734, 737 (2d Dept 2020), "An allonge may be needed when there is insufficient space on the document itself for the endorsements; as long as the allonge remains firmly affixed to the note, it becomes a part of the note (see UCC 3-202[2]). Thus, the physical delivery of a note which has an allonge endorsed in blank firmly affixed to it prior to the commencement of the foreclosure action is sufficient to transfer the obligation to the new payee (see *U.S. Bank N.A. v. Guy*, 125 A.D.3d 845, 846-847, 5 N.Y.S.3d 116)." The facts of *Moulton*, supra, at 737, are identical to the case at bar in that an

allonge was filed in the court as a separate piece of paper immediately following a copy of the note but that allonge page is not referred in any affidavits or any document of the bank. Exactly as in the case at bar, in *Moulton* the bank kept referring to the Note as endorsed but this court found that was not true because “no evidence was submitted to indicate that the paper containing the purported endorsement was so firmly affixed to the note so as to become a part thereof, as required under UCC 3–202(2) (see *HSBC Bank USA, N.A. v. Roumiantseva*, 130 A.D.3d at 984–985, 15 N.Y.S.3d 117; see also *One Westbank FSB v. Rodriguez*, 161 A.D.3d 715, 716, 78 N.Y.S.3d 63.” *Moulton* at 737.

This Department in *Moulton* further found more facts exactly like the case at bar to deny standing, such as the note’s last page was 5 of 5 and had sufficient white space to fit an endorsement while the allonge had no pagination or any writing to connect it to the note or that it was firmly affixed to it. *Moulton* at 738. Here the Note had five inches of white space for an endorsement and it was paginated 3 of 3, yet the so-called allonge was a separate piece of paper without any pagination or indication it was attached to the Note. *Moulton* at 738 found more exact facts as the case at bar that no affidavit by the plaintiff indicated the allonge was firmly affixed to the note. Here too there is not one affidavit certifying the so-called allonge was “firmly affixed” to the Note, which is why Wells Fargo deceived the lower court and this court that it had an endorsed note and cited cases only related to endorsed notes. To the extent Wells Fargo relied on naked physical possession of the note to establish standing, "mere physical possession of a note at the commencement of a foreclosure action is insufficient to confer standing or to make a plaintiff the lawful holder of a negotiable instrument for the purposes of enforcing the note." *Moulton*, at 737.

Accordingly, as the exact facts regarding the so-called allonge appear here as in *Moulton*, then the lower court should have denied the foreclosure here, and this appeal is valid and should be heard to avoid the grave injustice of taking Vassallo's home in face of clear violations of law.

ii. The Allonge Was Never Affixed Because The Note Was Lost

Conspicuously omitted from Wells Fargo's complaint was (a) the prior 2006 foreclosure admitting the Note was lost and (b) any facts detailing how it was found eight years later in the present action. To avoid that, Wells Fargo went as far as to fraudulently state in its complaint, paragraph 13, that there was never a previous action on the Note attached to their complaint. Notwithstanding their unclean hands, the law is clear that without proof of the circumstances of the lost note suddenly found, there cannot be a foreclosure.

The Second Department in *Bank of New York Mellon v. Hardt*, 173 A.D.3d 1125 (2nd Dept, 2019) recognized that U.C.C. 3-804 is an appropriate vehicle to prove ownership of a lost, destroyed or stolen note if the "holder" "prove[s] ownership of the notes, the circumstances of the loss and their terms" (quoting *Marazzo v. Piccolo*, 163 A.D.2d 369, 370 (2nd Dept 1990)). The Second Department, in *Deutsche Bank Nat. Trust Co. v. Anderson*, 161 A.D.3d 1043 (2nd Dept 2018) involving a lost Note found it was not clear when the loan servicer or its agent acquired possession of the note or which party (i.e., the loan servicer or its agent) acquired it. The court found that plaintiff's affidavit failed to provide sufficient facts as to when the search for the note occurred, who conducted the search, the steps taken in the search for the note, and when or how the note was lost; thus, failing to sufficiently establish the plaintiff's ownership of the note. *Anderson*, 161 A.D.3d at 1044-45. This court found that a lost note affidavit was insufficient because in it the party claimed without providing more information that "she conducted a diligent search of 'all of our files,' consisting of 'a thorough audit of the customary filing locations,

inclusive of the original credit file.”” *U.S. Bank N.A. v. Cope*, 97 U.C.C. Rep. Serv. 2d 593, 2018 WL 6626497 (2d Dept, 2018). In the case at bar, nowhere in the record was there an affidavit establishing the circumstances of the lost note suddenly found in the possession of Wells Fargo.

iii. As A Matter of Law, The Foreclosure Is Illegal as RPAPL 3104 Was Violated

On December 15, 2021, in *Bank of Am., N.A. v Kessler*, 202 AD 3d 10, 14 (2d Dept 2021), this Department held that the "inclusion of any material in the separate envelope sent to the borrower under RPAPL 1304 that is not expressly delineated in [the statute] constitutes a violation of the separate envelope requirement of RPAPL 1304(2)" Since *Kessler* the Second Department applied the strict compliance standard in numerous cases and has consistently adhered to the bright-line standard articulated in *Kessler* without exception that strict compliance with RPAPL 1304 notice to the borrower is a condition precedent to the commencement of a foreclosure action.⁵ In *Wells Fargo Bank, N.A. v DeFeo*, 200 AD3d 1105 (2d Dept 2021), this court held that inclusion of notice concerning Home Affordable Modification Program and bankruptcy issues violated the "separate envelope" mandate and reversed summary judgment for foreclosure because Wells Fargo failed to strictly comply with RPAPL 1304. Exactly as in *DeFeo*, a February 27, 2018 affidavit of Jennifer Jeudy, Contract Management Coordinator of Ocwen Loan Servicing, filed in this case and relied upon by the lower court, attaches an Exhibit A of the RPAPL 3104 notice. Exhibit D. The Jeudy Exhibit A has as the last two pages a document entitled “Helping You Stay in Your Home” about the Home Affordable Modification Program and loan modification process, and urges Vassallo to act now. That additional information

⁵ *Bank of N.Y. Mellon v Greene*, 210 AD3d 1042 [2d Dept, 2022] [failure to strictly comply with RPAPL 1304 by including information concerning bankruptcy and military service]; *HSBC Bank USA, N.A. v Schneps*, 210 AD3d 748 [2d Dept, 2022] [no complian with RPAPL 1304 by including additional notices in the same envelope with 90-day notice]; *Deutsche Bank Natl. Trust Co. v Ghosh*, 208 AD3d 851 [2d Dept 2022] [copies of 90-day notices showed additional notices not contemplated by RPAPL 1304, warranting denial of summary judgment]; *Citimortgage, Inc. v Dente*, 200 AD3d 1025 [2d Dept 2021] [inclusion of notice regarding bankruptcy violated "separate envelope" mandate]).

violates RPAPL 1304. Considering this documentary evidence was before the lower court and its summary judgment decision and foreclosure judgment both recite the Jeudy affidavit to support those decisions, then that court issued summary judgment for Wells Fargo based on fatally defective notices violating the strict statutory directions of RPAPL 1304. *Difeo*, supra.

More fatal noncompliance with RPAPL 1304 is found in the Jeudy affidavit at paragraph 9 stating the 90-day notice was mailed first class and certified mail to Vassallo, but Jeudy never states that she has personal knowledge of the actual mailing practices of Ocwen. She only states at paragraph 3 of her affidavit that she has “personal knowledge of Ocwen’s records and record making practices” of how records are made, used and kept. That is completely different than personal knowledge of its mailing practices which would include a statement that she personally knows Ocwen mails RPAPL 1304 by both regular and certified mail as directed by the statute. She does not affirm that. There also was no proof attached to her affidavit of copies of the actual regular or certified envelopes containing the RPAPL 1304 notice. Rather, the last page of Exhibit A is an unauthenticated page repeating information allegedly filed by Ocwen with New York State that it mailed a letter on May 20, 2014, without any proof of the requisite certified mailing.

Wells Fargo never satisfied RPAPL 1304 and as a matter of law the lower court should have never granted it summary judgment and judgment on foreclosure. Vassallo has a right to appeal with indisputable law supporting reversal of the foreclosure judgment.

E. Vassallo’s Disability Tolled 22 NYCRR 1250.10

CPLR 208 provides for a toll of the Statute of Limitations where the person entitled to commence an action is under a disability. *Sanchez v. Wolkoff*, 247 A.D.2d 529, 669 N.Y.S.2d 337. There is also the doctrine of equitable tolling that would be applicable here considering

Vassallo was mentally and physically challenged and incapable of managing her attorney Crawford. *Li-Lan Tsai v. Rockefeller Univ.* , 137 F. Supp. 2d 276(SDNY 2001).

Clearly, the undisputed serious nature of Vassallo’s physical and mental condition entitles her to the benefit of this toll. The affidavits of Vassallo and her medical provider affirm that she is disabled and has been so seriously ill the past two years that she has been physically and mentally exhausted and incapable of managing her former attorney the past two years to know that he had not done anything in this appeal. 2/4/25 Vassallo Aff, 2/4/25 Wortman Aff. Hence, she missed the brief filing by six months after the 22 NYCRR 120.10 one-year period as she believed her attorney, who was of record the entire time, was handling the appeal. As soon as she discovered he failed to file her brief she promptly removed him and diligently filed her motion for an extension on October 30, 2024. In similar circumstances, courts have tolled the statute of limitations when persons suffer such physical and mental infirmities that render them incapable of filing a case on time. *Li-Lan Tsai*, supra.

V. CONCLUSION

For all of the foregoing reasons, Vassallo requests vacating the January 10, 2025 Order that denied her an extension to file her brief and permitting that filing within 30-days of the date of the order vacating the prior order.

Dated: February 4, 2025

Yours, etc.,

LAW OFFICES OF SUSAN CHANA LASK

/s/ Susan Chana Lask

Susan Chana Lask, Esq.
244 Fifth Avenue, Suite 2369
New York, NY 10001
(917) 300-1958
susanchanalask@gmail.com

Attorneys for Defendant Vassallo

WORD COUNT CERTIFICATION

The foregoing affirmation was prepared on a computer. The total number of words in this affirmation, exclusive of the caption, table of contents, table of authorities and signature block, is 6,385. This affirmation complies with the word count limit as provided for in 22 NYCRR 202.8-b.

I have relied on the word count function of the word processing system used to prepare this. affirmation to calculate the number of words herein.

Dated: February 4, 2025

Yours, etc.,

LAW OFFICES OF SUSAN CHANA LASK

/s/ Susan Chana Lask

Susan Chana Lask, Esq.

244 Fifth Avenue, Suite 2369

New York, NY 10001

(917) 300-1958

susanchanalask@gmail.com

Attorneys for Defendant Vassallo

EXHIBIT A

STATE OF NEW YORK
SUPREME COURT: COUNTY OF RICHMOND

-----X
OPTION ONE MORTGAGE CORPORATION
3 Ada
Irvine, CA 92618

Plaintiff.

SUMMONS

vs.

ORIGINAL FILED WITH THE
CLERK ON _____

CHRISTINA VASSALLO, COMMERCE BANK, N.A.,
JOHN A. GEMELLI, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU.

INDEX NO.: 101995106

Mortgaged Premises:
314 LORETTO STREET
STATEN ISLAND, NY 10307

JOHN DOE (Said name being fictitious,
it being the intention of Plaintiff to
designate any and all occupants of
premises being foreclosed herein, and
any parties, corporations or entities,
if any, having or claiming an interest
or lien upon the Mortgaged Premises.)

SBL #: BLOCK 7846, LOT 42

Defendant(s).

-----X
TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Complaint in the above entitled action and to serve a copy of your Answer on the Plaintiff's attorney within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within the State. The United States of America, if designated as a Defendant in this action, may answer or appear within sixty (60) days of service hereof. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

RICHMOND County is designated as the place of trial. The basis of venue is the location of the Mortgaged Premises foreclosed herein.

DATED: June 27, 2006

Steven J. Baum, P.C.
Attorney for Plaintiff
220 Northpointe Parkway, Suite G
Amherst, New York 14228
Tel.: 716-204-2400

2006 Jun 28 PM 4:24
RICHMOND COUNTY CLERK
FILED COURT DESK

STATE OF NEW YORK
SUPREME COURT: COUNTY OF RICHMOND

-----X
OPTION ONE MORTGAGE CORPORATION
3 Ada
Irvine, CA 92618

Plaintiff.

vs.

COMPLAINT

CHRISTINA VASSALLO, COMMERCE BANK, N.A.,
JOHN A. GEMELLI, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU.

INDEX NO.:

Mortgaged Premises:
314 LORETTO STREET
STATEN ISLAND, NY 10307

JOHN DOE (Said name being fictitious,
it being the intention of Plaintiff to
designate any and all occupants of
premises being foreclosed herein, and
any parties, corporations or entities,
if any, having or claiming an interest
or lien upon the Mortgaged Premises.)

SBL #: BLOCK 7846, LOT 42

Defendant(s).

-----X

The Plaintiff herein, by Steven J. Baum, P.C., its attorney, complains of the Defendants above named, and for its cause of action, alleges:

FIRST: That the Plaintiff is a banking corporation organized and existing under and by virtue of the laws of the state of California, with an address of 3 Ada, Irvine, CA 92618. That the Plaintiff is the holder of a mortgage bearing date the 16th day of January, 2004 executed by CHRISTINA VASSALLO to secure the sum of \$484,500.00, and recorded at Liber 17905 of Mortgages at Page 114 in the Office of the Clerk of the County of RICHMOND, on the 6th day of May, 2004;

SECOND: Upon information and belief, that at all times hereinafter mentioned, the Defendant(s) set forth in "Schedule A-Defendants" are made Defendants in this action in the capacities therein alleged and for the reasons set forth in said Schedule.

THIRD: That the United States of America, The People of the State of New York, The State Tax Commission of the State of New York, the Industrial Commissioner of the State of New York, and all other agencies or instrumentalities of the Federal, State or local government (however designated), are made parties solely by reason of the facts set forth in "Schedule B".

FOURTH: That the Defendants named in "Schedule C" ("Schedule C" being a copy of the bond or note, or if note cannot be located, a summary of the terms of the note, or an accurate reference to the assumption agreement, evidencing the indebtedness), for the purpose of securing a sum of money, duly executed and acknowledged a certain bond or note whereby they bound themselves, their successors or their heirs, executors, administrators and assigns, and each and every one of them, jointly and severally, in the amount of said sum of money, all as more fully appears together with the terms of repayment of said sum in "Schedule C".

FIFTH: That as security for the payment of said indebtedness, a mortgage was executed ("Schedule D" being a copy of said mortgage[s]), acknowledged and delivered, whereby the mortgagor or mortgagors therein named executed their mortgage to the mortgagee named therein, its successors and assigns, the premises more particularly described therein (hereinafter called "Mortgaged Premises"), under certain conditions with rights, duties and privileges between or among them as more fully appears in said mortgage.

SIXTH: That the said mortgage was duly recorded (and the mortgage tax due thereon was duly paid) in the proper County Clerk's Office at the place and time which appears thereon.

SEVENTH: That the Defendant(s) CHRISTINA VASSALLO so named, have/has failed and neglected to comply with the conditions of said mortgage, bond or note by omitting and failing to pay items of principal and interest or taxes, assessments, water rates, insurance premiums, escrow and/or other charges, all as more fully appears in "Schedule E" and accordingly the Plaintiff hereby elects to call due the entire amount secured by the mortgage described in paragraph "FIFTH" hereof.

EIGHTH: That "Schedule E" sets forth the principal balance due and the date (and rate) from which interest accrued and all other items and charges arising from said default which are now due.

NINTH: That in order to protect its security, the Plaintiff has paid, if set forth in "Schedule E", or may be compelled to pay during the pendency of this action to pay local, taxes, assessments, water rates, insurance premium and other charges affecting the Mortgaged Premises, and the Plaintiff requests that any sums thus paid by it for said purposes (together with interest thereon), should be added to the sum otherwise due and be deemed secured by the said mortgage and be adjudged a valid lien on the Mortgaged Premises.

TENTH: That all the Defendants herein have, or claim to have, some interest in, or lien upon said Mortgaged Premises or some part thereof, which interest or lien, if any, has accrued subsequent to the lien of Plaintiff's mortgage.

ELEVENTH: There are no pending proceedings at law or otherwise to collect or enforce said bond/note and mortgage.

TWELFTH: That Schedules "A", "B", "C", "D", and "E" are expressly incorporated and made a part of the Complaint for all purposes with the same force and effect as if they were completely and fully set forth herein whenever reference has been made to each or any of them.

THIRTEENTH: That by reason of the foregoing, there is now due and owing to the Plaintiff upon said bond or note, the amount set forth in "Schedule E".

FOURTEENTH: That if the security for the indebtedness consists of more than one parcel, Plaintiff respectfully requests that the judgment of foreclosure provide for the sale of the parcels in a particular order to the extent necessary to satisfy the indebtedness.

WHEREFORE, PLAINTIFF DEMANDS JUDGMENT:

1. Adjudging and decreeing the amounts due the Plaintiff for principal, interest, costs and reasonable attorney's fees. (If provided for in the said mortgage)
2. That the Defendants and all persons claiming by, through or under them, and every other person or entity whose right, title, conveyance or encumbrance is subsequent to or subsequently recorded, or whose lien is being challenged by being named in this action, may be barred and forever foreclosed of all right, claim, lien, interest or equity of redemption in and to said Mortgaged Premises.
3. That the said Mortgaged Premises, or such part thereof as may be necessary to raise the amounts due for principal, interest, costs, allowances and disbursements, together with any monies advanced and paid, may be decreed to be sold according to law.

4. That out of the monies arising from the sale thereof, the Plaintiff may be paid the amounts due on said bond/note and mortgage and any sum which may be paid by the Plaintiff to protect the lien of Plaintiff's mortgage as herein set forth, with interest upon said amounts from the dates of the respective payments and advances thereof, the costs and expenses of this action, and reasonable attorney's fees, if provided for in said bond, note or mortgage, so far as the amount of such money properly applicable thereto will pay the same.
5. That either or any of the parties to this action may become a purchaser upon such sale.
6. That this Court, if requested, forthwith appoint a Receiver of the rents and profits of said premises with the usual powers and duties.
7. That the Defendants referred to in paragraph "SEVENTH" of this Complaint and any original or subsequent obligors so named in this action, may be adjudged to pay any deficiency that may remain after applying all of said monies so applicable thereto, unless the debt has been listed and discharged in a Bankruptcy petition or unless the Plaintiff is unable to produce a copy of the note, in which case no deficiency judgment will be sought.
8. That Plaintiff specifically reserves its right to share in any surplus monies arising from the sale of subject premises by virtue of its position as a judgment or other lien creditor excluding the mortgage being foreclosed herein, and
9. That the Plaintiff may have such other or further relief, or both, in the premises as may be just and equitable.

Steven J. Baum, P.C.
Attorney for Plaintiff
220 Northpointe Parkway, Suite G
Amherst, New York 14228
Tel.: 716-204-2400

SCHEDULE "C"

**AFTER DUE DILIGENCE, PLAINTIFF CANNOT LOCATE THE
PROMISSORY NOTE REFERRED TO IN THE RECORDED
MORTGAGE. THE BOOKS AND RECORDS OF THE PLAINTIFF
VERIFY THE EXISTENCE OF A NOTE MADE BY**

Christina Vassallo
TO Option One Mortgage Corp
DATED January 16th, 2004, IN THE FACE AMOUNT
OF \$484,500.00 PAYABLE \$3,816.15 PER MONTH
COMMENCING March 1st, 2004, SAID PAYMENT
TO INCLUDE INTEREST AT THE RATE OF 7.40 % PER
ANNUM MATURING ON THE 15th DAY OF February,
2034.

EXHIBIT B

mo

RICHMOND COUNTY CLERK
JUN 25 P 1:19
DIVISION OF REAL ESTATE

At a Special Term of the Supreme Court of the County of Richmond held in the County Courthouse in the City of Staten Island, New York, on the _____ day of _____, 20

JUN 22 2010

PRESENT: HON. JOSEPH J. MALTESE, J.S.C.

OPTION ONE MORTGAGE CORPORATION

Plaintiff,

vs.

CHRISTINA VASSALLO, COMMERCE BANK, N.A., JOHN A. GEMELLI, NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, NEW YORK CITY TRANSIT ADJUDICATION BUREAU,

Defendant(s).

ORDER OF DISCONTINUANCE OF ACTION, CANCELLATION OF LIS PENDENS AND VACATUR OF JUDGMENT OF FORECLOSURE AND SALE

INDEX NO.: 101995/06

MORTGAGED PREMISES:
314 LORETTO STREET
STATEN ISLAND, NY 10307

SBL #:32-7864-42

RICHMOND COUNTY CLERK
RECEIVED 2008 JUN 22 10:56:49 A.M.
101443/06
FILE NO. 101443/06
FILE NO. 101443/06

-----X

On reading and filing the annexed Affirmation of STEVEN J. BAUM, P.C., Michael J. Wrona, Esq., attorneys of record for Plaintiff,

IT IS HEREBY ORDERED, that this action, and all causes of action alleged therein, and any and all counterclaims and cross claims, is hereby discontinued without costs to either party as against the other and that the notice of pendency of this action filed in the Office of the Clerk of the County of Richmond on the 28th day of June, 2006, be marked cancelled and discharged of record, and the clerk is hereby directed to do so; and it is further

ORDERED, that the Judgment of Foreclosure and Sale granted on the 13th day of July, 2007 and duly entered in the Office of the Clerk of the County of Richmond on the 30th day of July, 2007 be marked vacated by said clerk, and the clerk is hereby directed so to do.

ORDERED, that the referee appointed therein is hereby discharged and relieved of any and all obligations thereunder.

Joseph J. Maltese
Joseph J. Maltese, J.S.C.

GRANTED
JUN 24 2010
Stephen J. Flaks
CLERK

FEES:
 FILING
 ACTION \$45
 DISCONTINUANCE
MTW

JUN 07 2010

242233

COPY

STATE OF NEW YORK
SUPREME COURT: COUNTY OF RICHMOND

-----X
OPTION ONE MORTGAGE CORPORATION

Plaintiff,

**CONSENT TO DISCONTINUE
ACTION, TO CANCEL LIS
PENDENS AND TO VACATE
JUDGEMENT OF FORECLOSURE AND
SALE**

vs.

INDEX NO.: 101995/06

CHRISTINA VASSALLO, COMMERCE BANK,
N.A., JOHN A. GEMELLI, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU,

MORTGAGED PREMISES:
314 LORETTO STREET
STATEN ISLAND, NY 10307

SBL #:32-7864-42

Defendant(s).

-----X

WHEREAS, no party to the above captioned action is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action,

The undersigned, being the attorneys of record for all parties who have appeared herein, hereby consent that the above captioned action, and all causes of action alleged therein, and any and all counterclaims and cross claims, may be discontinued without costs in favor of any party, and that the Notice of Pendency filed in this action in the office of the Clerk of the County of Richmond on the 28th day of June, 2006, be cancelled and discharged of record.

DATED: April 29, 2010



Steven J. Baum, P.C.
Attorneys for Plaintiff
Michael J. Wrona, Esq.

Lisa L. Wallace, Esq.
Attorney for Commerce Bank

Carole R. Larsen, Esq.
Appointed Referee

COPY

STATE OF NEW YORK
SUPREME COURT: COUNTY OF RICHMOND

-----X
OPTION ONE MORTGAGE CORPORATION

Plaintiff,

CONSENT TO DISCONTINUE
ACTION, TO CANCEL LIS
PENDENS AND TO VACATE
JUDGEMENT OF FORECLOSURE AND
SALE

vs.

INDEX NO.: 101995/06

CHRISTINA VASSALLO, COMMERCE BANK,
N.A., JOHN A. GEMELLI, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU,

MORTGAGED PREMISES:
314 LORETTO STREET
STATEN ISLAND, NY 10307

SBL #:32-7864-42

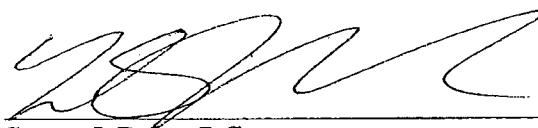
Defendant(s).

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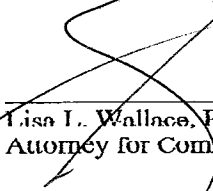
WHEREAS, no party to the above captioned action is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action,

The undersigned, being the attorneys of record for all parties who have appeared herein, hereby consent that the above captioned action, and all causes of action alleged therein, and any and all counterclaims and cross claims, may be discontinued without costs in favor of any party, and that the Notice of Pendency filed in this action in the office of the Clerk of the County of Richmond on the 28th day of June, 2006, be cancelled and discharged of record.

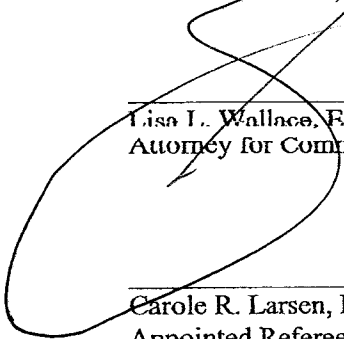
DATED: April 29, 2010



Steven J. Baum, P.C.
Attorneys for Plaintiff
Michael J. Wrona, Esq.



Lisa L. Wallace, Esq.
Attorney for Commerce Bank



Carole R. Larsen, Esq.
Appointed Referee

COPY

STATE OF NEW YORK
SUPREME COURT: COUNTY OF RICHMOND

-----X
OPTION ONE MORTGAGE CORPORATION

Plaintiff,

**CONSENT TO DISCONTINUE
ACTION, TO CANCEL LIS
PENDENS AND TO VACATE
JUDGEMENT OF FORECLOSURE AND
SALE**

vs.

INDEX NO.: 101995/06

CHRISTINA VASSALLO, COMMERCE BANK,
N.A., JOHN A. GEMELLI, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU,

MORTGAGED PREMISES:
314 LORETTO STREET
STATEN ISLAND, NY 10307

SBL #:32-7864-42

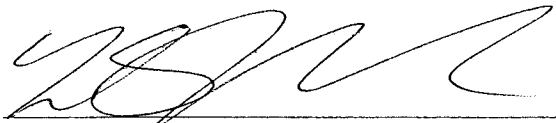
Defendant(s).

-----X

WHEREAS, no party to the above captioned action is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action,

The undersigned, being the attorneys of record for all parties who have appeared herein, hereby consent that the above captioned action, and all causes of action alleged therein, and any and all counterclaims and cross claims, may be discontinued without costs in favor of any party, and that the Notice of Pendency filed in this action in the office of the Clerk of the County of Richmond on the 28th day of June, 2006, be cancelled and discharged of record.

DATED: April 29, 2010



Steven J. Baum, P.C.
Attorneys for Plaintiff
Michael J. Wrona, Esq.

Lisa L. Wallace, Esq.
Attorney for Commerce Bank



Carole R. Larsen, Esq.
Appointed Referee



-----X

OPTION ONE MORTGAGE CORPORATION

Plaintiff,

vs.

CHRISTINA VASSALLO, COMMERCE BANK,
N.A., JOHN A. GEMELLI, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD, NEW YORK
CITY TRANSIT ADJUDICATION BUREAU,

Defendant(s).

**AFFIRMATION IN SUPPORT
OF DISCONTINUANCE OF
ACTION, CANCELLATION OF
LIS PENDENS AND VACATUR
OF JUDGMENT OF
FORECLOSURE AND SALE**

INDEX NO.: 101995/06

MORTGAGED PREMISES:
314 LORETTO STREET
STATEN ISLAND, NY 10307

SBL #:32-7864-42

-----X

Michael J. Wrona, Esq., pursuant to CPLR 2106, and under the penalties of perjury, affirms as follows:

1. I am an attorney at law, and an associate with the law firm of Steven J. Baum, P.C., the attorneys of record for the Plaintiff in the within mortgage foreclosure action. As such, I am fully familiar with the facts and circumstances of this case and the proceedings heretofore had herein.

2. This action was commenced to foreclose a mortgage on real property known as 314 LORETTO STREET, STATEN ISLAND, NY 10307, SBL No. 32-7864-42.

3. That the Summons, Complaint, and Lis Pendens were filed in the Office of the Richmond County Clerk on the 28th day of June, 2006.

4. None of the defendants have appeared, answered, or made any motion with respect to the Complaint in this action and their time to do so has expired except the Defendant

COMMERCE BANK.....LISA L. WALLACE, ESQ.

who consented by the annexed stipulation to discontinue the action and cancel the lis pendens.

5. An application was made for the appointment of a Referee on or about the 11th day of September, 2006. Said application was granted by this Court on the 2nd day of January, 2007. Carole R. Larsen Esq. *, Esq. was appointed to this action as the Referee.

6. An application for Judgment of Foreclosure and Sale was made on or about the 2nd day of April, 2007. Said application was granted by this Court on the 13th day of July, 2007 and was duly entered in the Office of the Richmond County Clerk on the 30th day of July, 2007.

7. The reason your affirmant requests that this action, and all causes of action alleged herein, together with any and all counterclaims and cross claims, be discontinued, and that the aforementioned Judgment of Foreclosure and Sale be vacated, is that defendant entered into a loan modification agreement with the Plaintiff.

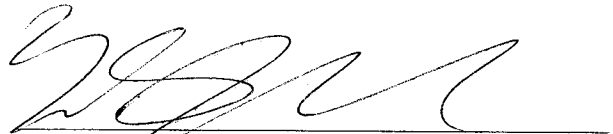
8. No prior application has been made for the same or similar relief as requested herein.

COPY

101995/06

WHEREFORE, your affirmant prays for an order of this Court discontinuing the instant action, cancelling the Notice of Pendency, vacating the Judgment of Foreclosure and Sale, and for such other and further relief as the Court may deem just, equitable, and proper.

DATED: April 29, 2010
 Buffalo, New York



Michael J. Wrona, Esq.

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

INDEX NO.

WELLS FARGO BANK, NATIONAL ASSOCIATION, AS
TRUSTEE FOR ASSET BACKED SECURITIES
CORPORATION HOME EQUITY LOAN TRUST 2004-
HE3, ASSET BACKED PASS-THROUGH
CERTIFICATES, SERIES 2004-HE3,

COMPLAINT

Plaintiff,

vs.

CHRISTINA VASSALLO; FRANK VASSALLO;
MIDLAND FUNDING LLC; NEW YORK CITY PARKING
VIOLATIONS BUREAU; JOHN A. GEMELLI,

"JOHN DOE #1" through "JOHN DOE #12," the last
twelve names being fictitious and unknown to
plaintiff, the persons or parties intended being the
tenants, occupants, persons or corporations, if any,
having or claiming an interest in or lien upon the
premises, described in the complaint,

Defendants.

The complaint of the above-named plaintiff, by RAS Boriskin, LLC, its attorneys, alleges upon
information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. Plaintiff is organized under the laws of the United States of America or its state of formation.
2. On January 16, 2004, CHRISTINA VASSALLO duly executed and delivered a note whereby
CHRISTINA VASSALLO promised to pay the sum of \$484,500.00 plus interest as set forth in said
note. A copy of said Note is annexed hereto.
3. Plaintiff, directly or through an agent has possession of said note, which note is secured by the
mortgage identified below, and the said note is either made payable to Plaintiff or is duly indorsed.
4. That to secure the payment of the sum represented by said note, CHRISTINA VASSALLO,
duly executed and delivered a mortgage which was recorded as follows and the mortgage tax thereon
was duly paid. The subject mortgage was recorded on May 6, 2004 in Reel 17905 at Page 114, of the



14-39318 - KrS

Drafter: Kristina Seigfried

Public Records of RICHMOND County, New York.

Said mortgage was assigned to Plaintiff by assignment of mortgage duly executed on a date prior to the filing of the complaint.

Said mortgage was modified by agreement dated March 1, 2010.

5. Said mortgage secured the real property known as 314 LORETTO STREET, STATEN ISLAND, NEW YORK 10307 and by Block 7864, Lot 42 together with all fixtures and articles of personal property annexed to, installed in, or used in connection with the mortgaged premises, all as is more fully set forth in said mortgage. A copy of the legal description is set forth on Schedule A annexed.

6. Plaintiff is the owner and holder of said note and mortgage or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the said note and mortgage.

7. Upon information and belief, Plaintiff complied with RPAPL 1304 and RPAPL 1306 unless exempt from doing so. Moreover, Plaintiff has complied with all conditions precedent contained in the mortgage, if any.

8. That Defendants failed to comply with the conditions of the note and mortgage by failing to make the payment that became due on January 1, 2011 and each subsequent payment thereafter.

9. That by reason of such defaults, Plaintiff hereby declares the balance of the principal indebtedness immediately due and payable.

10. That there is now due and owing to the plaintiff, the principal sum of \$662,073.67 with interest thereon from the December 01, 2010 plus accumulated late charges together with any sums advanced by the plaintiff on behalf of defendant.

11. That plaintiff shall not be deemed to have waived, altered, released or changed the election hereinbefore made by reason of the payment after the date of the commencement of this action, of any or all of the defaults mentioned herein; and such election shall continue and remain effective until the costs and disbursements of this action, and any and all future defaults under the aforesaid bond or note and mortgage, and occurring prior to the discontinuance of this action are fully paid.

12. That to protect its security afforded by said note and mortgage, it may be necessary for the

plaintiff to pay taxes, assessments, water rates and insurance premiums which are, or may become liens on the mortgaged premises, and any other charges for the protection of the premises, and plaintiff hereby demands that any amounts which may be so expended shall be added to the amount of the principal sum secured by said note and mortgage, together with interest from the time of any such payment, and that the same be paid to the plaintiff from the proceeds of the foreclosure sale herein.

13. That the plaintiff alleges that no other proceedings have been had for the recovery of the mortgage indebtedness or if any such action is pending, a final judgment was not rendered in favor of Plaintiff and such action is intended to be discontinued.

14. That the said premises and title thereto are subject to the following:

- a) The state of facts an accurate survey will show;
- b) All covenants, restrictions, easements, agreements and reservations, if any, of record, and to any and all violations thereof;
- c) Any and all building and zoning regulations, restrictions and ordinances of the municipality in which said premises are situated, and to any violations of the same, including, but not limited to, reapportionment of lot lines, and vault charges, if any;
- d) Any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said premises and any violation of the same;
- e) The physical condition of any building or structure on the premises as of the date of closing hereunder;
- f) Rights of tenants in possession, if any;
- g) Prior mortgages and judgments, if any, now liens of record;
- h) Right of Redemption of United States of America, if any;
- i) Rights of any defendants pursuant to CPLR Section 317, CPLR Section 2003 and CPLR Section 5015, if any;
- j) Any and all Hazardous Materials in the premises including, but not limited to, flammable explosives, radioactive materials, hazardous wastes, asbestos or any material containing asbestos, and toxic substances; and

k) Other conditions as set forth in the terms of sale more particularly to be announced at the sale.

15. That plaintiff further alleges that all the defendants have, or may claim to have, some interest in, or lien upon the mortgaged premises, or some part thereof, which interest or lien, if any, is subject and subordinate to the lien of the mortgage being foreclosed.

16. The description of each of the named party defendants interest is set out on Schedule "B" annexed.

17. The interest or lien of each of the named party defendants, if any, is set forth in Schedule "C" annexed.

18. The terms of said mortgage provide that defendants shall be liable to plaintiff for reasonable attorneys' fees incurred by plaintiff to protect or enforce plaintiff's security interest in the premises.

19. That the sale of the mortgaged premises and title thereto are subject to the state of facts an accurate survey will show; all covenants, restrictions, easements, agreements and reservations, if any, of record, and to any and all violations thereof; any and all building and zoning regulations, restrictions and ordinances of the municipality in which said premises are situated, and to any violations of the same, including, but not limited to, reapportionment of lot lines, and vault charges, if any; any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said premises and any violation of the same; the physical condition of any building or structure on the premises as of the date of closing hereunder; rights of tenants in possession, if any; prior mortgages and judgments, if any, now liens of record; right of Redemption of United States of America, if any; rights of any defendants pursuant to CPLR Section 317, CPLR Section 2003 and CPLR Section 5015, if any; any and all Hazardous Materials in the premises including, but not limited to, flammable explosives, radioactive materials, hazardous wastes, asbestos or any material containing asbestos, and toxic substances; and other conditions as set forth in the terms of sale more particularly to be announced at the sale.

AS AND FOR A SECOND CAUSE OF ACTION

20. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1 through 19.

21. This action is brought pursuant to Article 15 of the New York State Real Property Actions and Proceedings Law to bar defendant JOHN A. GEMELLI from any right, title, or interest in and to the premises located at 314 LORETTO STREET, STATEN ISLAND, NEW YORK 10307 and known as Block 7864; Lot 42.

22. Plaintiff is the holder of the subject note and mortgage referenced in paragraphs 2 and 3 above.

23. Upon review of a foreclosure search it was determined that the following defendant has an interest or claim in the real property which cannot be extinguished in the foreclosure action: JOHN A. GEMELLI.

24. JOHN A. GEMELLI is named a party defendant by virtue of the fact that it holds a prior judgment which is adverse to Plaintiff's interest and which remains open of record as follows:

Recorded Date: May 5, 2003

Control Number 000193531-01

Index Number 5458/01

County of: RICHMOND

In the amount of \$10,000.00 plus costs and interest, if any

Judgment is annexed hereto.

25. Upon information and belief, all of the defendants are known, and none of them are infants, mentally retarded, mentally ill or alcohol abusers.

26. Upon information and belief, there are no persons not being or ascertained at the commencement of this action who by any contingency contained in a devise or otherwise, could afterward become entitled to a beneficial estate or interest in the property involved in this action, and any judgment rendered herein will not and may not affect any such person not in being or not ascertained at the time of the commencement of the action.

27. The lien of Defendant JOHN A. GEMELLI appears to be prior and adverse to the mortgage being foreclosed and is subject to be declared invalid and extinguished pursuant to Article 15 of the Real Property Actions and Proceedings Law.

28. Plaintiff hereby requests that the Judgment of Foreclosure and Sale state the following:

ORDERED, ADJUDGED and DECREED that the prior lien which appears to be adverse to the mortgage being foreclosed, namely the prior lien of Defendant JOHN A. GEMELLI is hereby declared invalid and extinguished pursuant to RPAPL Article 15; and it is further

ORDERED, ADJUDGED and DECREED that Defendant JOHN A. GEMELLI and all persons or entities claiming by, through or under them, be and are hereby forever barred and foreclosed of and from all right, claim, lien, interest or equity of redemption in and to said mortgaged premises; and it is further

ORDERED, ADJUDGED AND DECREED, that the record be reformed to reflect that the prior lien of Defendant JOHN A. GEMELLI is invalid and extinguished.

THIS SPACE IS INTENTIONALLY LEFT BLANK

WHEREFORE, plaintiff demands judgment against the defendants as follows:

On its First Cause of Action,

- A. The defendants and each of them, and all persons claiming under them, or any of them subsequent to the commencement of this action and the filing of the Notice of Pendency thereof, may be barred and foreclosed of all right, title, claim, lien and equity of redemption in the mortgaged premises;
- B. Said mortgaged premises be sold subject to the state of facts an accurate survey will show; all covenants, restrictions, easements, agreements and reservations, if any, of record, and to any and all violations thereof; any and all building and zoning regulations, restrictions and ordinances of the municipality in which said premises are situated, and to any violations of the same, including, but not limited to, reapportionment of lot lines, and vault charges, if any; any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said premises and any violation of the same; the physical condition of any building or structure on the premises as of the date of closing hereunder; rights of tenants in possession, if any; prior mortgages and judgments, if any, now liens of record; right of Redemption of United States of America, if any; rights of any defendants pursuant to CPLR Section 317, CPLR Section 2003 and CPLR Section 5015, if any; any and all Hazardous Materials in the premises including, but not limited to, flammable explosives, radioactive materials, hazardous wastes, asbestos or any material containing asbestos, and toxic substances; and other conditions as set forth in the terms of sale more particularly to be announced at the sale.
- C. Said premises may be decreed to be sold in one parcel according to law subject to the various items set forth in allegations of the complaint herein;
- D. The monies arising from the sale may be brought into court;
- E. Plaintiff may be paid the amount due on said note and mortgage as alleged herein, together with interest to the time of such payment, together with the sums expended by plaintiff prior to and during the pendency of this action, and for thirty days after any sale demanded herein for taxes, water rates, sewer rents, assessments, insurance premiums and other necessary and essential charges or expenses in connection therewith to protect the mortgage lien, plus any sums expended for the protection or preservation of the property covered by said mortgage and note, and the amount secured thereby, with interest thereon from the time of such payment and the costs and expenses of this action including reasonable attorneys' fees so far as the amount of such monies properly applicable thereto will pay the same;

- F. The plaintiff be decreed to be the owner of any and all personal property used in connection with the said mortgaged premises;
- G. The obligors may be adjudged to pay any deficiency which may remain after applying all of said monies so applicable thereto unless the obligors were discharged in bankruptcy;
- H. awarding the relief requested in the additional causes of action stated in the complaint, if any;
- I. Plaintiff shall have such other and further relief or both, in the premises as shall be just and equitable.

On its Second Cause of Action,

that the lien of defendant JOHN A. GEMELLI that is prior and adverse to the mortgage being foreclosed is declared invalid and extinguished pursuant to Article 15 of the Real Property Actions and Proceedings Law; and that plaintiff have such other and further relief or both, in the premises as shall be just and equitable

RAS Boriskin, LLC
Attorney for Plaintiff

BY: 

ANTHONY CELLUCCI, ESQ.

LISA SOAVE, ESQ.

SARA BORISKIN, ESQ.

900 Merchants Concourse, Suite LL-5

Westbury, NY 11590

(516) 280-7675

Loan Number: [REDACTED]

Servicing Number: [REDACTED]

Date: 01/16/04

**ADJUSTABLE RATE NOTE
(LIBOR Index - Rate Caps)**

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

314 LORETTO ST, STATEN ISLAND, NY 10307-1919
[Property Address]

1. **BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$484,500.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Option One Mortgage Corporation, a California Corporation. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."
2. **INTEREST**

Interest will be charged on unpaid principal until the full amount of principal has been paid. Interest will be calculated on the basis of a 12-month year and a 30-day month. I will pay interest at a yearly rate of 7.400%. The interest rate I will pay may change in accordance with Section 4 of this Note.
The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.
3. **PAYMENTS**
 - (A) **Time and Place of Payments**

I will pay principal and interest by making payments every month.
I will make my monthly payments on the first day of each month beginning on March, 2004. I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on February 01, 2034, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."
I will make my monthly payments at Option One Mortgage Corporation, P.O. BOX 92103 LOS ANGELES, CA 90009-2103 or at a different place if required by the Note Holder.
 - (B) **Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$3,354.58. This amount may change.
 - (C) **Monthly Payment Changes**

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.
 - (D) **Application of Payments**

Payments received by the Note Holder will be applied in the following order: (i) prepayment charges due under this Note; (ii) amounts payable under paragraph 2 of the Security Instrument (defined below); (iii) interest due under this Note; (iv) principal due under this Note; and (v) late charges due under this Note.
4. **INTEREST RATE AND MONTHLY PAYMENT CHANGES**
 - (A) **Change Dates**

The interest rate I will pay may change on the first day of February, 2006, and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."
 - (B) **The Index**

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."
If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.
 - (C) **Calculation of Changes**

Before each Change Date, the Note Holder will calculate my new interest rate by adding SIX AND 10/100 percentage point(s) (6.100%) to the Current Index. The Note Holder will then round the result of this addition to the next higher one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.
The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.400% or less than 7.400%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage point (1.0%) from the rate of interest I have been paying for the preceding six months. In no event will my interest rate be greater than 13.400% or less than 7.400%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due, together with accrued interest. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of my monthly payments after the first Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED**(A) Late Charges for Overdue Payments**

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 2.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all interest that I owe on that amount, together with any other charges that I owe under this Note or the Security Instrument, except as otherwise required by applicable law.

(C) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(D) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

Loan Number: [REDACTED]

Servicing Number: [REDACTED]

Date: 01/16/04

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.


CHRISTINA VASSALLO (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

[Sign Original Only]

Loan Number: [REDACTED]

Servicing Number: [REDACTED]

Date: 01/16/04

**ALLONGE TO NOTE
(INVESTOR)**

This allonge makes reference to the following Note:

Borrowers: CHRISTINA VASSALLO

Loan #: [REDACTED]

Property Address: 314 LORETTO ST, STATEN ISLAND, NY 10307-1919

Loan Amount: \$484,500.00

Note Date: 01/16/04

Therefore, in reference to the captioned note, the following applies:

Pay to the order of:

Without Recourse

Option One Mortgage Corporation
A California Corporation

By: Kendra Stapleton
Kendra Stapleton

Assistant Secretary

EXHIBIT D

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND**

-----X
WELLS FARGO BANK, NATIONAL ASSOCIATION,
AS TRUSTEE FOR ASSET BACKED SECURITIES
CORPORATION HOME EQUITY LOAN TRUST 2004-
HE3, ASSET BACKED PASS-THROUGH CERTIFICATES,
SERIES 2004-HE3,

RFP

**Present:
Hon. DESMOND A. GREEN**

Plaintiff,

-against-

DECISION & ORDER

CHRISTINA VASSALLO; FRANK VASALLO;
MIDLAND FUNDING LLC; NEW YORK CITY PARKING
VIOLATIONS BUREAU; JOHN A. GEMELLI,

**Index No. 135743/2014
Motion No. 1674 - 003**

“JOHN DOE #1” through “JOHN DOE #12”, the last twelve
names being fictitious and unknown to plaintiff, the persons
or parties intended being the tenants, occupants, persons or
corporations, if any, having or claiming an interest in or lien
upon the premises, described in the complaint,

Defendants.

-----X
The following papers numbered 1 to 5 were fully submitted on the 3rd day
of October, 2018.

Papers Numbered

Plaintiff’s Notice of Motion, <i>inter alia</i> , for Summary Judgment Striking the Answer of Christina Vassallo, a Default Judgment against the Non-Answering Defendants, and the Appointment of a Referee to Compute, with Supporting Papers (dated April 13, 2018).....	1
Attorney Affirmation in Further Support of Motion for Summary Judgment (dated July 10, 2018).....	2
Amended Attorney Affirmation in Further Support of Motion for Summary Judgment (dated August 6, 2018).....	3

Affirmation in Opposition by Defendant Christina Vassallo
(dated July 5, 2018)..... 4

Amended Affirmation in Opposition by Defendant
Christina Vassallo
(dated July 24, 2018)..... 5

Upon the foregoing papers, plaintiff’s motion (Sequence No. 003) for summary judgment striking the answer of defendant Christina Vassallo, a default judgment against the non-answering defendants, and the appointment of a Referee to Compute is granted. The branch of the motion which is to declare the lien held by defendant John A. Gemelli extinguished is granted in accordance with the following.

Plaintiff Wells Fargo Bank, National Association, as Trustee for Asset Backed Securities Corporation Home Equity Loan Trust 2004-HE3, Asset Backed Pass-Through Certificates, Series 2004-HE3 (hereinafter, “Wells Fargo”) commenced this action to foreclose a mortgage encumbering certain premises located at 314 Loretto Street, Staten Island, New York. The mortgage was given by plaintiff’s predecessor-in-interest (the lender, Option One Mortgage Corporation) to secure a promissory note executed by the borrower, defendant Christina Vassallo, on January 16, 2004. The loan was subsequently modified by a Loan Modification Agreement dated March 1, 2010. The borrower allegedly defaulted by failing to pay the monthly loan installments due on January 1, 2011, and thereafter. Insofar as it appears on the papers before the Court, the mortgage was assigned to plaintiff by Assignment of Mortgage dated March 6, 2012. This action was commenced on September 25, 2014. Defendants Christina Vassallo and John A. Gemelli interposed separate Answers to the Complaint; the remaining defendants have not answered and are in default. The action was assigned to the Foreclosure Conference Part of this

Court wherein numerous foreclosure settlement conferences were held pursuant to CPLR § 3408, without resolution. Thereafter, the case was released to proceed with the foreclosure proceedings.

“Generally, in moving for summary judgment in an action to foreclose a mortgage, a plaintiff establishes its prima facie case through the production of the mortgage, the unpaid note, and evidence of default” (*U.S. Bank N.A. v Sabloff*, 153 AD3d 879, 889 [2d Dept 2017] [internal quotation marks omitted]; see *U.S. Bank Natl. Ass. v Henry*, 157 AD3d 839, 840-841 [2d Dept 2018]; *Bank of Am., N.A. v DeNardo*, 151 AD3d 1008 [2d Dept 2017]). Where, as here, “the plaintiff standing is placed in issue by a defendant, the plaintiff must prove its standing as part of its prima facie showing” (*U.S. Bank Natl. Ass. v Henry*, 157 AD3d at 840; see *Wells Fargo Bank, N.A. v Lewczuk*, 153 AD3d 890 [2d Dept 2017]). More specifically, a plaintiff establishes its standing in a mortgage foreclosure action by demonstrating that it was either the holder or assignee of the underlying note when the action is commenced” (see *Aurora Loan Servs., LLC v Taylor*, 25 NY3d 355, 361 [2015]; *Bank of Am., N.A. v Wheatley*, 158 AD3d 736, 736 [2d Dept 2018]). In this regard, it has been held that “[e]ither a written assignment of the underlying note or the physical delivery of the note prior to the commencement of the foreclosure action is sufficient to transfer the obligation, and the mortgage passes with the debt as an inseparable incident [thereof]” (*Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d 725, 726 [2d Dept 2017]; see *Aurora Loan Servs., LLC v Taylor*, 25 NY3d at 361-362; *JPMorgan Chase Bank, N.A. v Weinberger*, 142 AD3d 643, 644-645 [2d Dept 2016]; *Dyer Trust 2012-1 v Global World Realty, Inc.*, 140 AD3d 827, 828 [2d Dept 2016]).

In the matter at bar, plaintiff established, prima facie, its standing as evidenced by the attachment of the note, which contained an allonge endorsed in blank by the mortgagee, Option One Mortgage Corporation, to the Summons and Complaint at the time the action was commenced

(see *Bank of Am., N.A. v Wheatley*, 158 AD3d at 737; see *U.S. Bank Natl. Ass. v Clement*, 163 AD3d 742 [2d Dept 2018]; *Nationstar Mtge., LLC v LaPorte*, 162 AD3d 784, 786 [2d Dept 2-18]; *Wells Fargo Bank, N.A. v Frankson*, 157 AD3d 844, 845 [2d Dept 2018]; *Bank of N.Y. Mellon v Lopes*, 158 AD3d 662, 663-664 [2d Dept 2018]; *U.S. Bank Natl. Ass. v Henry*, 157 AD3d at 841; *US Bank Natl Assn. v Coppola*, 156 AD3d 934, 935 [2d Dept 2017]); *Wells Fargo Bank, N.A. v Lewczuk*, 153 AD3d at 890; *U.S. Bank N.A. v Sabloff*, 153 AD3d at 880; *Deutsche Bank Natl. Trust Co. v Carlin*, 152 AD3d 491, 492 [2d Dept 2017]; *Wells Fargo Bank, N.A. v Thomas*, 150 AD3d 1312, 1313 [2d Dept 2017]). Moreover, “[w]here the note is affixed to the complaint, ‘it is unnecessary to give factual details of the delivery in order to establish that possession was obtained prior to a particular date’” (*Deutsche Bank Natl. Trust Co. v Logan*, 146 AD3d 861, 863 [2d Dept 2107], quoting *JPMorgan Chase Bank, NA v Weinberger*, 142 AD3d at 645; see *Aurora Loan Servs., LLC v Taylor*, 25 NY3d at 362; *Wells Fargo Bank, N.A. v Inigo*; 164 AD3d 545, 547 [2d Dept 2018]; *Mariners Atlantic Portfolio, LLC v Hector*, 159 AD3d 686, 687-688 [2d Dept 2018]; *U.S. Bank Natl. Ass. v Henry*, 157 AD3d at 841).

Thus, defendant’s contention that plaintiff has failed to give factual details as to the physical delivery of the subject note is misguided (see *US Bank Natl Assn. v Coppola*, 156 AD3d at 935). “There is simply no requirement that an entity in possession of a negotiable instrument that has been endorsed in blank must establish how it came into possession of the instrument in order to be able to enforce it” (*U.S. Bank Natl. Ass. v Henry*, 157 AD3d at 841 citing *JP Morgan Chase Bank, N.A. v Weinberger*, 142 AD3d at 645; see *U.S. Bank Natl. Ass. v Henry*, 157 AD3d at 841; *US Bank Natl Assn. v Coppola*, 156 AD3d at 935; see *Deutsche Bank Natl. Trust Co. v Carlin*, 152 AD3d at 493; see also UCC 3-202[1]; 3-204[2]).

Furthermore, plaintiff sustained its burden of demonstrating its prima facie entitlement to judgment as a matter of law by submitting the mortgage, the note and allonge endorsed in blank by plaintiff's predecessor-in-interest, and the affidavit of the loan servicer's Contract Management Coordinator, Jennifer Jeudy, an individual with personal knowledge of the records and record making practices of her employer, who attests to the borrower's default under the terms of the loan (*see Wells Fargo Bank, N.A. v Frankson*, 157 AD3d at 846; *Bank of New York Mellon v Lopes*, 158 AD3d at 664; *Wells Fargo Bank v Thomas*, 150 AD3d 1312, 113 [2d Dept 2017]; *Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d at 726; *Deutsche Bank Natl. Co. v Leigh*, 137 AD3d 841, 842 [2d Dept 2016]).

The affidavit is legally sufficient to demonstrate the admissibility of Ms. Jeudy's assertions under the business records exception to the hearsay rule (CPLR § 4518[a]) because she averred in her affidavit that she has personal knowledge of plaintiff's business records and record-making practices (*see Bank of New York Mellon v Lopes* 158 AD3d at 664; *Citibank, N.A. v Gentile*, 156 AD3d 859, 860 [2d Dept 2017]; CPLR 4518[a]) pertaining to, *inter alia*, (1) plaintiff's physical possession of the original note as of December 30, 2013, (2) the borrower's default, (3) and the mailing of the required notices, *i.e.*, the Notice of Default pursuant to the terms of the mortgage, and the 90-Day Pre-Foreclosure Notices pursuant to RPAPL §1304. Proof of mailing by first-class mail in properly stamped and addressed envelopes, and by certified mail bearing United States Postal Service tracking numbers is annexed to her affidavit (*see Bank of New York Mellon v Lopes* 158 AD3d at 664) ¹.

¹ Notably, defendant's Answer to the Complaint does not raise the defense of plaintiff's failure to comply with the notice requirements pursuant to RPAPL § 1303.

Defendant's challenge to the veracity and validity of the Assignment of Mortgage dated March 6, 2012 by Sand Canyon Corporation f/k/a Option One Mortgage Corporation to plaintiff Wells Fargo is unavailing (*see Wells Fargo Bank, N.A. v Inigo*, 164 AD3d 545, 547 [2d Dept 2018]; *Silvergate Bank v Calkula Props., Inc.*, 150 AD3d 1295, 1296 [2d Dept 2017]). Where, as here, the evidence establishes that Wells Fargo had physical possession of the note at the time the action was commenced, the invalidity of the various assignments of the mortgage does not affect its standing (*see Silvergate Bank v Calkula Props., Inc.*, 150 AD3d at 1296; *Mariners Atlantic Portfolio, LLC v Hector*, 159 AD3d at 688). Stated otherwise, because "the mortgage passes as an incident to the note" (*Aurora Loan Servs., LLC v Taylor*, 25 NY3d at 361 [internal quotation marks omitted]; *see Deutsche Bank Trust Co. Ams. v Garrison*, 147 AD3d at 726; *JPMorgan Chase Bank, N.A. v Weinberger*, 142 AD3d at 644-645), the validity of the assignments of the subject mortgage is irrelevant to plaintiff's entitlement to summary judgment (*see Wells Fargo Bank, N.A. v Charlaff*, 134 AD3d 1099, 1100 [2d Dept 2015]), and "any disparity between the holder of the note and the mortgagee of record does not stand as a bar to a foreclosure action" (*Aurora Loan Servs., LLC v Taylor*, 25 NY3d at 361-362). Moreover, defendant's perceived defects in the assignments should not be construed to impair the long-recognized methods of transferring a negotiable instrument such as a promissory note under the Uniform Commercial Code (*see* UCC 3-202[1] and 3-204[2]).

Defendant Vassallo's remaining contentions lack merit. In particular, she incorrectly maintains that plaintiff failed to comply with CPLR § 3012-b which requires that a Certificate of Merit be filed with the complaint in a residential foreclosure action. The court's electronic filing system indicates that on September 25, 2014, the Summons and Complaint, and a Certificate of Merit dated September 13, 2014, were filed. Annexed to the Certificate of Merit are copies of the

note, mortgage, assignment of mortgage, loan modification agreement and the notice of pendency, as required by the CPLR § 3012-b(a). An Amended Certificate of Merit was filed on December 14, 2016, which specifically identified the representatives of the loan servicer with whom plaintiff's attorney communicated (*see* CPLR § 3012-b[a]). Any purported irregularities with the certificates that were filed are of no consequence here, absent a showing that "plaintiff willfully failed to provide copies of the papers and documents as required by [CPLR 3012-b (a)]" (*see* CPLR 3012-b [e]).

Furthermore, the denials and defenses interposed in defendant Vassallo's answer consist entirely of unsupported and bare legal conclusions lacking either factual allegations or documentary proof in support thereof. As such, she has failed to meet her burden to defeat summary judgment by coming forward with admissible evidence of a material issue of fact requiring a trial (*see Wells Fargo Bank Minn. Natl. Ass. v Perez*, 41 AD3d 590, 590 [2d Dept 2007], *lv denied* 14 NY3d 710; *Wells Fargo Bank v Thomas*, 150 AD3d at 1314).

Turning to the unopposed branch of the motion which is for summary judgment striking the answer of John A. Gemelli, plaintiff maintains that this defendant is a party to the action by virtue of a prior judgment he holds against defendant Frank Vasallo, which, admittedly, is superior to the mortgage lien at issue in this case. A search of the records of the Richmond County Clerk reveals that the judgment was duly recorded on May 5, 2003. It is argued that more than ten years has elapsed since the judgment was recorded, therefore, the lien has expired and should be declared "invalid and extinguished" in accordance with CPLR § 5014 which provides, in pertinent part, "[a]n action upon a money judgment entered in a court of the state may only be maintained between the original parties to the judgment where...ten years have elapsed since the first docketing of the judgment."

“Although under CPLR § 211(b), a New York judgment has a life of 20 years, CPLR 5203(a) makes the judgment a lien on the defendant’s real property for only ten. If the ten expire without satisfaction of the judgment, the judgment, while retaining its validity [for the balance of the 20 years], loses its lien value, which means that another creditor [*e.g.*, a mortgagee] can sneak in with a lien and make the real property unavailable for satisfaction of the judgment” (Siegel, Practice Commentaries, Cons Laws of NY, Book 7B, C5014:2). Consonant with the foregoing, the Court finds that defendant Gemelli’s lien has expired and the related money judgment may not be enforced against the subject property. However, pursuant to CPLR § 211(b), the judgment remains valid for the balance of its 20-year life.

The branch of plaintiff’s motion which seeks a default judgment pursuant to CPLR 3215 against the remaining defendants who have neither appeared nor answered the complaint is unopposed.

Accordingly, it is

ORDERED, that plaintiff’s motion for (1) summary judgment striking the Answers of defendants Christina Vassallo and John A. Gemelli, (2) a default judgment against the remaining defendants, and (3) the appointment of a Referee to Compute, is granted in its entirety; and it is further

ORDERED, that the branch of the motion which seeks a declaration that defendant John A. Gemelli’s judgment docketed in the Richmond County Clerk’s Office on May 5, 2003, is invalid and extinguished, is granted solely to the extent that the lien is declared to be expired; the

related money judgment remains valid pursuant to CPLR §211(b) although the subject property is unavailable for satisfaction of the money judgment; and it is further

ORDERED, that the Clerk enter judgment accordingly.

E N T E R,

Dated: 12/14/18



J.S.C.

Hon. Desmond A. Green
J.S.C.

EXHIBIT E

pg

At Part ____ of the Supreme Court of the State of New York, held in and for the County of RICHMOND at the Courthouse thereof, 26 Central Avenue, Staten Island, NY 10307, on the 1 day of April, 2022, 2019.

P R E S E N T: Honorable Desmond A. Green, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

-----X
WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR ASSET BACKED SECURITIES CORPORATION HOME EQUITY LOAN TRUST 2004-HE3, ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2004-HE3,

Plaintiff,

vs.

CHRISTINA VASSALLO; FRANK VASSALLO; MIDLAND FUNDING LLC; NEW YORK CITY PARKING VIOLATIONS BUREAU; JOHN A. GEMELLI,

Defendant(s).

INDEX NO.: 135743/2014

ORDER CONFIRMING REFEREE REPORT AND JUDGMENT OF FORECLOSURE AND SALE

MORTGAGED PROPERTY:
314 LORETTO STREET
STATEN ISLAND, NY 10307

COUNTY: RICHMOND

BL#: Block 7864, Lot 42

-----X
UPON the Summons, Complaint and Notice of Pendency filed in this action on September 25, 2014, the subsequent Notice of Pendency filed on March 5, 2019, the Notice of Motion dated August 12, 2019, the affirmation of Veronica M. Rundle, Esq., the affidavit of indebtedness due by JENNIFER JEUDY who is CONTRACT MANAGEMENT COORDINATOR of OCWEN LOAN SERVICING, LLC, as servicer for WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR ASSET BACKED SECURITIES

14-39318 - ByM

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RECEIVED NYSCEF: 04/21/2022
INDEX NO: 135743/2014

NYSCEF DOC. NO. 178

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CORPORATION HOME EQUITY LOAN TRUST 2004-HE3, ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2004-HE3, duly sworn to on February 27, 2018; the affidavit of indebtedness due by CLARIBEL LOPEZ who is CONTRACT MANAGEMENT COORDINATOR of PHH MORTGAGE CORPORATION, SUCCESSOR BY MERGER TO OCWEN LOAN SERVICING, LLC, as servicer for WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR ASSET BACKED SECURITIES CORPORATION HOME EQUITY LOAN TRUST 2004-HE3, ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2004-HE3, duly sworn to on June 26, 2019; together with the exhibits attached thereto, all in support of Plaintiff's motion for a Judgment of Foreclosure and Sale; and

UPON proof that each of the Defendants herein have been duly served with the Summons and Complaint in this action, and has voluntarily appeared either personally or by their respective attorneys or have not served any answer to the Complaint or otherwise appeared, nor had their time to so do extended; and it appearing that more than the legally required number of days had elapsed since said Defendants FRANK VASSALLO, MIDLAND FUNDING LLC and NEW YORK CITY PARKING VIOLATIONS BUREAU were so served and/or appeared; and Plaintiff having established to the court's satisfaction that judgment against the defendants is warranted;

UPON the affidavit of mailing reflecting compliance with CPLR 3215(g)(3)(iii); and

14-39318 - ByM

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RECEIVED NYSCEF: 04/21/2022
INDEX NO. 135743/2014

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

UPON proof that non-appearing defendants FRANK VASSALLO, MIDLAND FUNDING LLC and NEW YORK CITY PARKING VIOLATIONS BUREAU are not absent, in accordance with RPAPL §1321(2);

AND the court having held a mandatory settlement conference in this action pursuant to CPLR §3408.

A settlement was not reached and the case was released from the settlement conference part on February 06, 2015.

A Referee having been appointed to compute the amount due to the Plaintiff upon the bond/note and mortgage set forth in the Complaint, and to examine whether the mortgaged property can be sold in parcels; and

UPON reading and filing the Report of Charles C. Destefano, Esq. dated _____, showing the sum of \$1,004,460.98 due as of June 21, 2019 and that the mortgaged property cannot be sold in parcels; and

UPON proof of due notice of this application upon all parties entitled to receive same, and upon all of the prior proceedings and papers filed herein; and

ORDERED that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee's Report be, and the same is, hereby in all respects ratified and confirmed; and it is further

14-39318 - ByM

FILED: RICHMOND COUNTY CLERK - PENDING

RECEIVED NYSCEF: 04/21/2022
INDEX NO. 135743/2014

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

ORDERED, ADJUDGED AND DECREED that the mortgaged property described in the Complaint in this action and as hereafter described, or such part thereof as may be sufficient to discharge the mortgage debt, the expenses of the sale, and the costs of this action as provided by the RPAPL be sold, within 90 days from the date of this Judgment, in one parcel, at public auction at the Supreme Court, Richmond County, 26 Central Avenue by and under the direction of Charles C. Destefano, who is hereby appointed Referee for that purpose; that said Referee give public notice of the time and place of sale in accordance with RPAPL §231 in Staten Island Advance; and it is further

ORDERED, ADJUDGED AND DECREED that by accepting this appointment the Referee certifies that he/she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2(c) ("Disqualifications from appointment"), and §36.2(d) ("Limitations on appointments based upon compensation"); and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee is prohibited from accepting or retaining any funds for him/herself or paying funds to him/herself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

14-39318 - ByM

FILED: RICHMOND COUNTY CLERK - PENDING

RECEIVED NYSCEF: 04/21/2022
INDEX NO. 135743/2014

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

ORDERED, ADJUDGED AND DECREED that the Referee shall conduct the foreclosure sale only if Plaintiff, its successors and/or assignees, or its representative is present at the sale; and it is further

ORDERED, ADJUDGED AND DECREED that if the Referee does not conduct the sale within 90 days of the date of the judgment, in accordance with CPLR 2004, the time fixed by RPAPL §1351(1) is extended for the Referee to conduct the sale as soon as reasonably practicable; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall accept the highest bid offered by a bidder who shall be identified upon the court record, and shall require that the successful bidder immediately execute Terms of Sale for the purchase of the property, and pay to the Referee, in cash or certified or bank check, ten percent (10%) of the sum bid, unless the successful bidder is the Plaintiff in which case no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED AND DECREED that in the event the first successful bidder fails to execute the Terms of Sale immediately following the bidding upon the subject property or fails to immediately pay the ten percent (10%) deposit as required, the property shall be reoffered at auction; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee shall then deposit the
down payment and proceeds of sale, as necessary, in

14-39318 - ByM

FILED: RICHMOND COUNTY CLERK - PENDING

RECEIVED NYSCEF: 04/21/2022
INDEX NO. 135743/2014

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

IOLA Acct or FDIC Insured Bank
w/in NYC _____ in his/her own name as Referee, in accordance

with CPLR 2609; and it is further

ORDERED, ADJUDGED AND DECREED that after the property is sold the Referee shall execute a deed to the purchaser, in accordance with RPAPL §1353 and the terms of sale, which shall be deemed a binding contract; and it is further

ORDERED, ADJUDGED AND DECREED that in the event a party other than the Plaintiff becomes the purchaser at the sale, the closing of title shall be had thirty (30) days after the date of such sale unless otherwise stipulated by all parties to the sale; and it is further

ORDERED, ADJUDGED AND DECREED that if the Plaintiff (or its affiliate, as defined in paragraph (a) of subdivision 1 of section six-1 of the Banking Law) is the purchaser, such party shall place the property back on the market for sale or other occupancy: (a) within one hundred eighty (180) days of the execution of the deed of sale, or (b) within ninety (90) days of completion of construction, renovation, or rehabilitation of the property, provided that such construction, renovation, or rehabilitation proceeded diligently to completion, whichever comes first, provided however, a court of competent jurisdiction may grant an extension for good cause; and it is further

ORDERED, ADJUDGED AND DECREED that the Referee, on receiving the proceeds of such sale, shall forthwith pay therefrom, in accordance with their priority according to law, all taxes, assessments, sewer rents, or water rates, which are, or may become, liens on the property

14-39318 - ByM

FILED: RICHMOND COUNTY CLERK - PENDING

RECEIVED NYSCEF: 04/21/2022
INDEX NO: 135743/2014

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

at the time of sale, with such interest or penalties which may have lawfully accrued thereon to the date of payment; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee then deposit the balance IOLA Acct. or FDIC Insured of said proceeds of sale in her/his own name as Referee in Bank w/in NYC, and shall thereafter make the following payments in accordance with RPAPL §1354, as follows:

FIRST: The Referee's statutory fees for conducting the sale, in accordance with CPLR 8003(b), in the sum of \$ 750 in the event a sale was canceled or postponed, Plaintiff shall compensate the Referee in the sum of \$ 250 for each adjournment or cancellation, unless the Referee caused the delay;

SECOND: All taxes, assessments and water rates that are liens upon the property and monies necessary to redeem the property from any sales for unpaid taxes, assessments, or water rates that have not apparently become absolute, and any other amounts due in accordance with RPAPL §1354(2). Purchaser shall be responsible for interest and penalties due on any real property taxes accruing after the sale. The Referee shall not be held responsible for the payment of penalties or fees pursuant to this appointment. The Purchaser shall hold the Referee harmless from any such penalties or fees assessed;

14-39318 - ByM

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RECEIVED NYSCEF: 04/21/2022

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

THIRD: The expenses of the sale and the advertising expenses as shown on the bills presented and certified by said Referee to be correct, duplicate copies of which shall be annexed to the report of sale;

FOURTH: The Referee shall then pay to the Plaintiff or its attorney the following:

Amount Due per Referee's Report: \$1,004,460.98 with interest at the note rate from January 01, 2011, together with any advances together with any advances as provided for in the note and mortgage which Plaintiff has made for taxes, insurance, principal, and interest, and any other charges due to prior mortgages or to maintain the property pending consummation of this foreclosure sale, not previously included in the computation, upon presentation of receipts for said expenditures to the Referee, all together with interest thereon pursuant to the note and mortgage, and then with interest from the date of entry of this judgment at the statutory rate until the date the deed is transferred;

Costs and Disbursements: \$ 2,080 ^{mg} adjudged to the Plaintiff for costs and disbursements in this action, with interest at the statutory judgment rate from the date of entry of this judgment;

Additional Allowance: \$ 300 is hereby awarded to the Plaintiff in addition to costs, with interest at the statutory judgment rate from the date of entry of this judgment, pursuant to CPLR Article 83;

14-39318 - ByM

Attorney Fees: \$ 4,950 is hereby awarded to the Plaintiff as reasonable legal fees herein, with interest at the statutory rate from the date of entry of this judgment;

FIFTH: Surplus monies arising from the sale shall be paid into court by the officer conducting the sale within five days after receipt in accordance with RPAPL §1354(4) and in accordance with local County rules regarding Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the Plaintiff is the purchaser of the property, or in the event that the rights of the purchasers at such sale and the terms of sale under this judgment shall be assigned to and be acquired by the Plaintiff, and a valid assignment thereof is filed with said Referee, said Referee shall not require the Plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the Plaintiff or its assignee, a deed or deeds of the property sold upon the payment to said Referee of the amounts specified in items marked "First", "Second", and "Third" above; that the Referee shall allow the Plaintiff to pay the amounts specified in "Second" and "Third" above when it is recording the deed; that the balance of the bid, after deducting the amounts paid by the Plaintiff, shall be applied to the amount due Plaintiff as specified in paragraph "Fourth" above; that if there is a surplus after applying the balance of the bid, the Plaintiff shall pay that amount to the Referee, who shall deposit it in accordance with paragraph "Fifth" above; and it is further

14-39318 - ByM

FILED: RICHMOND COUNTY CLERK - PENDING

RECEIVED NYSCEF: 04/21/2022

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

ORDERED, ADJUDGED AND DECREED that all expenses of recording the Referee's deed, including real property transfer tax, which is not a lien upon the property at the time of sale, shall be paid by the purchaser, not by the Referee from sale proceeds; and that any transfer tax shall be paid in accordance with Tax Law §1404; and it is further

ORDERED, ADJUDGED AND DECREED that if the sale proceeds distributed in accordance with paragraphs "First," "Second," "Third" and "Fourth" above are insufficient to pay Plaintiff the Amount Due per the Referee's Report as set forth in paragraph "Fourth" above, Plaintiff may seek to recover a deficiency judgment against CHRISTINA VASSALLO in accordance with RPAPL §1371 if permitted by law; and it is further

ORDERED, ADJUDGED AND DECREED that the mortgaged property is to be sold in one parcel in "as is" physical order and condition, subject to any state of facts that an inspection of the property would disclose; any state of facts that an accurate survey of the property would show; any covenants, restrictions, declarations, reservations, easements, right of way, and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the mortgaged property is located and possible violations of same; any rights of tenants or persons in possession of the subject property; prior liens of record, if any, except those liens addressed in RPAPL §1354; any equity of redemption of the United States of America to redeem the property within 120 days from the date of sale; and any rights pursuant to CPLR §317, §2003 and §5015 or any appeal of the underlying action or additional litigation brought by any defendant or its successor or assignee contesting the validity of this foreclosure; and it is further

14-39318 - ByM

FILED: RICHMOND COUNTY CLERK - PENDING

RECEIVED NYSCEF: 04/21/2022

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

ORDERED, ADJUDGED AND DECREED that the purchaser be let into possession of the property on production of the Referee's Deed or upon personal service of the Referee's deed in accordance with CPLR §308; and it is further

ORDERED, ADJUDGED AND DECREED that the Defendants in this action and all persons claiming through them and any person obtaining an interest in the property after the filing of the Notice of Pendency are barred and foreclosed of all right, claim, lien, title, and interest in the property after the sale of the mortgaged property; and it is further

ORDERED, ADJUDGED AND DECREED that within thirty days after completing the sale and executing the proper conveyance to the purchaser, unless the time is extended by the court, the officer making the sale shall file with the clerk a report under oath of the disposition of the proceeds of the sale in accordance with RPAPL §1355(1) and follow all local County rules regarding handling of Surplus Monies; and it is further

ORDERED, ADJUDGED AND DECREED that if the purchaser or purchasers at said sale default(s) upon the bid and/or the terms of sale the Referee may place the property for resale without prior application to the Court unless the Plaintiff's attorneys shall elect to make such application; and it is further

ORDERED, ADJUDGED AND DECREED, that the Notice of Pendency filed on March 05, 2019 be deemed filed, *nunc pro tunc*, to the date of the expiration of the Notice of Pendency on September 25, 2017; and it is further

14-39318 - ByM

FILED: RICHMOND COUNTY CLERK - PENDING

RECEIVED NYSCEF: 04/21/2022

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

ORDERED, ADJUDGED AND DECREED that Plaintiff shall serve a copy of this Judgment with Notice of Entry upon the owner of the equity of redemption, any tenants named in this action, and any other parties or persons entitled to service, including the Referee appointed herein; and it is further

ORDERED, ADJUDGED AND DECREED that nothing herein shall be deemed to relieve Plaintiff of any obligation imposed by RPAPL §1307 and RPAPL §1308 to secure and maintain the property until such time as ownership of the property has been transferred and the deed duly recorded; and it is further

ORDERED, ADJUDGED AND DECREED that when the Referee files a report of sale, he or she shall concurrently file a Foreclosure Actions Surplus Monies Form; and it is further

ORDERED, ADJUDGED AND DECREED that to ensure compliance herewith, Plaintiff shall file a written report with the court within six months from the date of entry of this judgment stating whether the sale has occurred and the outcome thereof.

Said property is commonly known as 314 LORETTO STREET, STATEN ISLAND, NY 10307.

[REMAINDER LEFT INTENTIONALLY BLANK]

14-39318 - ByM

FILED: RICHMOND COUNTY CLERK - PENDING


RECEIVED NYSCEF: 04/21/2022

NYSCEF DOC. NO. 178

RECEIVED NYSCEF: 04/06/2022

The legal description of the mortgaged property referred to herein is annexed hereto as Schedule "A".

DATED: April 1, 2022

ENTER: 

Desmond A. Green J.S.C.

ORDERED that plaintiff shall email the court at RichmondSIAuctions@nycourts.gov within 90 days of entry of this order to arrange for auction.

14-39318 - ByM

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

Index No.: 135743/2014

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR ASSET
BACKED SECURITIES CORPORATION HOME
EQUITY LOAN TRUST 2004-HE3, ASSET
BACKED PASS-THROUGH CERTIFICATES,
SERIES 2004-HE3,

Plaintiff,

AFFIDAVIT OF INDEBTEDNESS

vs.

CHRISTINA VASSALLO; FRANK VASSALLO;
MIDLAND FUNDING LLC; NEW YORK CITY
PARKING VIOLATIONS BUREAU; JOHN A.
GEMELLI,

"JOHN DOE #1" through "JOHN DOE #12," the last
twelve names being fictitious and unknown to
plaintiff, the persons or parties intended being the
tenants, occupants, persons or corporations, if any,
having or claiming an interest in or lien upon the
premises, described in the complaint,

Defendants.

I, Jennifer Jeudy, being of lawful age, being first duly

sworn on oath, states and deposes as follows:

- I am employed as a(n) Contract Management Coordinator by Ocwen Loan Servicing, LLC (herein after referred to as "Ocwen"). As such, I am authorized to execute this Affidavit as part of my business duty to Ocwen. *Annexed hereto as Exhibit "C" is a copy of the applicable Assignment of Mortgage and/or Power of Attorney.*
- In the regular performance of my job functions, I have access to, have acquired personal knowledge of, and am fully familiar with the facts and circumstances hereinafter set forth within this Affidavit based upon my review of the business records defined herein below. I

am competent to testify about such facts, and would do so if I appeared as a witness in the above-entitled action.

3. I have personal knowledge of Ocwen's records and record making practices, and how such records are made, used and kept. As a mortgage loan servicer, Ocwen is responsible for maintaining the books and business records (hereinafter referred to as the "Records"). The Records document activity, occurrences, events, and transactions (hereinafter referred to as the "Transactions") conducted by Ocwen. The Records are created and maintained in the regular course of business, and are needed and relied upon in the performance of functions of the business. The Records manually entered were made at or near the time of the Transactions documented by a person with personal knowledge. These Records include, but are not limited to, prior servicer records, account ledgers, data compilations, and electronically imaged documents. To the extent that the records for the subject loan were created by a prior servicer, those records have been incorporated into Ocwen's records in the regular course of business. Ocwen relies on the foregoing business records in the ordinary course of its business. *Annexed hereto as Exhibit "A" are copies of the 90-day Pre-Foreclosure Notices, all of which are maintained as business records of Ocwen. Annexed hereto as Exhibit "B" is a copy of the Demand Letter sent pursuant to the Mortgage, which is maintained as a business record of Ocwen. Annexed hereto as Exhibit "C" are true and correct copies of the Note, Mortgage, Assignments of Mortgage, Loan Modification Agreement, Power of Attorney, data compilation(s) and account ledger(s), all of which are maintained as business records of Ocwen.*
4. On or about January 16, 2004, defendant CHRISTINA VASSALLO (hereinafter referred to as the "Borrower") executed and delivered a note (hereinafter referred to as the "Note") to Plaintiff and/or Plaintiff's predecessor-in-interest.

5. Plaintiff was physically delivered the original Note on December 30, 2013 and Plaintiff remained in physical possession of the Note up to and through the date upon which this action was commenced.
6. The above-entitled action is brought to foreclose a mortgage dated January 16, 2004. At the time of commencement, the Mortgage was held by Plaintiff, having been executed and delivered to Plaintiff and/or Plaintiff's predecessor-in-interest as collateral for payment of the underlying indebtedness.
7. The Borrower has breached said obligation and defaulted upon the Note. The Borrower failed to make the payment pursuant to the terms of the Note and Mortgage commencing with the January 01, 2011 payment, which default remains uncured.
8. On October 04, 2011, the outstanding payments were duly demanded by mailing a demand letter pursuant to the terms of the Mortgage at the notice address.
9. On May 30, 2014, 90-day pre-foreclosure notices (hereinafter referred to as the "Notices") were mailed by first-class and certified mail, having been placed in an official depository under the exclusive case and custody of the United States Post Office in postage-paid properly addressed envelopes, to the Borrower at the address as set forth within Exhibit "A". The Notices mailed to the Borrower described herein were not returned to as undeliverable and they were mailed in envelopes separate from the Demand Letter.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

10. According to the Records, the following amounts are due and owing pursuant to the Note and

Mortgage:

Unpaid Principal Balance:	\$662,073.67
Deferred Principal Balance:	\$0.00
Interest (at date of default 2.50000 %) from 12/01/2010 to 02/16/2018 (per diem or FHA Monthly Interest: \$ 91.954676)	\$206,346.20
Late Charges:	N/A
Escrow Balance:	\$66,079.62
Taxes 2013-2017:	\$38,931.69
Insurance 2013-2017:	\$11,915.21
Escrow Payments/Credits	(\$271.16)
Prior Servicer Escrow Balance (if applicable)	\$15,503.88
ADDITIONAL COSTS:	
Property Inspections	\$661.25
Property Valuation Fee/BPO	\$595.00
Prior Servicer Fee:	\$1,240.35
Property Preservation/Maintenance Fee:	\$0.00
Certified Mail Cost:	\$0.00
Title Search Expenses:	\$375.00
Interest Arrearage:	\$0.00
Other fees	N/A
Bankruptcy Costs	\$0.00
Subtotal	\$937,371.09
Less: Suspense Balance	(\$2,648.46)

GRAND TOTAL as of 02/16/2018 \$934,722.63

Dated: 2/27/18

Affiant Signature: Jennifer Jeudy

Print Name: Jennifer Jeudy

Contract Management Coordinator

Title: _____
Ocwen Loan Servicing, LLC, as servicer for WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR ASSET BACKED SECURITIES CORPORATION HOME EQUITY LOAN TRUST 2004-HE3, ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2004-HE3

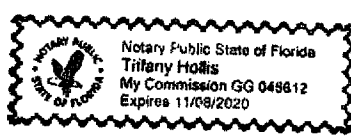
UNIFORM CERTIFICATE OF ACKNOWLEDGEMENT
(Outside New York State)

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 27 day February of 2018, by Jennifer Jeudy as Contract Management Coordinator for Ocwen Loan Servicing, LLC who is the servicer for WELLS FARGO BANK, NATIONAL ASSOCIATION, AS TRUSTEE FOR ASSET BACKED SECURITIES CORPORATION HOME EQUITY LOAN TRUST 2004-HE3, ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2004-HE3, who is personally known to me or who has produced _____ as identification.

Tiffany Hollis
Signature of Notary Public
Name of Notary Public: Tiffany Hollis

Personally known: ✓
OR Produced Identification: _____
Type of Identification Produced: _____



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

Index No.: 135743/2014

WELLS FARGO BANK, NATIONAL
ASSOCIATION, AS TRUSTEE FOR ASSET
BACKED SECURITIES CORPORATION HOME
EQUITY LOAN TRUST 2004-HE3, ASSET
BACKED PASS-THROUGH CERTIFICATES,
SERIES 2004-HE3,

Plaintiff,

**CERTIFICATE OF
CONFORMITY**

vs.

CHRISTINA VASSALLO; FRANK VASSALLO;
MIDLAND FUNDING LLC; NEW YORK CITY
PARKING VIOLATIONS BUREAU; JOHN A.
GEMELLI,

"JOHN DOE #1" through "JOHN DOE #12," the last
twelve names being fictitious and unknown to
plaintiff, the persons or parties intended being the
tenants, occupants, persons or corporations, if any,
having or claiming an interest in or lien upon the
premises, described in the complaint,

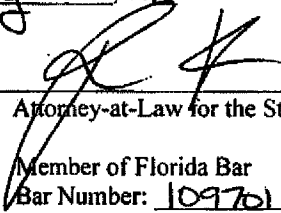
Defendants.

STATE OF FLORIDA
COUNTY OF PALM BEACH ss.:

The undersigned does hereby certify that he/she is an attorney at law duly admitted to practice in
the state of Florida and presently residing at Palm Beach in the State of Florida ;
that he/she is a person duly qualified to make this certificate of conformity pursuant to Section
299-a of the Real Property Law of the State of New York; that he/she is fully acquainted with
the laws of the State of Florida pertaining to the acknowledgement or proof of deeds or
real property to be recorded therein; that the foregoing acknowledgment by Jennifer Jeudy
named in the foregoing instrument taken before Tiffany Hollis, a notary public (or

other officer) was taken in the manner prescribed by such laws of the State of Florida,
being the state in which it was taken; and that it duly conforms with such laws and is in all
respects valid and effective in such state.

Witness my signature this 27 day of February, 2018.



Attorney-at-Law for the State of FL
Member of Florida Bar
Bar Number: 109701

Ruthamar Hyppolite, Esq.
Fla. Bar No. 109701

EXHIBIT A



P.O. Box 24646
West Palm Beach, FL 33416-4646

VIA First Class Mail
VIA Certified Mail (return receipt requested)
Certified Number: 71069017515166890181

Christina Vassallo

314 Loretto St
Staten Island, NY 10307-0000

Ocwen Loan Servicing, LLC
HELPING HOMEOWNERS IS WHAT WE DO!™
WWW.OCWEN.COM

May 29, 2014

Loan Number: [REDACTED]
Property Address: 314 Loretto St.,
Staten Island, NY 10307-0000

Dear Borrower(s):

**YOU COULD LOSE YOUR HOME.
PLEASE READ THE FOLLOWING NOTICE CAREFULLY.**

As of May 29, 2014, your home loan is 1244 days in default. Under New York state law, we are required to send you this notice to inform you that you are at risk of losing your home. You can cure this default by making the payment of 147,973.74 dollars by 08/27/2014.

If you are experiencing financial difficulty, you should know that there are several options available to you that may help you keep your home. Attached to this notice is a list of government approved housing counseling agencies in your area which provide free or very low-cost counseling. You should consider contacting one of these agencies immediately. These agencies specialize in helping homeowners who are facing financial difficulty. Housing counselors can help you assess your financial condition and work with us to explore the possibility of modifying your loan, establishing an easier payment plan for you, or even working out a period of loan forbearance. If you wish you may also contact us directly at (800) 746-2936 and ask to discuss possible options.

While we cannot assure that a mutually agreeable resolution is possible, we encourage you to take immediate steps to try to achieve a resolution. The longer you wait the fewer options you may have.

DEMANDNY.25

This communication is from a debt collector attempting to collect a debt; any information obtained will be used for that purpose. However, if the debt is in active bankruptcy or has been discharged through bankruptcy, this communication is not intended as and does not constitute an attempt to collect a debt.

NMLS # 1852



P.O. Box 24646
West Palm Beach, FL 33416-4646

If this matter is not resolved within 90 days from the date this notice was mailed, we may commence legal action against you (or sooner if you cease to live in the dwelling as your primary residence.)

If you need further information, please call the New York State Department of Financial Services' toll-free helpline at (800) 269-0990 or visit the Department's website at <http://www.dfs.ny.gov>

Kunal Thakker has been assigned as your relationship manager and will be your designated representative for resolution inquiries and submission of documents

Sincerely,

Ocwen Loan Servicing, LLC

County	Counseling / Assistance Agency
ALBANY	Affordable Housing Partnership, 255 Orange St Albany, New York 12210, Ph-518-434-1730, Fax-518-434-1767, Web-ahphome.org Catholic Charities, United Tenants Of Albany, 33 Clinton Ave, Albany, NY 12207, Catholic Charities of the Albany Diocese, 40 N. Main Ave., Albany, NY 12203, Ph-518-436-8997, Fax-518-436-0320, Web-www.unitedtenantsalbany.org NY State Office Of Mental Retardation And Developmental Disabilities(OMRDD), 44 Holland Avenue, Albany, New York 12229-0001, Ph-518-473-1973, Fax-518-473-9784, Web-www.omr.state.ny.us CCCS of Central New York, 2 Computer Drive West, Albany, NY 12205-1622, Ph-518-482-2227 OR 800-479-6026, Fax-518-482-2296, Web-www.CreditHelpNY.org Albany County Rural Housing Alliance, Inc, PO Box 83, 10 Cayuga Plaza, Cohoes, New York 12047, Ph-518-235-3920, Web-www.acrha.org Albany County Rural Housing Alliance, Inc, Faith Plaza, Route 9W, PO Box 58, Ravena, New York 12143, Ph-518-756-3656, Web-www.acrha.org
ALLEGANY	Allegany County Community Opportunities And Rural Development (ACCORD) Corp, 84 Schuyler Street, P.O. Box 573, Belmont, New York 14813-1051, Ph-585-268-7605, Fax-585-268-7241, Web-www.accordcorp.org
BRONX	Consumer Credit Counseling Services - A Division of MMI, 888 Grand Concourse, Suite 1K, Bronx, New York 10451, Ph-800-308-2227 OR 800-346-2227 Greenpath, Inc., 2050 Eastchester Road, Suite 203, Bronx, New York 11801, Ph-888-860-4167, Web-www.greenpath.com Neighborhood Housing Services of North Bronx, 1178 East Gun Hill Road, Bronx, New York 10469, Ph-718-881-1180, Fax-718-881-1190, Web-www.nhsnyc.org, Languages-Spanish Neighborhood Housing Services of South Bronx, Concourse Plaza, 200 East 161st Street, Bronx, New York 10452, Ph-718-992-5979, Fax-718-992-6056, Web-www.nhsnyc.org, Languages-Spanish New York City Commission on Human Rights, 1932 Arthur Ave., Suite 203A, Bronx, New York 10457, Ph-718-579-6900, Fax-718-579-6995, Web-www.nyc.gov/cchr, Languages-French, Russian, Spanish
BROOME	CCCS OF Central New York, The Metro Center, 49 Court Street, Binghamton, New York 13901, Ph-607-723-2671 OR 800-479-6026, Fax-607-723-3007, Web-www.CreditHelpNY.org Metro-Interfaith Services, Incorporated, 21 New St, Binghamton, New York 13903, Ph-607-723-0723, Fax-607-722-8912, Web-www.metrointerfaith.org
CHAUTAUQUA	Chautauqua Opportunities, Incorporated, 17 W Courtney St, Dunkirk, New York 14048-2754, Ph-716-661-9430, Fax-716-661-9436, Web-www.chautauquaopportunities.com Chautauqua Opportunities, Incorporated, 610 W 3rd St, Jamestown, New York 14701-4705, Ph-716-661-9430, Fax-716-661-9436, Web-www.chautauquaopportunities.com, Languages - Spanish Chautauqua Home Rehabilitation and Improvement Corp. (CHRIC), 2 Academy Street, Mayville, New York 14757, Ph-716-753-4650, Fax-716-753-4508, Web-www.chric.org, Languages-Spanish
CHEMUNG	Tri-County Housing Council, 143 Hibbard Road, P.O. Box 451, Big Flats, New York 14814, Ph-607-562-2477, Fax-607-562-3856, Web-www.tricountyhousing.org Catholic Charities, Elmira, NY, 215 East Church Street, Elmira, New York 14901-2743, Ph-607-734-9784, Fax-607-734-6588

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NMLS # 1852



P.O. Box 24646
West Palm Beach, FL 33416-4646

CHENANGO	Opportunities for Chenango, Inc, 44 W Main St, PO Box 470, Norwich, New York 13815-1613, Ph-607-336-2101 OR 866-456-3051, Fax- 607-336-3089, Web-www.ofcinc.org, Languages-Spanish
CLINTON	Friends of the North Country, Mill Street, PO Box 446, Keeseville, New York 12944, Ph-518-834-9606 OR 888-355-3662, Fax-518-834-9687
COLUMBIA	Housing Resources of Columbia County, Inc., 757 Columbia Street, Hudson, New York 12534-2509, Ph-518-822-0707, Fax- 518-822-0367, Web-www.housingresources.org
CORTLAND	Cortland Housing Assistance Council, Incorporated, 36 Taylor Street, Cortland, New York 13045, Ph-607-753-8271, Fax-607-756-6267, Web-www.cortlandhousing.org
DELAWARE	Delaware Opportunities, Incorporated, 35430 State Hwy 10, Hamden, New York 13782, Ph-607-746-1600, Fax-607-746-1648 Western Catskills Community Revitalization Council, Inc., 125 Main Street, Box A, Stamford, New York 12167, Ph-607-652-8029, Fax-607-652-2825, Web-www.westerncatskills.org
DUTCHESS	Dutchess County for the Aging, 27 High Street, Poughkeepsie, New York 12601, Ph-845-486-2555 OR 866-486-2555, Fax- 845-486-2571, Web-www.dutchessny.gov/CountyGov/Departments/Aging/AGIndex.htm Hudson River Housing, 291 Mill Street, Poughkeepsie, New York 12601, Ph-845-454-9288, Fax-845-485-1957, Languages-French, Spanish
ERIE	Belmont Shelter Corporation, 1195 Main Street, Buffalo, New York 14209-2196, Ph-716-884-7791 OR 800-836-0335, Fax-716-884-8026, Web-www.belmontshelter.org, Languages-Polish, Russian, Spanish Buffalo Urban League, Inc., 15 East Genesee St, Buffalo, New York 14203-1405, Ph-716-854-7625 OR 866-375-0408, Fax-716-854-8960, Languages-Spanish Homefront, Inc., 560 Delaware Ave., Suite 101, Buffalo, New York 14202, Ph- 716-856-2952, Fax-716-856-4639, Web-www.homefrontbfo.org, Languages-Spanish NACA(Neighborhood Assistance Corporation of America) Buffalo, NY, 1094 Hertel Ave, Buffalo, New York 14216, Ph-716-834-6222 OR 888-297-5568, Web-www.naca.com West Side Neighborhood Housing Services, Inc., 359 Connecticut St, Buffalo, New York 14213, Ph-716-885-2344, Fax-716-885-2346, Web-www.wsnhs.org, Languages-Spanish
ESSEX	Housing Assistance Program Of Essex County, 103 Hand Avenue, PO Box 157, Elizabethtown, New York 12932-0157, Ph-518-873-6888, Fax-518-873-9102, Web-www.hapec.org
FRANKLIN	Franklin County Community Housing Council, 337 West Main Street, Malone, New York 12953, Ph-518-483-5934, Fax-518-483-0984
JEFFERSON	CCCS Of Central New York, 215 Washington Street, Watertown, New York 13601, Ph-315-782-2227 OR 800-479-6026, Fax-315-482-0203, Web-www.CreditHelpNY.org Neighbors of Watertown, Inc., 112 Franklin Street, Watertown, New York 13601, Ph-315-782-8497, Fax-315-782-0102, Web-www.neighborsofwatertown.com
KINGS	Acorn Housing, New York City, 2-4 Nevins Street, 2nd Floor, Brooklyn, New York 11217-0000, Ph-718-246-8080, Fax-718-246-7939, Web-www.acornhousing.com, Languages-English, French, Spanish Brooklyn Cooperative Federal Credit Union, 1474 Myrtle Ave, Brooklyn, New York 11237, Ph-718-418-8232, Fax-718-418-8252, Web-www.brooklyn.coop, Languages-English, Spanish Brooklyn Neighborhood Improvement Association, 1482 Saint Johns Pl Ste 1F, Brooklyn, New York 11213-3929, Ph-718-773-4116, Fax-718-221-1711 Carroll Gardens Association, Incorporated, 201 Columbia St, Brooklyn, New York 11231-1402, Ph-718-243-930, Fax-718-243-9304, Languages-Spanish Consumer Credit Counseling Services, A Division of MMI, 26 Court Street #1801, Brooklyn, New York 11242, Ph-800-346-2227 OR 866-889-9347, Web-www.moneymanagement.org Cypress Hills Local Development Corporation, 625 Jamaica Avenue, Brooklyn, New York 11208-1203, Ph-718-647-8100, Web-www.cypresshills.org, Languages-Portuguese, Spanish
MADISON	Community Action Program for Madison County, 3 East Main Street, P.O. Box 249, Morrisville, New York 13408-0000, Ph-315-684-7862-22 OR 800-721-2271, Fax-315-684-9940, Web-www.capmadco.org
MONROE	Bishop Sheen Ecumenical Housing Foundation, 935 East Ave Suite 300, Rochester, New York 14607-2216, Ph-585-461-4263, Fax-585-461-5177, Web-www.sheenhousing.org Housing Council in Monroe County, Incorporate, 75 College Avenue, Suite 412, Rochester, New York 14607, Ph-585-546-3700, Fax-585-546-2946, Web-www.thehousingcouncil.org, Languages-Spanish Marketview Heights Association, Inc., 308 North Street, Rochester, New York 14605, Ph-585-423-1540, Fax-585-423-1934, Web-www.marketviewheights.org, Languages- Spanish Neighborworks Rochester, 570 South Ave, Rochester, New York 14620-1345, Ph-585-325-4170, Fax-85-325-2587, Web-www.nhsrochester.org, Languages- Spanish Providence Housing Development Corporation, 1136 Buffalo Road, Rochester, New York 14624, Ph-585-328-3228, Fax-585-529-9525, Web-www.Providencehousing.org Rochester, 265 North Clinton Avenue, Rochester, New York 14605, Ph-585-325-6530, Fax-585-325-4864, Languages-Spanish Rural Opportunities, Inc., 400 East Ave, Rochester, New York 14607-1910, Ph-585-546-7180, Fax-585-340-3326, Web-

DEMANDNY.25

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NMLS # 1852



P.O. Box 24646
West Palm Beach, FL 33416-4646

	www.ruralinc.org , Languages- Spanish
NASSAU	Community Development Corporation of Long Island, 54 West Merrick Road, Freeport, New York 11520, Ph-516-867-7727, Fax-516-867-9398, Web- www.cdcli.org , Languages-Spanish La Fuerza Unida, Inc. - Long Island, 14 Glen Street, Suite 305, Glen Cove, New York 11542, Ph-516-759-0788, Fax-516-759-3465, Languages-French, Portuguese, Spanish County of Nassau Economic Development - Office of Housing & Intergovernmental Affairs, 40 Main Street, Suite B, Hempstead, New York 11550, Ph-516-572-0815, Fax-516-572-2789, Web- www.nassaucountyny.gov , Languages-Spanish Family and Children's Association, 336 Fulton Avenue, Hempstead, New York 11550, Ph-516-292-1300, Fax-516-538-2548, Web- www.familyandchildrens.org , Languages-Spanish Greenpath, Inc., 380 N. Broadway, Ste 304, Jericho, New York 11753, Ph-888-860-4167, Web- www.greenpath.com Family and Children's Association, 100 East Old Country Road, Mineola, New York 11501-4614, Ph-516-292-1300, Fax-516-538-2548, Web- www.familyandchildrens.org , Languages-Spanish
NEW YORK	Abyssinian Development Corporation, 4 W. 125th Street, New York, New York 10027, Ph-646-442-6545, Fax-646-442-6598, Web- www.adcorp.org Asian Americans for Equality, 111 Division St, New York, New York 10002-0000, Ph-212-964-2288, Fax-212-964-6003, Web- www.aafecdf.org , Languages-Cantonese, Chinese Mandarin, Korean Greenpath, Inc., 250 West 34th Street, Suite 2108, New York, New York 10119, Ph-888-860-4167, Web- www.greenpath.com Harlem Community Development Corporation, 163 West 125th St., 17th floor, New York, New York 10027, Ph-212-961-4100, Fax-212-961-4143, Web- www.harlemcdc.com , Languages: Spanish Harlem Congregations for Community Improvement, 2854 Frederick Douglass Boulevard, New York, New York 10039, Ph-212-283-1377, Fax-212-281-4885, Web- www.hcci.org , Languages-French, Spanish Housing Partnership Development Corp., 450 7th Avenue, Ste. 2401, New York, New York 10123, Ph-646-217-3392, Fax-646-217-3788, Languages-Spanish Nazareth Housing, Inc., 519 East 11th Street, New York, New York 10009, Ph-212-777-1010, Fax-212-777-1867, Web- www.nazarethhousing.com , Languages-Spanish Neighborhood Housing Services of New York City (NHS of NYC), 307 West 36th St. 12 floor, New York, New York 10018-6495, Ph-212-519-2500, Fax-212-727-8171, Web- www.nhsnyc.org , Languages: Spanish
NIAGARA	Center City Neighborhood Development Corporation, 1824 Main St, Niagara Falls, New York 14305, Ph-716-282-3738, Fax-716-282-9607, Web- www.centercitynfd.org
ONEIDA	CCCS Of Central New York, 289 Genesee Street, Utica, New York 13501-3804, Ph-315-797-5366 OR 800-479-6026, Fax-315-797-9410, Web- www.CreditHelpNY.org UNHS Neighborworks Homeownership Center, 1611 Genesee Street, Utica, New York 13501-4731, Ph-315-724-4197-226, Fax-315-724-1415, Web- www.thehomeownershipcenter.org , Languages-Russian, Spanish and Vietnamese
ONONDAGA	Southern Hills Preservation Corporation, 2383 Route 11 Unit 1, La Fayette, New York 13084, Ph-315-677-3863, Fax-315-677-3864, Web- www.southernhillspc.org CCCS Of Central New York, 500 S Salina Street, Suite 600, Syracuse, New York 13202-3394, Ph-315-474-6026 OR 800-479-6026, Fax-315-479-8421, Web- www.CreditHelpNY.org Home Headquarters, Inc., 124 E Jefferson St, Syracuse, New York 13202, Ph-315-474-1939-228, Fax-315-474-0637, Web- www.homehq.org , Languages- Spanish Northeast Hawley Development Association, Inc., 101 Gertrude St, Syracuse, New York 13203-2417, Ph-315-425-1032, Fax-315-425-1089, Web- www.nhda.org Syracuse Cooperative Federal Credit Union, 723 Westcott Street, Syracuse, New York 13210, Ph-315-476-5290, Fax-315-476-0567, Web- www.cooperativefederal.org , Languages- Spanish
ONTARIO	Bishop Sheen Ecumenical Housing Foundation, PO Box 460, Bloomfield, New York 14469, Ph-585-657-4114, Fax-585-657-4167, Web- www.sheenhousing.org Community Unified Today, Incorporated, 152 Genesee Street, PO Box 268, Geneva, New York 14456, Ph-315-781-0534 OR 877-819-0534, Fax-315-781-6309, Web- www.cutinc.org , Languages-French
ORANGE	Orange County Rural Development Advisory Corp., 3136 Route 207, Professional Bldg Campbell Hall, New York 10916, PO Box 149, Montgomery NY 12549, Ph-845-291-7300, Fax-845-291-7322 Kiryas Joel Community Housing Development Org., 51 Forest Road, Suite 360, Monroe, New York 10950-2948, Ph-845-782-7790, Fax-845-783-7415
OSWEGO	Fulton Community Development Agency, 125 West Broadway, Fulton, New York 13069, Ph-315-593-7166, Fax-315-593-7754, Web- www.fultonceda.com Oswego Housing Development Council, Inc., 2971 County Rte 26, PO Box 147, Parish, New York 13131, Ph-315-625-4520 OR 866-706-2679, Fax-315-625-7347
PUTNAM	Putnam County Housing Corporation, 11 Seminary Hill Road, Carmel, New York 10512, Ph-845-225-8493, Fax-845-225-8532, Web- www.Putnamhousing.com , Languages- Spanish
QUEENS	Margert Community Corporation, 325 Beach 37th Street, Far Rockaway, New York 11691-1510, Ph-718-471-3724, Fax-718-471-5342, Web- www.margert.org , Languages-Spanish

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NMLS # 1852



P.O. Box 24646
West Palm Beach, FL 33416-4646

	<p>Rockaway Development and Revitalization Corporation, 1920 Mott Ave, Suite 2, Far Rockaway, New York 11691-4102, Ph-718-327-5300, Fax-718-327-4990, Web-www.rdrc.org, Languages-Spanish</p> <p>Asian Americans for Equality, 133-04 39th Avenue, Flushing, New York 11354, Ph-718-961-0888, Fax-718-961-0988, Web-www.aafe.org, Languages-Cantonese, Chinese Mandarin</p> <p>New York City Commission on Human Rights, 136-56 39th Avenue, Room 305, Flushing, New York 11354, Ph-718-886-6162, Fax-718-463-3452, Web-www.nyc.org, Languages-French, Russian, Spanish</p> <p>Consumer Credit Counseling Services - A Division of MMI, 88-32 Sutphin Blvd, Jamaica, New York 11435, Ph-800-308-2227 OR 800-346-2227</p>
RENSSELAER	<p>Rensselaer County Housing Resources, 415 River St, Third floor, Troy, New York 12180, Ph-518-272-8289, Fax-518-690-0025, Languages-Spanish</p> <p>Troy Rehabilitation and Improvement Program, 251 River Street, Troy, New York 12180-2834, Ph-518-690-0020, Fax-518-690-0025, Languages- Spanish</p> <p>Troy Rehabilitation and Improvement Program, 415 River Street, Ste. 3, Troy, NY 12180, Ph-518-690-0020, Fax-518-690-0025, Languages- Spanish</p>
RICHMOND	<p>Neighborhood Housing Services of Staten Island, 1205 Castleton Avenue, Staten Island, New York 10310, Ph-718-442-8080, Fax-718-442-8245, Web-www.nhsfstatenisland.org and www.nhsnyc.org, Languages-Spanish</p> <p>Northfield Community Local Development Corporation, 160 Heberton Ave., Staten Island, New York 10302, Ph-718-442-7351, Fax-718-981-3441, Web-www.portrichmond.net/nldc/, Languages-Spanish</p> <p>New York City Commission on Human Rights - Staten Island Community Service Center, 60 Bay Street, 7th Floor, Staten Island, New York 10301, Ph-718-390-8506, Fax-718-390-8516, Web-nyc.gov</p>
ROCKLAND	<p>Housing Opportunities for Growth, Advancement and Revitalization, Inc., 49 West Broad Street, PO Box 577, Haverstraw, New York 10927, Ph-845-429-1100, Fax-845-429-0193, Languages-Spanish</p> <p>Rockland Housing Action Coalition, 95 New Clarkstown Road, Nanuet, New York 10954, Ph-845-352-3819, Fax-845-352-2126, Languages- Spanish</p>
SARATOGA	<p>Cornell Cooperative Extension, 50 W High St, Ballston Spa, New York 12020-1979, Ph-518-885-8995 OR 800-443-0107, Fax-518-885-9078, Web-www.cce-saratoga.org</p>
SCHENECTADY	<p>Better Neighborhoods, Incorporated, 986 Albany St, Schenectady, New York 12307, Ph-518-372-6469, Fax-518-372-6460, Web-www.better-neighborhoods.org, Languages-French, Spanish</p>
ST. LAWRENCE	<p>St. Lawrence County Housing Council, Inc., 19 Main Street, Canton, New York 13617, Ph-315-386-8576, Fax-315-386-1564, Web-www.slchc.org</p>
SUFFOLK	<p>Economic Opportunity Council of Suffolk, Inc., Amityville/Copiague/Farmingdale ACE Family Development Center, 48 Cedar Road, Amityville, New York 11701, Ph-631-289-2124 OR 800-300-4362, Fax-631-289-2178, Web-www.eoc-suffolk.com</p> <p>Economic Opportunity Council of Suffolk, Inc., COBRA Office, 357 Broadway, Suite 4, Amityville, New York 11701, Ph-631-289-2124, OR 800-300-4362, Fax-631-289-2178, Web-www.eoc-suffolk.com</p> <p>Economic Opportunity Council of Suffolk, Inc., E.O.C. of Suffolk Counseling Center, 25 Fourth Avenue, Bay Shore, New York 11706, Ph-631-289-2124 OR 800-300-4362, Fax-631-289-2178, Web-www.eoc-suffolk.com, Languages-Spanish</p> <p>Bellport, Hagerman, East Patchogue Alliance, Inc., 1492 Montauk Highway, P.O. Box 121, Bellport, New York 11713, Ph-631-286-9236, Fax-631-286-3948, Web-www.bhepalliance.com</p> <p>Long Island Housing Services, Incorporated, 640 Johnson Ave., Ste 8, Bohemia, New York 11716-2624, Ph-631-467-5111 OR 800-660-6920, Fax-631-467-5131, Web-www.LIFairHousing.org, Languages-Spanish</p> <p>Community Development Corporation of Long Island, 2100 Middle Country Road Suite 300, Centereach, New York 11720, Ph-631-471-1215, Fax-631-471-3087, Web-www.cdcli.org, Languages-Spanish</p>
SULLIVAN	<p>Rural Sullivan Housing Corporation, 6 Pelton Street, PO Box 1497, Monticello, New York 12701-1128, Ph-845-794-0348, Fax-845-794-3042</p>
TOMPKINS	<p>Alternatives Federal Credit Union, 125 North Fulton St., Ithaca, New York 14850, Ph-607-273-4611, Fax-607-277-6391, Web-www.alternatives.org, Languages-French, Russian, Spanish</p> <p>Better Housing for Tompkins County, Inc., 950 Danby Road, Ste. 102, Ithaca, New York 14850, Ph-607-273-2187, Fax-607-273-1630, Web-www.betterhousingtc.org</p> <p>Ithaca Neighborhood Housing Services, Inc., 115 W Clinton St, Ithaca, New York 14850, Ph-607-277-4500, Fax-607-277-4536, Web-ithacahnhs.org, Languages-Spanish</p> <p>Tompkins County Office for the Aging, 320 N Tioga St, Ithaca, New York 14850-4206, Ph-607-274-5492, Fax-607-274-5495, Web-www.tompkins-co.org/cofa</p>
ULSTER	<p>Rural Ulster Preservation Company, 289 Fair St, Kingston, New York 12401, Ph-845-331-2140, Fax-845-331-6217, Web-www.rupco.org, Languages-Spanish</p>
WAYNE	<p>Community Action in Self Help, Incorporated, 48 Water St, Lyons, New York 14489-1244, Ph-315-946-6992, Fax-315-946-3314, Web-www.cashinc.org</p>

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P.O. Box 24646
West Palm Beach, FL 33416-4646

WESTCHESTER	<p>Human Development Services of Westchester, Inc., 930 Mamaroneck Avenue, Mamaroneck, New York 10543, Ph-914-939-2005, Fax-914-939-3531, Web-www.HDSW.org, Languages-Spanish Westchester Residential Opportunities, Incorporated, 144 North 5th Avenue, MT Vernon, New York 10550, Ph-914-668-4424, Fax-914-668-9515, Web-www.wroinc.org, Languages-Spanish The Family Resource Center of Peekskill Inc. (FRC), 156-2 North Division Street, Peekskill, New York 10566, Ph-914-739-0411, Fax-914-739-6421, Languages- Spanish Human Development Services of Westchester, Inc., 28 Adee Street, P.O. Box 110, Port Chester, New York 10573, Ph-914-939-2005, Fax-914-939-3531, Web-www.HDSW.org, Languages-Spanish Westchester Residential Opportunities, Incorporated, 470 Mamaroneck Ave, Ste 410, White Plains, New York 10605-1830, Ph-914-428-4507, Fax-914-428-9455, Web-www.wroinc.org, Languages-Spanish</p>
YATES	<p>Keuka Housing Council, 160 Main Street, Penn Yan, New York 14527, Ph-315-536-8707, Fax-315-536-6169, Web-www.keukahousingcouncil.org</p>

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P.O. Box 24646
West Palm Beach, FL 33416-4646

HELPING YOU STAY IN YOUR HOME.

MAKING HOME AFFORDABLE

You may be able to make your payments more affordable.

Act now to get the help you need!

Dear Borrower,

There is help available if you are having difficulty making your mortgage loan payments. You may be eligible for the Home Affordable Modification Program, part of the initiative announced by President Obama to help homeowners.

As your mortgage loan servicer, we will work with you in an effort to make your mortgage payment affordable. You will not pay any fees to take advantage of this opportunity to modify your mortgage loan payment and keep your property. Now is the time to act. We are ready to help you.

Here's how it works: We will first determine if you are eligible based on your situation. To conduct this evaluation, we need you to submit an Initial Package consisting of a Request for Mortgage Assistance form (including all necessary certifications), an IRS Form 4506T-EZ or Form 4506-T, and documentary evidence of all income. You may obtain the Request for Mortgage Assistance form and the IRS Form 4506T-EZ or Form 4506-T form at www.ocwencustomers.com.

If you are eligible, we will look at your monthly income and housing costs, including any past due payments, and then determine an affordable mortgage payment.

At first, you will make new, affordable monthly payments on your mortgage loan during a trial period. If you make those payments successfully and fulfill all trial period conditions, we will permanently modify your mortgage loan.

The modification may involve some or all of the following changes to your mortgage loan: 1) Bringing your account current; 2) Reducing the interest rate on your loan; 3) Extending the term of the loan, and/or 4) delaying your repayment of a portion of the mortgage principal until the end of the loan term.

STEP 1 GATHER THE INFO WE NEED TO HELP YOU

To take advantage of this opportunity and the Home Affordable Modification Program, contact us as soon as possible. To help speed the process it will be helpful if you have the following information when you call:

- Loan number
- Monthly pre-tax income of each borrower
- Information about any financial hardship you are suffering

If you do not qualify for a loan modification under this program, or do not want to stay in your home or keep your rental property, we will work with you to explore other options available to help you keep your property or ease your transition to a new home, if applicable.

STEP 2 CONTACT US

We want to make modifying your mortgage loan as easy as possible. However, you must take the first step by contacting us at (800) 746-2936; Monday to Friday 8:00 am to 9:00 pm, Saturday 8:00 am to 5:00 pm, and Sunday 9:00 am to 9:00 pm ET. You may also write to us at the address at the bottom of this letter. Be sure to include the information listed above.

Sincerely,

Ocwen Loan Servicing
1661 Worthington Road, Suite 100
West Palm Beach, FL 33409

The Making Home Affordable program was created to help millions of homeowners refinance or modify their mortgages. As part of this program, we – your mortgage servicer – and the Federal Government are working to offer you options to help you stay in your home.

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NMLS # 1852



P.O. Box 24646
West Palm Beach, FL 33416-4646

IMPORTANT NOTICE

We want to help you avoid foreclosure scams.

FINANCIAL COUNSELING SERVICES

When you are experiencing a financial hardship, counseling may be a way to help you manage your finances. We urge you to contact HUD approved agencies to obtain assistance in keeping your home. This assistance is available at no charge. For specific guidance on this notice or information related to the Home Affordable Modification Program, ask the counselor for MHA HELP.

HUD Approved Housing Counseling: 1-800-569-4287

www.HUD.gov

HOPE Hotline Number:

1-888-995-4673

Beware of Foreclosure Rescue Scams. Help is free!

- There is never a fee to get assistance or information about the Making Home Affordable Program from your lender or a HUD-approved housing counselor.
 - For a HUD-approved counselor, visit:
<http://www.hud.gov/offices/hsg/sfh/hcc/fc/>
- Beware of any person or organization that asks you to pay a fee in exchange for housing counseling services or modification of a delinquent loan.

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NMLS # 1852



New York State Department of Financial Services
One State Street Plaza, New York, NY 10004

Proof of Filing Statement

To Whom It May Concern:

Section 1306 of the Real Property Actions and Proceedings Law (RPAPL) requires lenders, assignees or mortgage loan servicers servicing loans on 1-to-4 family residential properties in New York State to file certain information with the Superintendent of the Department Financial Services within three days after the mailing of a 90-Day Pre-Foreclosure Notice.

The information below pertains to a filing submitted to the Department of Financial Services as required in Section 1306 of RPAPL. The information is presented as filed by the lender, assignee or mortgage loan servicer.

Filer Information:

Name : Ocwen Loan Servicing, LLC
Address : 402 Strand Street
Fredericksted VI 00840

Filing Information:

Tracking Number : NYS3561333
Mailing Date Step 1 : 30-MAY-14 12.00.00.000 AM
Mailing Date Step 2 :
Judgment Date Step 3 :
Filing Date Step 1 : 02-JUN-14 12.00.00.000 AM
Filing Date Step 1 Orig : 02-JUN-14 12.00.00.000 AM
Filing Date Step 2 :
Filing Date Step 3 :
Owner Occupd at Jdgmnt :
Property Type : 1 to 4 Family Home
Property Address : 314 Loretto St Staten Island
NY 10307
County : Richmond
Date of Original Loan : 22-JAN-04 12.00.00.000 AM
Amt of Original Loan : 484500
Loan Number Step 1 : [REDACTED]
Loan Number Step 2 :
Loan Reset Frequency :
Loan Type : 1st Lien
Loan Details : Fixed Rate
Loan Term : Other
Loan Modification : No Modification
Days Delinquent : Other
Borrower's Name : Christina Vassallo
Address : 314 Loretto St
Staten Island 10307
Borrower's Phone No : [REDACTED]
Filing Status : Step 1 Completed

Sincerely,

New York State Department of Financial Services

EXHIBIT B

American Home Mortgage Servicing Inc.
PO Box 9092
Tamecula, CA 92589-9092



7196 9006 9295 5010 3967

PRESORT
First-Class Mail
U.S. Postage and
Fees Paid
WSO

Send Payments to:
American Home Mortgage Servicing Inc
P.O. Box 660029
Dallas, TX 75266-0029



Send Correspondence to:
American Home Mortgage Servicing Inc.
P.O. Box 632237
Irving, TX 75083-2237



CHRISTINA VASSALLO
314 LORETTO ST
STATEN ISLAND, NY 10307-1919





P.O. Box 631730
Irving, TX 75063-1730

www.ahmsi3.com

10/04/2011

Sent Via Certified Mail
7196 9006 9295 5010 3967

CHRISTINA VASSALLO
314 LORETTO ST
STATEN ISLAND, NY 10307-1919

Loan Number: [REDACTED]
Property Address: 314 LORETTO ST
STATEN ISLAND, NY 10307

Dear CHRISTINA VASSALLO:

You are hereby provided formal notice by American Home Mortgage Servicing, Inc, the Servicer of the above-referenced loan, on behalf of Wells Fargo Bank, N.A., as Trustee for Asset Backed Securities Corporation Home Equity Loan Trust 2004-HE3, Asset Backed Pass-Through Certificates, Series 2004-HE3, the Creditor to whom the debt is owed, that you are in default under the terms and conditions of the Note and Security Instrument (i.e. Deed of Trust, Mortgage, etc.), for failure to pay the required installments when due.

This letter serves as further notice that American Home Mortgage Servicing, Inc intends to enforce the provisions of the Note and Security Instrument. You must pay the full amount of the default on this loan by the thirty-fifth (35th) day from the date of this letter which is 11/08/2011 (or if said date falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). If you do not pay the full amount of the default, we may accelerate the entire sum of both principal and interest due and payable, and invoke any remedies provided for in the Note and Security Instrument, including but not limited to the foreclosure sale of the property. If you received a bankruptcy discharge which included this debt, this notice is not intended and does not constitute an attempt to collect a debt against you personally; notice provisions may be contained within your mortgage/deed of trust which require this notice prior to foreclosure.

You are hereby informed that you may have the right to "cure" or reinstate the loan after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense you may have to acceleration and sale. In the event you pay the amount set forth above in a timely fashion, but said payment is returned for insufficient funds or for any other reason, your default will not be cured. American Home Mortgage Servicing, Inc reserves the right to accept or reject a partial payment of the total amount due without waiving its right to proceed with foreclosure.

As of 10/04/2011 the amount of the debt that we are seeking to collect is \$26,507.14, which includes the sum of payments that have come due on and after the date of default 01/01/2011, any late charges, periodic adjustments to the payment amount (if applicable) and expenses of collection. In addition, any subsequent advances made by the Servicer to protect its lien position must be added to the total amount necessary to cure the default. Because of interest, late charges, and other charges or credits that may vary from day to day, or be assessed during the processing of this letter, the amount due on the day that you pay may be greater. Please contact American Home Mortgage Servicing, Inc. at (877) 304-3100 on the day that you intend to pay for the full amount owed on your account. This letter is in no way intended as a payoff statement for your mortgage, it merely states an amount necessary to cure the current delinquency.



Please note, however, that your right to cure this default as referenced herein does not suspend your payment obligations. Pursuant to the terms of the Note, your 11/01/2011 installment is still due on 11/01/2011 (or if said date(s) falls on a Saturday, Sunday, or legal holiday, then on the first business day thereafter). Please disregard this notice if a payment sufficient to cure the default has already been sent.

American Home Mortgage Servicing, Inc is attempting to collect a debt, and any information obtained will be used for that purpose. Unless you notify us within thirty (30) days after receiving this notice that you dispute the validity of this debt or any portion thereof, we will assume this debt is valid. If you notify us within thirty (30) days from receiving this notice that you dispute the validity of this debt or any portion thereof, we will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. Upon your written request within thirty (30) days after the receipt of this notice, we will provide you with the name and address of the original creditor, if the original creditor is different from the current creditor.

A "CURE" or "Reinstatement Right" similar to that described in the prior paragraph may be available in many states. If, at any time, you make a written request to us not to be contacted by phone at your place of employment, we will not do so. If, at any time, you make a written request to us not to contact you, we will not do so, except to send statutorily and/or contractually required legal notice. If you voluntarily surrender possession of the collateral specified herein, you could still owe additional monies after the money received from the sale of the collateral is deducted from the total amount you owe.

American Home Mortgage Servicing, Inc would like you to be aware that if you are unable to make payments or resume payments within a reasonable period of time due to a reduction in your income resulting from a loss or reduction in your employment, you may be eligible for Homeownership Counseling. To obtain a list of HUD approved counseling agencies, please call (800) 569-4287 or by visiting <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. You may also contact the Homeownership Preservation Foundation's Hope hotline at (888) 995-HOPE (4673).

Attention Servicemembers and dependents: The Federal Servicemembers' Civil Relief Act ("SCRA") and certain state laws provide important protections for you, including prohibiting foreclosure under most circumstances. If you are currently on active duty in the military service, or have been within the last nine (9) months, please notify American Home Mortgage Servicing, Inc immediately. When contacting American Home Mortgage Servicing, Inc as to your active duty status, please provide positive proof as to your active duty status, i.e. a copy of your active duty orders. This information is also applicable to you if you are considered a "dependent", as defined by the "SCRA", of a servicemember who is currently on active duty in the military service, or has been within the last nine (9) months. If you do not provide this information, it will be assumed that you are not entitled to protection under the above-mentioned Act.

You are notified that this default and any other legal action that may occur as a result thereof may be reported to one or more local and national credit reporting agencies by American Home Mortgage Servicing, Inc. American Home Mortgage Servicing, Inc requests that all payments be sent overnight to 1525 S. Bellline Rd. Coppell, TX 75019 or mailed to P.O. Box 660029 Dallas, TX 75266-0029. You may also send payments via Western Union: Code City-AHMSI Code State - TX. You may contact American Home Mortgage Servicing, Inc at (877) 304-3100 should you have servicing questions regarding your account or by mail at P.O. Box 631730, Irving, TX 75063-1730. You may have options available to you to help you avoid foreclosure. Please contact American Home Mortgage Servicing, Inc's Loss Mitigation Department at (877) 304-3100 or by visiting www.ahmsi3.com for additional information and to see what options are available to you.

The matters discussed herein are of extreme importance. We trust you will give them appropriate attention.

Sincerely,

American Home Mortgage Servicing, Inc
P.O. Box 631730
Irving, TX 75063-1730
Phone: (877) 304-3100

To the extent your original obligation was discharged, or is subject to an automatic stay of bankruptcy under Title 11 of the United States Code, this notice is for compliance and/or informational purposes only. Additionally, if you did not sign the Note or are not otherwise personally obligated to pay this debt, this letter is being sent for informational purposes.



EXHIBIT C

Loan Number: [REDACTED] Servicing Number: [REDACTED] Date: 01/16/04

**ADJUSTABLE RATE NOTE
(LIBOR Index - Rate Caps)**

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. THIS NOTE LIMITS THE AMOUNT MY INTEREST RATE CAN CHANGE AT ANY ONE TIME AND THE MAXIMUM RATE I MUST PAY.

314 LORETTO ST, STATEN ISLAND, NY 10307-1919
[Property Address]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$484,500.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is Option One Mortgage Corporation, a California Corporation. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. Interest will be calculated on the basis of a 12-month year and a 30-day month. I will pay interest at a yearly rate of 7.400%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on March 2004.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on

February 01, 2034, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at Option One Mortgage Corporation
P.O. BOX 92103 LOS ANGELES, CA 90009-2103

or at a different place if required by the Note Holder.

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments will be in the amount of U.S. \$3,354.58. This amount may change.

(C) Monthly Payment Changes

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

(D) Application of Payments

Payments received by the Note Holder will be applied in the following order: (i) prepayment charges due under this Note; (ii) amounts payable under paragraph 2 of the Security Instrument (defined below); (iii) interest due under this Note; (iv) principal due under this Note; and (v) late charges due under this Note.

4. INTEREST RATE AND MONTHLY PAYMENT CHANGES

(A) Change Dates

The interest rate I will pay may change on the first day of February 2006 and on that day every sixth month thereafter. Each date on which my interest rate could change is called a "Change Date."

(B) The Index

Beginning with the first Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(C) Calculation of Changes

Before each Change Date, the Note Holder will calculate my new interest rate by adding

SIX AND 10/100 percentage point(s) (6.100%)

to the Current Index. The Note Holder will then round the result of this addition to the next higher one-eighth of one percentage point (0.125%). Subject to the limits stated in Section 4(D) below, this rounded amount will be my new interest rate until the next Change Date.

The Note Holder will then determine the amount of the monthly payment that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full on the Maturity Date at my new interest rate in substantially equal payments. The result of this calculation will be the new amount of my monthly payment.

Loan Number: [REDACTED] Servicing Number: [REDACTED] Date: 03/16/04

(D) Limits on Interest Rate Changes

The interest rate I am required to pay at the first Change Date will not be greater than 10.400% or less than 7.400%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage point (1.0%) from the rate of interest I have been paying for the preceding six months. In no event will my interest rate be greater than 13.400% or less than 7.400%.

(E) Effective Date of Changes

My new interest rate will become effective on each Change Date. I will pay the amount of my new monthly payment beginning on the first monthly payment date after the Change Date until the amount of my monthly payment changes again.

(F) Notice of Changes

The Note Holder will deliver or mail to me a notice of any changes in my interest rate and the amount of my monthly payment before the effective date of any change. The notice will include information required by law to be given me and also the title and telephone number of a person who will answer any question I may have regarding the notice.

5. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due, together with accrued interest. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due dates of my monthly payments unless the Note Holder agrees in writing to those changes. My partial prepayment may reduce the amount of my monthly payments after the first Change Date following my partial prepayment. However, any reduction due to my partial prepayment may be offset by an interest rate increase.

6. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

7. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charges for Overdue Payments

If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be 2.000% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default. If I am in default, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all interest that I owe on that amount, together with any other charges that I owe under this Note or the Security Instrument, except as otherwise required by applicable law.

(C) No Waiver by Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(D) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

8. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

9. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

Loan Number: [REDACTED] Servicing Number: [REDACTED] Date: 01/16/04

10. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

11. SECURED NOTE

In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. Lender also shall not exercise this option if: (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by applicable law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

If Lender exercises the option to require immediate payment in full, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Christina Vassallo (Seal) _____ (Seal)
CHRISTINA VASSALLO -Borrower -Borrower

(Seal) _____ (Seal)
-Borrower -Borrower

(Seal) _____ (Seal)
-Borrower -Borrower

[Sign Original Only]

Loan Number: [REDACTED]

Servicing Number: [REDACTED]

Date: 01/16/04

**ALLONGE TO NOTE
(INVESTOR)**

This allonge makes reference to the following Note:

Borrowers: **CHRISTINA VASSALLO**
Loan #: [REDACTED]
Property Address: **314 LORETTO ST, STATEN ISLAND, NY 10307-1919**
Loan Amount: **\$484,500.00**

Note Date: 01/16/04

Therefore, in reference to the captioned note, the following applies:

Pay to the order of:

Without Recourse

Option One Mortgage Corporation
A California Corporation

By: Kendra Stapleton
Kendra Stapleton
Assistant Secretary