

At I.A.S. Part 32 of the Supreme Court of the State of New York, held in and for the County of New York, at the County Clerk's Office, 120 Centre Street, New York, New York, on and 10 of May, 2017.

PRESENT: HON. ARLENE P. BLUTH J.S.C.  
HON.

MS# 2

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

Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5

Index No. 850202/2016

ORDER TO SHOW CAUSE

Plaintiff,

- against -

UNKNOWN HEIRS AT LAW OF KYLE HARRINGTON, AND IF THEY BE DEAD, ANY AND ALL PERSONS UNKNOWN TO PLAINTIFF, CLAIMING, OR WHO MAY CLAIM TO HAVE AN INTEREST IN, OR GENERALLY OR SPECIFIC LIEN UPON THE REAL PROPERTY DESCRIBED IN THIS ACTION; SUCH UNKNOWN PERSONS BEING HEREIN GENERALLY DESCRIBED AND INTENDED TO BE INCLUDED IN THE FOLLOWING DESIGNATION, NAMELY: THE WIFE, WIDOW, HUSBAND, WIDOWER, HEIRS AT LAW, NEXT OF KIN, DESCENDANTS, EXECUTORS, ADMINISTRATORS, DEVISEES, LEGATEES, CREDITORS, TRUSTEES, COMMITTEES, LIENORS, AND ASSIGNEES OF SUCH DECEASED, ANY AND ALL PERSONS DERIVING INTEREST IN OR LIEN UPON, OR TITLE TO SAID REAL PROPERTY BY, THROUGH OR UNDER THEM, OR EITHER OF THEM, AND THEIR RESPECTIVE WIVES, WIDOWS, HUSBANDS, WIDOWERS, HEIRS AT LAW, NEXT OF KIN, DESCENDANTS, EXECUTORS, ADMINISTRATORS, DEVISEES, LEGATEES, CREDITORS, TRUSTEES, COMMITTEES, LIENORS AND ASSIGNS, ALL OF WHOM AND WHOSE NAMES, EXCEPT AS STATED, ARE UNKNOWN TO PLAINTIFF; CATHERINE HARRINGTON; WELLS FARGO BANK, NA, EXPRESS ELEVATOR CONSTRUCTION Co., CRIMINAL COURT OF THE CITY OF NEW YORK, NEW YORK SUPREME COURT, BIG APPLE COMPACTOR Co INC., NEW YORK CITY DEPARTMENT OF FINANCE, NEW YORK CITY PARKING VIOLATIONS BUREAU, THE PEOPLE OF THE STATE OF NEW YORK, AND "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 BEING FORECLOSED HEREIN,

Defendant(s).

Upon the affidavit of Kyle Harrington sworn to on the 8th day of May, 2017, the affirmation of Michael Kennedy Karlson affirmed May 9th, 2017 and upon all exhibits annexed thereto and all prior papers and proceedings in this action,

LET THE PLAINTIFF <sup>or counsel appear and</sup> SHOW CAUSE at Part 32 thereof, room 308

of this Court, to be held at the Courthouse at 80 Centre Street, New York, NY 10013, room 308 on June 27 2017 at 10am am in the

forenoon of that day, or as soon thereafter as counsel can be heard why an Order should not be issued herein pursuant to CPLR §3211(a)(8); CPLR §2201; CPLR §5015(a)(3) and (a)(4); and all applicable law (a) Vacating all prior orders; (b) discharging the Guardian ad Litem; (c) Staying the publication of the summons, complaint or any other notice or process in this action; (d) dismissing this action in its entirety; (e) vacating the notice of pendency and (f) Granting Defendant Kyle Harrington such other and further relief as may be found to be just and proper under the circumstances, THEREFORE IT IS



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

**Wells Fargo Bank, N.A., as Trustee for Banc of  
America Funding Corporation Mortgage Pass-Through  
Certificates, Series 2007-5**

**Index No. 850202/2016**

**AFFIRMATION**

**Plaintiff,**

**- against -**

**UNKNOWN HEIRS AT LAW OF KYLE HARRINGTON, AND IF  
THEY BE DEAD, ANY AND ALL PERSONS UNKNOWN TO  
PLAINTIFF, CLAIMING, OR WHO MAY CLAIM TO HAVE AN  
INTEREST IN, OR GENERALLY OR SPECIFIC LIEN UPON  
THE REAL PROPERTY DESCRIBED IN THIS ACTION; SUCH  
UNKNOWN PERSONS BEING HEREIN GENERALLY  
DESCRIBED AND INTENDED TO BE INCLUDED IN THE  
FOLLOWING DESIGNATION, NAMELY: THE WIFE, WIDOW,  
HUSBAND, WIDOWER, HEIRS AT LAW, NEXT OF KIN,  
DESCENDANTS, EXECUTORS, ADMINISTRATORS,  
DEWISEES, LEGATEES, CREDITORS, TRUSTEES,  
COMMITTEES, LIENORS, AND ASSIGNEES OF SUCH  
DECEASED, ANY AND ALL PERSONS DERIVING INTEREST IN  
OR LIEN UPON, OR TITLE TO SAID REAL PROPERTY BY,  
THROUGH OR UNDER THEM, OR EITHER OF THEM, AND  
THEIR RESPECTIVE WIVES, WIDOWS, HUSBANDS,  
WIDOWERS, HEIRS AT LAW, NEXT OF KIN, DESCENDANTS,  
EXECUTORS, ADMINISTRATORS, DEWISEES, LEGATEES,  
CREDITORS, TRUSTEES, COMMITTEES, LIENORS AND  
ASSIGNS, ALL OF WHOM AND WHOSE NAMES, EXCEPT AS  
STATED, ARE UNKNOWN TO PLAINTIFF; CATHERINE  
HARRINGTON; WELLS FARGO BANK, NA, EXPRESS  
ELEVATOR CONSTRUCTION Co., CRIMINAL COURT OF  
THE CITY OF NEW YORK, NEW YORK SUPREME COURT,  
BIG APPLE COMPACTOR Co INC., NEW YORK CITY  
DEPARTMENT OF FINANCE, NEW YORK CITY PARKING  
VIOLATIONS BUREAU, THE PEOPLE OF THE STATE OF  
NEW YORK, AND "JOHN DOE #!," 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 BEING  
FORECLOSED HEREIN,**

Defendant(s).

MICHAEL KENNEDY KARLSON, an attorney admitted to practice before the laws of the State of New York, affirms the following under penalty of perjury:

1. I am the attorney for Defendant Kyle Harrington in this Real Estate Foreclosure Action. (See Exhibit A, exhibits thereto have been redacted to prevent this application from becoming voluminous)

**THIS IS AN OSC TO STOP A FRAUD IN PROGRESS**

2. On August 16, 2016 Wells Fargo files foreclosure index 850171/2016 against Kyle Harrington, et al in regards to Subject Property 116 West 22<sup>nd</sup> Street, Apt 3, New York, NY 10011. (See Exhibit A)
3. In that index number Plaintiff and Defendant Kyle Harrington are both represented by counsel zealously defending their client's respective interests. (See Exhibit C)
4. In that litigation jurisdiction is in question and Kyle Harrington submits sworn affidavits wherein he swears, inter alia, as to his address in San Diego, California. (See Exhibits C and D)
4. Kyle swears to his address on paragraph 7 of his affidavit. (See Exhibit C)
5. A copy of his redacted drivers license showing his address was included as an exhibit and thus available to Wells Fargo. (See Exhibit E)
6. In his reply affidavit Kyle Harrington even stated his apartment number, 115. (See Exhibit D, paragraph 9)
7. There was even driving directions to Mr. Harrington's apartment in San Diego as an exhibit to the reply. (See Exhibit F)

- 8 All of this is efiled. (See Exhibit B)
9. A traverse date is set and then adjourned/. (See Exhibit G)
10. The traverse is adjourned. Both parties' witnesses are flying in from California so we agree to schedule that.
11. This action is 850202/2016 filed 10/10/2016, less than two months after the first case, with the same Plaintiff, same first named Defendant Kyle Harrington and same property, albeit a different alleged loan. (See Exhibit H, various exhibits thereto redacted to prevent this application from becoming voluminous)
12. In this action Wells Fargo is trying to convince the Court that Defendant Kyle Harrington might be dead and maybe even so long dead that his heirs are dead. (See Exhibit I)
13. This is preposterous. Wells Fargo knows quite plainly that Kyle Harrington is not dead. Wells Fargo is litigating the other case with him. He is signing affidavits and we are mking arrangements to schedule his live witness testimony.
14. The Order granting service by publication was based upon Wells Fargo's fraud and deception. It should be vacated. (See Exhibit J)
15. Even the purported notice of entry was not served where they knew him to be. (See Exhibit J)
16. The Guardian ad litem should be discharged.
17. Wells Fargo cannot be in active litigation with Kyle under 1 index number and claim totally ignorance of him in another.
18. It matters not that Wells Fargo is represented by different counsel in the two index numbers.

19. No one is seeking Sanctions as against Sheldon May & Associates. This Court need not determine whether or not their client (Wells Fargo) made them aware of what was happening in the other index number.
20. The relevant question is what did Wells Fargo know not what did Sheldon May or anyone else know.
21. Wells Fargo does not get to proceed with publication while they know where Kyle Harrington is just by means of different attorneys fir different cases involving multiple alleged loans at the same property.
22. Wells Fargo should have their action dismissed for falsely claiming ignorance of where Kyle Harrington might be found.
23. Sending investigators and process servers on pointless snipe hunts looking for someone in New York when Wells Fargo knows the person is in California proves only Wells Fargo's bad faith and deceitfulness.
24. Defendant asks that the publication be stayed. Defendant is prejudiced by publishing notices pertaining to his death while he is alive. Someone could read that and might really think he is dead.
25. This action should be dismissed for failure to serve Defendant within the required 120 days.
26. Plaintiff's time to serve process should not be extended. Plaintiff should not be rewarded for deceitfulness.
27. A traverse hearing is not necessary as Plaintiff does not claim to have served Defendant Kyle Harrington, except perhaps by publication but that is based upon fraud.

28. This Court has the authority to vacate its own Orders on the grounds of fraud. CPLR §5015(a)(4); Beltway Capital, LLC v. Soleil, 104 A.D.3d 628 (2013), 961 N.Y.S.2d 225 (2<sup>nd</sup> Dept., 2013).

WHEREFORE, Defendant Kyle Harrington respectfully requests that this Court stay Plaintiff, its attorneys, agents and assigns from any further publication in this action,, dismiss this action in its entirety, vacate all prior Orders, vacate the notice of pendency and grant Defendant Kyle Harrington such other and further relief as may be found to be just and proper under the circumstance.

State of New York  
County of New York  
Dated: May 9, 2017



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Michael Kennedy Karlson  
Attorney for Defendant  
(Kyle Harrington)  
5030 Broadway, Suite 813  
New York, NY 10034  
(212) 569-9597



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

**Wells Fargo Bank, N.A., as Trustee for Banc of  
America Funding Corporation Mortgage Pass-Through  
Certificates, Series 2007-5**

**Index No. 850202/2016**

**AFFIDAVIT**

**Plaintiff,**

**- against -**

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THEY BE DEAD, ANY AND ALL PERSONS UNKNOWN TO  
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HARRINGTON; WELLS FARGO BANK, NA, EXPRESS  
ELEVATOR CONSTRUCTION Co., CRIMINAL COURT OF  
THE CITY OF NEW YORK, NEW YORK SUPREME COURT,  
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INTEREST IN OR LIEN UPON THE PREMISES BEING  
FORECLOSED HEREIN,**

**Defendant(s).**

KYLE HARRINGTON, being sworn, states:

1. The reports of my death are greatly exaggerated.
2. More specifically, Plaintiff's claims and surmises that I might be dead are completely, wilfully and maliciously fabricated.

**PLAINTIFF'S EX-PARTE ORDERS ARE BASED UPON FRAUD**

3. Plaintiff, Wells Fargo Bank comes before this Honorable Court in index number 850212/2016 filed October 10, 2016 and falsely and fraudulently tries to convince this Court that I must be dead somewhere and maybe even my heirs are dead and someone needs to appoint a guardian ad litem for me.
4. In the course of writing my epitaph Plaintiff Wells Fargo Bank neglected to inform this Court that the very same Plaintiff Wells Fargo Bank is involved in active litigation with me under index number 850171/0216 also entitled Wells Fargo Bank NA v. Kyle Harrington, filed August 16, 2016 also before the Supreme Court of the State of New York, County of New York before the Honorable Carol Edmead. (See Exhibit B)
5. I have submitted sworn affidavits as part of that litigation. (See Exhibit C)
6. In my affidavit dated September 28, 2016, paragraph 7, I swore: "I reside at 1540 Soledad Avenue, La Jolla, CA 92037." (See Exhibit C)
7. This is true. I reside at 1540 Soledad Avenue, La Jolla, CA 92037. I have resided there throughout the pendency of this litigation and I reside there still.
8. WELLS FARGO HAD THAT AFFIDAVIT. It was efiled on October 4, 2016. Upon information and belief it was served on Wells Fargo's counsel in that case. (See Exhibit C)

Page | 2

9. Wells Fargo knew I was alive. Dead people can't sign affidavits and get them notarized.

10. Wells Fargo falsely and fraudulently came before this Court peddling a lot of nonsense about my heirs at law, widows, devisees and such all the while they were involved in active litigation against me in another part of the same Courthouse and my attorney was filing my sworn affidavits and we were litigating that case. (See Exhibits A, B, C, D)

11. Wells Fargo had my residence address in California from an affidavit filed SIX DAYS BEFORE this action was filed setting forth my address in California. (See Exhibit C, first affidavit)

12. Despite having my address from said affidavit Wells Fargo was falsely and fraudulently claiming inability to serve me and ignorance of where, if indeed anywhere in this world, I might be found.

13. Wells Fargo knew that I was represented by Michael Kennedy Karlson, Esq., who was opposing them in index number 850171/2016.

14. Despite knowing this Wells Fargo falsely, wilfully and maliciously got a guardian ad litem appointed to supposedly represent me against my wishes or represent my heirs and/or the heirs of my heirs.

15. I discharge the guardian ad litem. I do not wish to be represented by this person. I never consented to be represented by this person. I ask that this person be immediately discharged. I deny any representation of me by this guardian.

17. I have also been involved in loss mitigation efforts with Wells Fargo. As part of these loss mitigation efforts extensive documentation has, upon information and belief, been provided to Wells Fargo including but not limited to pay stubs, bank statements, tax returns and forms.

18. Dead people don't get pay stubs.
19. Dead people can't sign loss mitigation forms.
20. Wells Fargo also had access to my bank statements and tax returns and all of the information thereon including my address.
21. We had a traverse hearing scheduled for April 12, 2017. Eventually we agreed to adjourn it because I did not want to fly in from California if Wells Fargo was not ready to move forward. If they were ready I would have flown in. This is what is happening in one litigation yet in the other Wells Fargo litigation they insinuate that I must be deceased.
22. Clearly Wells Fargo knew I was not dead but despite this knowledge Wells Fargo clearly, willfully and maliciously misled this Court into thinking that I was or at least might be.
23. Clearly Wells Fargo knew where I lived but despite this knowledge Wells Fargo clearly, willfully and maliciously misled this Court into thinking that wells Fargo did not know where I lived.
24. Clearly Wells Fargo knew where to look for me and try to effectuate service upon me but despite this knowledge Wells Fargo clearly misled this Court into thinking they had no idea where to look for me or how to serve me.
25. Plaintiff has obtained an Order extending their time to serve based upon their fraud and false misrepresentations. That Order must be vacated as based on fraud.
26. Plaintiff has obtained an Order allowing service by publication based upon their fraud and false misrepresentation. That Order must be vacated as based on fraud.
27. Plaintiff has obtained an Order appointing a guardian ad litem based upon their fraud and false misrepresentation. That Order must be vacated as based on fraud.

28. Plaintiff did not even TRY to serve me in this action despite all of the knowledge which they had from the other action. Instead Plaintiff chose to rely on deception and trickery. This action should be dismissed.

29. I have a strong likelihood of success on the merits as Plaintiff has engaged in obvious fraud.

30. I will be irreparably injured if Plaintiff gets away with their scheme. Plaintiff then may have established jurisdiction by fraud and deception to my detriment.

31. I am also irreparably injured by the publication. Friends, relations, professional contacts and other people may read of my supposed demise. I do not want rumors started that I am dead just because Plaintiff is too lazy to try to serve me in California.

32. I have made no prior application to any Court or Judge for the relief requested herein.

33. I am moving by emergency order to show cause so as to stop Plaintiff's scheme before it is too late.

34. Wells Fargo may ask for mercy and ask that this action not be dismissed. If all this Court does to Wells Fargo is dismiss this action, that is showing mercy. Showing mercy is not imposing sanctions for frivolous conduct. Showing mercy is not referring this to the District Attorney.

WHEREFORE, Defendant Kyle Harrington respectfully requests that this Court stay Plaintiff, its attorneys, agents and assigns from any further publication in this action,, dismiss this action in its entirety, vacate all prior Orders, vacate the notice of pendency and grant Defendant Kyle Harrington such other and further relief as may be found to be just and proper under the circumstance.

State of California

County of San Diego

5/8/17

Kyle Harrington, Defendant

UNIFORM CERTIFICATE OF ACKNOWLEDGMENT

State of California, County of San Diego

On the \_\_\_\_ day of April, 2017 before me, the undersigned, personally appeared Kyle Harrington, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me he executed the same in his individual capacity, that by his signature on the affidavit the individual, or the person on whose behalf the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in the \_\_\_\_\_

(Insert the city or other political subdivision and the state or county or other place the acknowledgment was taken).

See Notarized Certificate of Acknowledgment attached

\_\_\_\_\_

(Signature and office of individual taking acknowledgment)

# ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of SAN DIEGO }

On MAY 8, 2017 before me, MARQUERITE OLER, NOTARY PUBLIC,  
(Here insert name and title of the officer)

personally appeared KYLE HARRINGTON,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ she ~~they~~ executed the same in ~~his~~ her ~~their~~ authorized capacity(ies), and that by ~~his~~ her ~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Marquerite Oler  
Notary Public Signature (Notary Public Seal)



### ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT  
SUPREME COURT OF THE STATE OF  
(Title or description of attached document)  
NEW YORK - AFFIDAVIT  
(Title or description of attached document continued)  
Number of Pages 6 Document Date 5/8/2017

### INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/~~she~~/~~they~~, ~~is~~ /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

CAPACITY CLAIMED BY THE SIGNER  
 Individual (s)  
 Corporate Officer  
\_\_\_\_\_  
(Title)  
 Partner(s)  
 Attorney-in-Fact  
 Trustee(s)  
 Other DEFENDANT

**EXHIBIT A**



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

SUMMONS AND NOTICE

Wells Fargo Bank, NA,

Plaintiff,

-against-

Index No. \_\_\_\_\_

Date Filed: \_\_\_\_\_

Kyle Harrington; Catherine Harrington; The Board of Managers of the Soma Condominium Homeowners Association; City of New York Environmental Control Board; City of New York Parking Violations Bureau; City of New York Transit Adjudication Bureau; New York City Department of Finance, "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,  
Defendants.

PROPERTY ADDRESS: 116 West 22nd Street Apartment 3, New York, NY 10011

TO THE ABOVE NAMED DEFENDANTS:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or a notice of appearance on the attorneys for the Plaintiff within thirty (30) days after the service of this summons, exclusive of the day of service. The United States of America, if designated as a defendant in this action, may 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.

**NOTICE OF NATURE OF ACTION AND RELIEF SOUGHT THE OBJECT** of the above captioned action is to foreclose a Mortgage to secure \$390,000.00 and interest, recorded in the New York County Office of the City Register on June 5, 2007, in CRFN 2007000290275 covering premises known as 116 West 22nd Street Apartment 3, New York, NY 10011.

The relief sought in the within action is a final judgment directing the sale of the premises described above to satisfy the debt secured by the Mortgage described above.

Plaintiff designates New York County as the place of trial. Venue is based upon the County in which the mortgaged premises is situated.

**NOTICE  
YOU ARE IN DANGER OF LOSING YOUR HOME**

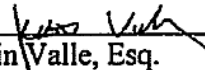
**IF YOU DO NOT RESPOND TO THIS SUMMONS AND COMPLAINT BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE MORTGAGE COMPANY WHO FILED THIS FORECLOSURE PROCEEDING AGAINST YOU AND FILING THE ANSWER WITH THE COURT, A DEFAULT JUDGMENT MAY BE ENTERED AND YOU CAN LOSE YOUR HOME.**

**SPEAK TO AN ATTORNEY OR GO TO THE COURT WHERE YOUR CASE IS PENDING FOR FURTHER INFORMATION ON HOW TO ANSWER THE SUMMONS AND PROTECT YOUR PROPERTY.**

**SENDING A PAYMENT TO YOUR MORTGAGE COMPANY WILL NOT STOP THIS FORECLOSURE ACTION.**

**YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT.**

Dated: 5/15/2017

  
Justin Valle, Esq.  
Associate Attorney  
SHAPIRO, DICARO & BARAK, LLC  
Attorneys for Plaintiff  
175 Mile Crossing Boulevard  
Rochester, New York 14624  
(585) 247-9000  
Fax: (585) 247-7380  
Our File No. 16-050819

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

---

Wells Fargo Bank, NA,

Plaintiff,

-against-

Kyle Harrington; Catherine Harrington; The Board of Managers of the Soma Condominium Homeowners Association; City of New York Environmental Control Board; City of New York Parking Violations Bureau; City of New York Transit Adjudication Bureau, "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,

Defendants.

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**MORTGAGE FORECLOSURE COMPLAINT**

Index No. \_\_\_\_\_

Date Filed: \_\_\_\_\_

The Plaintiff herein, by its Attorneys, Shapiro, DiCaro & Barak, LLC, complains of the defendants above named, and for its cause of action, alleges that:

First: The Plaintiff herein, at all times hereinafter mentioned was and still is a duly authorized National Association and having an office at c/o 18700 NW Walker Road #92, MAC #P6053-022, Beaverton, Oregon 97006.

**PLAINTIFF FURTHER ALLEGES  
UPON INFORMATION AND BELIEF**

Second: The defendants set forth in Schedule "A" reside or have a place of business at the address set forth therein and are made defendants in this action in the capacities therein alleged and for the purpose of foreclosing and extinguishing any other right, title or interest said defendants may have in the subject premises.

Third: 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 (by whatever name designated) if made parties to this action and if appearing in Schedule "B", are made parties solely by reason of the interest set forth in Schedule "B" and for no other reason.

Fourth: Heretofore, the defendant(s), Kyle Harrington and Catherine Harrington, for the purpose of securing to Wells Fargo Bank, N.A., its successors and assigns, the sum of \$390,000.00, duly made a certain bond, note, consolidation, extension, modification, recasting, or assumption agreement, as the case may be, wherein and whereby they bound themselves, 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 or rights of Wells Fargo Bank, N.A., its successors and assigns, in said bond, note or other instrument, a copy of which is attached hereto and made a part hereof.

Fifth: As security for the payment of said indebtedness, a mortgage was executed, acknowledged and delivered to Wells Fargo Bank, N.A. recorded in the New York County Office of the City Register on June 5, 2007, in CRFN 2007000290275, wherein and whereby the mortgagor(s) named therein mortgaged, bargained, granted an interest in and/or sold to the mortgagee, 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, a copy of which is attached hereto and made a part hereof.

Sixth: The Plaintiff is the current owner and holder of the subject mortgage and note, or has been delegated the authority to institute a mortgage foreclosure action by the owner and holder of the subject mortgage and note. If Plaintiff is not the original owner and holder of the subject note and mortgage then information regarding the chain of title will be contained in Schedule "D".

Seventh: The said mortgage was duly recorded and the mortgage tax due thereon was duly paid on the recorded instrument in the proper County Clerk's Office at the place and time which appears thereon. Plaintiff shall pay the requisite mortgage tax attributed to the Modification Agreement, if any, prior to Judgment of Foreclosure and Sale.

Eighth: The defendant(s), Kyle Harrington and Catherine Harrington, so named, have failed and neglected to comply with the conditions of said mortgage, bond or note by omitting and failing to pay the monthly payments of principal, interest, taxes, assessments, water rates, insurance premiums, escrow and/or other charges, and accordingly, the plaintiff has duly elected and does hereby elect to call due the entire amount presently secured by the mortgage described in paragraph "FIFTH" hereof.

Ninth: Heretofore and prior to the commencement of this action, part of the original principal sum may have been paid to apply on said indebtedness and there remains due the amount set forth in Schedule "C".

Tenth: In order to protect its security, the plaintiff has paid, or will pay, as may be compelled during the pendency of this action, local taxes, assessments, water rates, insurance premiums, inspections and other charges affecting the mortgaged premises, and the plaintiff requests that any sums thus paid by it for said purposes (together with interests 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, the amount of which will ultimately be determined by the Court.

Eleventh: 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, has been paid, or is otherwise subordinate to, the lien of plaintiff's mortgage.

Twelfth: There are no pending proceedings at law or otherwise to collect or enforce said bond/note and mortgage and there is no other action pending which has been brought to recover said mortgage debt or any part thereof.

Thirteenth: The Schedules, Exhibits and other items attached to this Complaint are expressly incorporated and made a part of this Complaint for all purposes with the same force and effect as if they were completely and fully set forth herein wherever reference has been made to each or any of them.

Fourteenth: By reason of the foregoing, there is now due and owing to the plaintiff upon said bond, note, assumption agreement, consolidation agreement, or recasting agreement, the unpaid principal balance set forth in Schedule "C", and such other fees, costs, late charges, and interest, the amount of which will be determined by the Court.

Fifteenth: The mortgage provides that, in the case of foreclosure, the mortgaged premises may be sold in one parcel.

Sixteenth: The Plaintiff shall not be deemed to have waived, altered, released or changed the election hereinbefore made by reason of the payment or performance, 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 all present and future defaults under the Note and Mortgage and occurring prior to the discontinuance of this action are fully paid and cured.

Seventeenth: Pursuant to the Fair Debt Collection Practices Act, this action may be deemed to be an attempt to collect a debt, on behalf of Plaintiff. Any information obtained as a result of this action will be used for that purpose.

Eighteenth: If the subject note and mortgage fall within the prescribed definition of a subprime home loan or high-cost home loan as identified under section six-l or six-m of the New York State Banking Law, then Plaintiff has complied with all the provisions of section five-hundred ninety-five of the New York State Banking Law and any rules and regulations promulgated thereunder, section six-l or six-m of the New York State Banking Law and section thirteen hundred four of New York State Real Property Actions and Proceedings Law (RPAPL).



Nineteenth: Plaintiff has complied with the provisions of RPAPL § 1306, by filing the form required by the superintendent of financial services within three business days of mailing the RPAPL § 1304 notice, as evinced by the Proof of Filing Statement issued by the New York State Department of Financial Services f/k/a New York State Banking Department; a copy of the Proof of Filing Statement is attached hereto and made a part hereof.

Twentieth: To the extent the original obligation was discharged in bankruptcy under Title 11 of the United States Code, this pleading does not constitute an attempt to collect a debt or to impose personal liability for such obligation. However, the secured party retains all rights, and hereby exercises its right to foreclose its lien, under its security instrument.

**WHEREFORE**, plaintiff demands judgment:

- (a) Adjudging and decreeing the amounts due the plaintiff for principal, interest, costs, and reasonable attorney's fees, if and as provided for in the said mortgage;
- (b) That the defendants and all persons claiming by, through or under them, or either or any of them, subsequent to the commencement of this action and every other person or corporation whose right, title conveyance or encumbrance is subsequent to or subsequently recorded, may be barred and forever foreclosed of all right, claim, lien, or interest, or equity of redemption in and to said mortgaged premises;
- (c) That the said mortgaged premises, or such part thereof as may be necessary to raise the amounts then due for principal, interest, costs, reasonable attorney's fees, allowances and disbursements, together with any monies advanced and paid, may be decreed to be sold according to law;

(d) That out of the monies arising from the sale thereof, the plaintiff may be paid the amounts then due on said bond/note and mortgage and any sum which may have been 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, additional allowance, if any, and reasonable attorney's fees, if and as provided for in the mortgage, rider or other agreement, so far as the amount of such money properly applicable thereto will pay the same;

(e) That either or any of the parties to this action may become a purchaser upon such sale;

(f) That this Court forthwith appoint a Receiver of the rents and profits of said premises with the usual powers and duties;

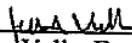
(g) That the defendant(s), Kyle Harrington and Catherine Harrington, unless discharged in bankruptcy may be adjudged to pay any deficiency that may remain after applying all of said monies so applicable thereto;

(h) That the United States of America shall have the right of redemption, if applicable;

(i) That the plaintiff may have such other or further relief, or both, in the premises as may be just and equitable.

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.

Dated: 7/25/17

  
Justin Valle, Esq.  
Associate Attorney  
SHAPIRO, DICARO & BARAK, LLC  
Attorneys for Plaintiff  
175 Mile Crossing Boulevard  
Rochester, New York 14624  
(585) 247-9000  
Fax: (585) 247-7380  
Our File No. 16-050819

**SCHEDULE A – DEFENDANTS**

**DEFENDANTS**

**CAPACITY**

Kyle Harrington  
116 West 22nd Street Apartment 3  
New York, NY 10011

Owner of record and original obligor under the Note secured by the Mortgage recorded on June 5, 2007, in CRFN 2007000290275, being foreclosed herein.

Catherine Harrington  
116 West 22nd Street Apartment 3  
New York, NY 10011

Owner of record and original obligor under the Note secured by the Mortgage recorded on June 5, 2007, in CRFN 2007000290275, being foreclosed herein.

The Board of Managers of the Soma  
Condominium Homeowners Association  
116 West 22nd Street  
New York, NY 10011

Possible holder of claim or lien as a result of unpaid common charges and possible holder of a right of first refusal express or implied by virtue of the Power of Attorney recorded on January 18, 2008 in CRFN 2008000025095, pursuant to the terms of Declaration of Covenants, Easements and Restrictions By-Laws recorded in CRFN 2006000699818 , as amended.

“JOHN DOE”

Said name being fictitious, it being the intention of Plaintiff to designate any and all occupants, tenants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein.

**SCHEDULE B – DEFENDANTS**

<u>DEFENDANTS</u>	<u>CAPACITY</u>
City of New York Environmental Control Board 100 Church Street New York, NY 10007	To cut off any possible liens filed by the Environmental Control Board with the Clerk of New York County.
City of New York Parking Violations Bureau 100 Church Street New York, NY 10007	To cut off any possible liens filed by the New York City Parking Violations Bureau with the Clerk of New York County.
City of New York Transit Adjudication Bureau 130 Livingston Street Brooklyn, NY 11201	To cut off any possible liens filed by the Transit Adjudication Bureau with the Clerk of New York County.

16-050819

SCHEDULE CMORTGAGE INFORMATION

1.	Original Amount of Bond/Note/ Consolidation or Modification Agreement	\$390,000.00
2.	Last installment due and paid	March 22, 2014
3.	Date of first unpaid installment/ default date	April 20, 2014

AMOUNT DUE

4.	Principal balance owing	\$390,000.00
5.	*Interest @ 4.24% from March 22, 2014	To Be Calculated at Judgment
6.	Late charges as per the terms of the Note	To Be Calculated at Judgment
7.	Taxes Advanced by Plaintiff	To Be Calculated at Judgment
8.	Escrow Advances	To Be Calculated at Judgment

*\* Interest will continue to accrue at the contract bond/note/loan agreement rate, until a Judgment of Foreclosure and Sale has been entered in the proper County Clerk's Office, at which time the interest rate will be calculated at the legal rate of 9.00%.*

16-050819

**SCHEDULE D**

NONE

16-050819

**EXHIBIT B**



NYSCEF - Supreme & Court of Claims (Live System)

**850171/2016 - New York County Supreme Court**


Short Caption: **Wells Fargo Bank, NA - v. - Kyle Harrington et al**  
 Case Type: Real Property - Mortgage Foreclosure - Residential  
 Case Status: Active  
 eFiling Status: Partial Participation Recorded  
 Assigned Judge: **Carol Edmead**

**Narrow By Options**

Document Type:  Filed By:

Motion Info:  Filed Date:

Document Number:

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To view details, click on the **Doc #** link

Doc #	Document Type Information	Status	Received Date	Filing User	View
1	<a href="#">SUMMONS WITH NOTICE</a>	Processed	08/16/2016	Di caro, J.	<a href="#">Confirmation Notice</a>
2	<a href="#">COMPLAINT</a> <i>Redacted per 22 NYCRR §202.5(e)</i>	Processed	08/16/2016	Di caro, J.	<a href="#">Confirmation Notice</a>
3	<a href="#">NOTICE OF PENDENCY</a>	Processed	08/16/2016	Di caro, J.	<a href="#">Confirmation Notice</a>
4	<a href="#">CERTIFICATE OF MERIT</a>	Processed	08/16/2016	Di caro, J.	<a href="#">Confirmation Notice</a>
5	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> Affidavit of Service-CITY OF NY TRANSIT ADJUDICATION BUREAU	Processed	08/25/2016	Di caro, J. - filed by ProVest,LLC by Mercedes Ramirez	<a href="#">Confirmation Notice</a>
6	<a href="#">STATEMENT OF AUTHORIZATION FOR ELECTRONIC FILING</a> AUTHORIZATION FORM	Processed	08/25/2016	Di caro, J. - filed by ProVest,LLC by Mercedes Ramirez	<a href="#">Confirmation Notice</a>
7	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> Affidavit of Service-CITY OF NY PARKING VIOLATIONS BUREAU	Processed	09/01/2016	Di caro, J. - filed by ProVest,LLC by Mercedes Ramirez	<a href="#">Confirmation Notice</a>
8	<a href="#">AFFIRMATION/AFFIDAVIT OF SERVICE</a> Affidavit of Service-CITY OF NY ENVIRONMENTAL CONTROL BOARD	Processed	09/01/2016	Di caro, J. - filed by ProVest,LLC by Mercedes Ramirez	<a href="#">Confirmation Notice</a>

## Document List | NYSCEF

9	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> AFFIDAVIT OF SERVICE - NEW YORK CITY DEPARTMENT OF FINANCE	Processed	09/09/2016 Di caro, J. - filed by Provest LLC	<u>Confirmation Notice</u>
10	<u>STATEMENT OF AUTHORIZATION FOR ELECTRONIC FILING</u> AUTH FORM	Processed	09/09/2016 Di caro, J. - filed by Provest LLC	<u>Confirmation Notice</u>
11	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> AFFIDAVIT OF SERVICE - CATHERINE HARRINGTON	Processed	09/12/2016 Di caro, J. - filed by Provest LLC	<u>Confirmation Notice</u>
12	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> AFFIDAVIT OF SERVICE - KYLE HARRINGTON	Processed	09/12/2016 Di caro, J. - filed by Provest LLC	<u>Confirmation Notice</u>
13	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> Affidavit of Service-THE BOARD OF MANAGERS OF THE SOMA CONDOMINIUM HOMEOWNERS ASSOCIATION	Processed	09/14/2016 Di caro, J. - filed by ProVest,LLC by Mercedes Ramirez	<u>Confirmation Notice</u>
14	<u>NOTICE OF APPEARANCE (PRE RJI)</u> Notice of Appearance	Processed	09/15/2016 Kisyk, D.	<u>Confirmation Notice</u>
15	<u>NOTICE OF MOTION (Motion# 001)</u> Notice of Motion	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
16	<u>AFFIDAVIT OR AFFIRMATION IN SUPPORT (Motion# 001)</u> Affirmation MK Karlson, Esq	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
17	<u>AFFIDAVIT OR AFFIRMATION IN SUPPORT (Motion# 001)</u> Affidavit Kyle Harrington	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
18	<u>EXHIBIT(S) - A (Motion# 001)</u> Summons and Complaint without attachments	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
19	<u>EXHIBIT(S) - B (Motion# 001)</u> Affidavit of service	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
20	<u>EXHIBIT(S) - C (Motion# 001)</u> Redacted Drivers Licence <b>Redacted per 22 NYCRR §202.5(e)</b>	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
21	<u>AFFIRMATION/AFFIDAVIT OF SERVICE (Motion# 001)</u> Affirmation of service of motion	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
22	<u>MEMORANDUM OF LAW (Motion# 001)</u> Memorandum	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
23	<u>RJI -RE: NOTICE OF MOTION (Motion# 001)</u>	Processed	10/04/2016 Karlson, M.	<u>Confirmation Notice</u>
24	<u>STIPULATION - ADJOURNMENT OF MOTION -IN SUBMISSIONS PART -RM 130 (Motion# 001)</u>	Processed	10/31/2016 Di caro, J.	<u>Confirmation Notice</u>
25	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> Affidavit of Service-JOHN (REF.FIRST NAME) FELDMAN AS JOHN DOE	Processed	11/14/2016 Di caro, J. - filed by ProVest,LLC by Mercedes Ramirez	<u>Confirmation Notice</u>
26	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> Affidavit of Mailing-ANY AND ALL OCCUPANTS	Processed	11/15/2016 Di caro, J. - filed by ProVest,LLC	<u>Confirmation Notice</u>

			by Mercedes Ramirez	
27	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> Affidavit of Mailing-JOHN (REF.FIRST NAME) FELDMAN AS JOHN DOE	Processed	11/17/2016 Di caro, J. - filed by ProVest,LLC by Mercedes Ramirez	<u>Confirmation Notice</u>
28	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> AFFIDAVIT OF SERVICE-KYLE HARRINGTON	Processed	11/22/2016 Di caro, J. - filed by ProVest, LLC	<u>Confirmation Notice</u>
29	<u>STATEMENT OF AUTHORIZATION FOR</u> <u>ELECTRONIC FILING</u> AUTHORIZATION FORM	Processed	11/22/2016 Di caro, J. - filed by ProVest, LLC	<u>Confirmation Notice</u>
30	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> AMENDED Affidavit of Service-KYLE HARRINGTON	Processed	11/30/2016 Di caro, J. - filed by ProVest,LLC by Mercedes Ramirez	<u>Confirmation Notice</u>
31	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> AMENDED AFFIDAIT OF SERVICE-KYLE HARRINGTON	Processed	12/01/2016 Di caro, J. - filed by ProVest, LLC	<u>Confirmation Notice</u>
32	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> AMENDED AFFIDAVIT OF SERVICE-NEW YORK CITY DEPARTMENT OF FINANCE	Processed	12/02/2016 Di caro, J. - filed by Provest	<u>Confirmation Notice</u>
33	<u>STATEMENT OF AUTHORIZATION FOR</u> <u>ELECTRONIC FILING</u> AUTHORIZATION FORM	Processed	12/02/2016 Di caro, J. - filed by Provest	<u>Confirmation Notice</u>
34	<u>AFFIDAVIT OR AFFIRMATION IN OPPOSITION</u> <u>TO MOTION (Motion# 001)</u>	Processed	12/02/2016 Di caro, J.	<u>Confirmation Notice</u>
35	<u>EXHIBIT(S) - A (Motion# 001)</u> Affidavit of Service	Processed	12/02/2016 Di caro, J.	<u>Confirmation Notice</u>
36	<u>AFFIDAVIT OR AFFIRMATION IN REPLY</u> <u>(Motion# 001)</u>	Processed	12/09/2016 Karlson, M.	<u>Confirmation Notice</u>
37	<u>AFFIDAVIT OR AFFIRMATION IN REPLY</u> <u>(Motion# 001)</u>	Processed	12/09/2016 Karlson, M.	<u>Confirmation Notice</u>
38	<u>EXHIBIT(S) - A (Motion# 001)</u> Affidavit of Service for Summons	Processed	12/09/2016 Karlson, M.	<u>Confirmation Notice</u>
39	<u>EXHIBIT(S) - B (Motion# 001)</u> Amended Affidavit of Service for Summons	Processed	12/09/2016 Karlson, M.	<u>Confirmation Notice</u>
40	<u>EXHIBIT(S) - C (Motion# 001)</u> Amended Affidavit of serv	Processed	12/09/2016 Karlson, M.	<u>Confirmation Notice</u>
41	<u>EXHIBIT(S) - D (Motion# 001)</u> Driving Directions	Processed	12/09/2016 Karlson, M.	<u>Confirmation Notice</u>
42	<u>AFFIRMATION/AFFIDAVIT OF SERVICE</u> <u>(Motion# 001)</u>	Processed	12/09/2016 Karlson, M.	<u>Confirmation Notice</u>
43	<u>AFFIDAVIT</u>	Processed	01/06/2017 Di caro, J.	<u>Confirmation Notice</u>
44	<u>ORDER - INTERIM (Motion# 001)</u>	Processed	02/07/2017 Court User	<u>Confirmation Notice</u>
45	<u>STIPULATION - ADJOURNMENT OF HEARING</u>	Processed	04/10/2017	

Di caro, J.

Confirmation Notice

46 STIPULATION - SO ORDERED (Motion# 001)

Processed 04/12/2017

**EXHIBIT C**

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

**Wells Fargo Bank, N.A.,**

**Plaintiff,**

**- against -**

**Index No. 850171/2016**

**AFFIDAVIT**

**KYLE HARRINGTON; CATHERINE HARRINGTON; THE BOARD OF MANAGERS OF THE SOMA CONDOMINIUM HOMEOWNERS ASSOCIATION; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; CITY OF NEW YORK PARKING VIOLATIONS BUREAU; CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU; NEW YORK CITY DEPARTMENT OF FINANCE, "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,**

**Defendants.**

**KYLE HARRINGTON, being sworn, states:**

- 1. I am a Defendant in the above-captioned real estate foreclosure matter. (See Exhibit A)**
- 2. I am an owner of the Subject Property.**

**LACK OF JURISDICTION**

**3. Plaintiff claims jurisdiction based upon an alleged substitute service by delivery to a Catherine Harrington at 5533 La Jolla Mesa Drive, La Jolla, CA 92037 on August 24, 2016.**

**(See Exhibit B)**

**4. 5533 La Jolla Mesa Drive, La Jolla, CA 92037 is not my actual place of business, nor was it at any time in 2016.**

**5. 5533 La Jolla Mesa Drive, La Jolla, CA 92037 is not my usual place of abode, nor was it at any time in 2016.**

**Page | 1**

6. **5533 La Jolla Mesa Drive, La Jolla, CA 92037 is not my dwelling place nor was it at any time in 2016.**
7. **I reside at 1540 Soledad Avenue, La Jolla, CA 92037. I resided there at all times in 2016 to date. (See Exhibit C)**
8. **I have read the Affidavit of Matthew Fitts dated September 12, 2016 and the same is false to my knowledge in that 5533 La Jolla Mesa Drive, La Jolla, CA 92037 was not my dwelling place or usual place of abode at any time in 2016.**
9. **I have never lived at 5533 La Jolla Mesa Drive, La Jolla, CA 92037.**
10. **5533 La Jolla Mesa Drive, La Jolla, CA 92037 cannot be a last known address for me as I have never lived there.**
11. **5533 La Jolla Mesa Drive, La Jolla, CA 92037 is not a proper mailing address for me.**
12. **Catherine Harrington and I no longer reside together. I do not know whether the Plaintiff has served Catherine Harrington or not but even if they did serve her at 5533 La Jolla Mesa Drive, La Jolla, CA 92037 that is not my actual place of business, dwelling place or usual place of abode.**
13. **The affidavit of service is false and perjurious to the extent that it claims that 5533 La Jolla Mesa Drive, La Jolla, CA 92037 was my dwelling place, usual place of abode or actual place of business at any time in 2016.**
14. **I did not receive any summons, complaint and/or other notice relating to this action from Catherine Harrington or anyone else, although I am informed that delivery to a person of suitable age and discretion must be to my actual place of business, dwelling place or usual place of abode to be valid.**

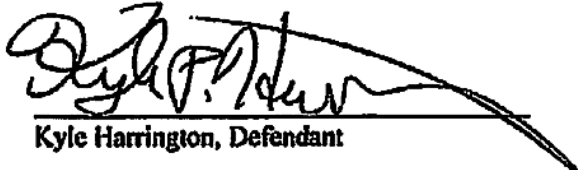
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15. I am informed that Exhibits A and B of this motion were obtained by my attorney, Michael Kennedy Karlson, Esq., from the Court's electronic filing system.

WHEREFORE, Defendant Kyle Harrington respectfully requests this Court to issue an Order dismissing this case in its entirety as well as granting Defendant Alisuch other and further relief as may be found to be just and proper under the circumstances.

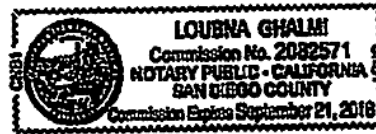
State of California

County of SAN DIEGO

  
Kyle Harrington, Defendant

Sworn to and subscribed before me this 28 day of Sept 2016.







**EXHIBIT D**

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

**Wells Fargo Bank, N.A.,**

**Plaintiff,**

**- against -**

**KYLE HARRINGTON; CATHERINE HARRINGTON; THE BOARD OF MANAGERS OF THE SOMA CONDOMINIUM HOMEOWNERS ASSOCIATION; CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD; CITY OF NEW YORK PARKING VIOLATIONS BUREAU; CITY OF NEW YORK TRANSIT ADJUDICATION BUREAU; NEW YORK CITY DEPARTMENT OF FINANCE, "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,**

**Defendants.**

**Index No. 850171/2016**

**AFFIDAVIT  
IN REPLY**

KYLE HARRINGTON, being sworn, states:

1. I am a Defendant in the above-captioned real estate foreclosure matter.
2. I am an owner of the Subject Property.

**LACK OF JURISDICTION**

3. Plaintiff previously claimed jurisdiction based upon an alleged substitute service by delivery to a Catherine Harrington at 5533 La Jolla Mesa Drive, La Jolla, CA 92037 on August 24, 2016.
4. Since then I am informed that Plaintiff has filed three more affidavits of service. These are false as well. I have already addressed Plaintiff's affidavit of service #1, then the only one, in my affidavit in support of my motion.

**Affidavit of Service # 2**

5. I have read the affidavit of Herb Thompson dated November 4, 2016, which I am informed is document number 28 on the Court's electronic docket, and the same is false to my own knowledge in that Andrew Davis was never at 1540 Soledad Avenue in La Jolla, CA. (See Exhibit A)

**Affidavit of Service # 3**

6. Plaintiff appears to accept concede that placing Andrew Davis at 1540 Soledad Avenue in Ja Holla, CA is incorrect in that Plaintiff's affidavit of service number 3, which I am informed in document 30 on the Court's electronic docket is labeled an amended affidavit of service. In this affidavit the same process server, Herb Thompson, claims to have served the same alleged person of suitable age and discretion, Andrew Davis, on the same date and same exact time, November 2, 2016 at 4:46pm, but this time at a wholly different address some distance away, 5370 Toscana Way, Apt 115, San Diego, CA. (See Exhibit B)

7. This is the same Herb Thompson who previously swore that he delivered papers to Andrew Davis at 1540 Soledad Avenue. This casts doubt on the veracity of Mr. Thompson. It would appear that Mr. Thompson considers it his role to simply fill in the places left blank for him but the preprinted parts are not to be altered irregardless of whether they are accurate or not.

8. These two locations are very different. 1540 Soledad Avenue is a single family house. 5370 Toscana Way is a multiple dwelling with over 60 separate apartments in it. Neither are they close to each other. They are miles away. Google gives driving directions at over 9 miles, which is accurate. There is no way that the Mr. Thompson could have mistaken the one place for the other.

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9. I have read the affidavit of Herb Thompson dated November 22, 2016 and the same is false to my own knowledge. Andrew Davis is not a co-occupant of mine at apartment 115 at 5370 Toscana Way. Andrew Davis is someone who lives at another apartment at 5370 Toscana Way in San Diego, CA. He has his apartment and I have mine. They are built as separate apartments. Apartment 115 is a wholly separate and distinct dwelling unit from any other apartment in the building. It has its own door that can lock. It has its own kitchen and bathroom facilities. 5370 Toscana Way is not some communal living space wherein all of the inhabitants reside together as co-occupants. Each individual unit is its own apartment.

10. Andrew Davis does not have a key to Apartment 115.

11. Andrew Davis does not come to visit Apartment 115 for any reason whatsoever. He was not there at any time in November of 2016. He was not there as guest, roommate, co-occupant, contractor or in any other capacity. There is another apartment that he goes to. It is separate from Apartment 115.

12. Andrew Davis' apartment has never been my actual place of business, dwelling place or usual place of abode. If they delivered any papers to him at his apartment I do not know but I know that his apartment has never been my actual place of business, dwelling place or usual place of abode.

13. I am certain that Andrew Davis was not at Apartment 115.

**Affidavit of Service #4**

14. This one, which I am informed is document 31 on the Court's electronic docket, is also labeled as an amended affidavit of service and appears to be an attempt to amend Plaintiff's second and third affidavits of service to provide more details such as a longer list of things

Page | 3

allegedly given to Andrew Davis at Apartment 115. My objection to this is the same as my objection to Plaintiff's affidavit of service # 3. (See Exhibit C)

15. I have read the affidavit of Herb Thompson dated November 30, 2016 and the same is false to my own knowledge. Andrew Davis is not a co-occupant of mine at apartment 115 at 5370 Toscana Way. Andrew Davis is someone who lives at another apartment at 5370 Toscana Way in San Diego, CA. He has his apartment and I have mine. They are built as separate apartments. Apartment 115 is a wholly separate and distinct dwelling unit from any other apartment in the building. It has its own door that can lock. It has its own kitchen and bathroom facilities. 5370 Toscana Way is not some communal living space wherein all of the inhabitants reside together as co-occupants. Each individual unit is its own apartment.

16. Andrew Davis does not have a key to Apartment 115.

17. Andrew Davis does not come to visit Apartment 115 for any reason whatsoever. He was not there at any time in November of 2016. He was not there as guest, roommate, co-occupant, contractor or in any other capacity. He does not come to Apartment 115 socialize. He does not come to Apartment 115 to borrow things. There is another apartment that he goes to. It is a wholly separate and distinct unit from Apartment 115.

18. Andrew Davis' apartment has never been my actual place of business, dwelling place or usual place of abode. If they delivered any papers to him at his apartment I do not know but I know that his apartment has never been my actual place of business, dwelling place or usual place of abode.

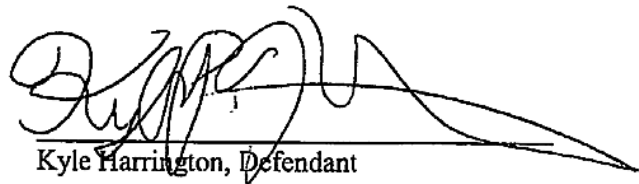
19. I am certain that Andrew Davis was not at Apartment 115 at any time in November of 2016.

20. Andrew Davis is not my employee. He is not related to me. He is not my tenant. He is not my co-occupant. He does not owe me any money, loyalty or anything else. He is some guy who lives down the hall and has his own apartment. Absent a subpoena I cannot compel any testimony from him. He is not under my control. Plaintiff may complain that I do not have an affidavit from Andrew Davis but Plaintiff does not have an affidavit from him either and he is no more under my control than theirs.
21. I am willing to and look forward to coming to New York and taking the witness stand to testify at a traverse hearing. My testimony will be as it has been in this affidavit and my previous affidavit.
22. Plaintiff's second process server has already sworn to two wildly different stories as to allegedly delivering the summons and complaint to the same person at the same time at two locations several miles distant from each other. This would require both the process server and Andrew Davis to be able to occupy two different spacial locations several miles apart at precisely the same time. Assuming that neither of them is possessed of such supernatural abilities the only remaining explanations are either that Plaintiff's second process server is a deliberate liar and perjurer or that Plaintiff's second process server is simply careless and does not pay much attention to what he is signing and swearing to. In either event this Court should discount the credibility of Plaintiff's second process server accordingly.

WHEREFORE, Defendant Kyle Harrington respectfully requests this Court to issue an Order dismissing this case in its entirety as well as granting Defendant Alisuch other and further relief as may be found to be just and proper under the circumstances.

State of California

County of \_\_\_\_\_

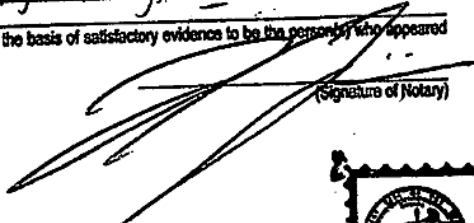
  
Kyle Harrington, Defendant

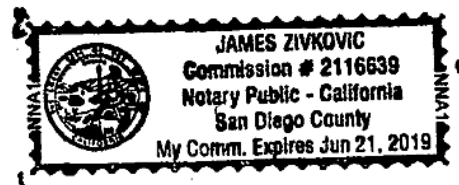
Sworn to and subscribed before me this \_\_\_\_ day of December, 2016.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA COUNTY OF San Diego  
Subscribed and sworn to (or affirmed) before me on this 9<sup>th</sup> day of December  
2016 by Kyle Harrington

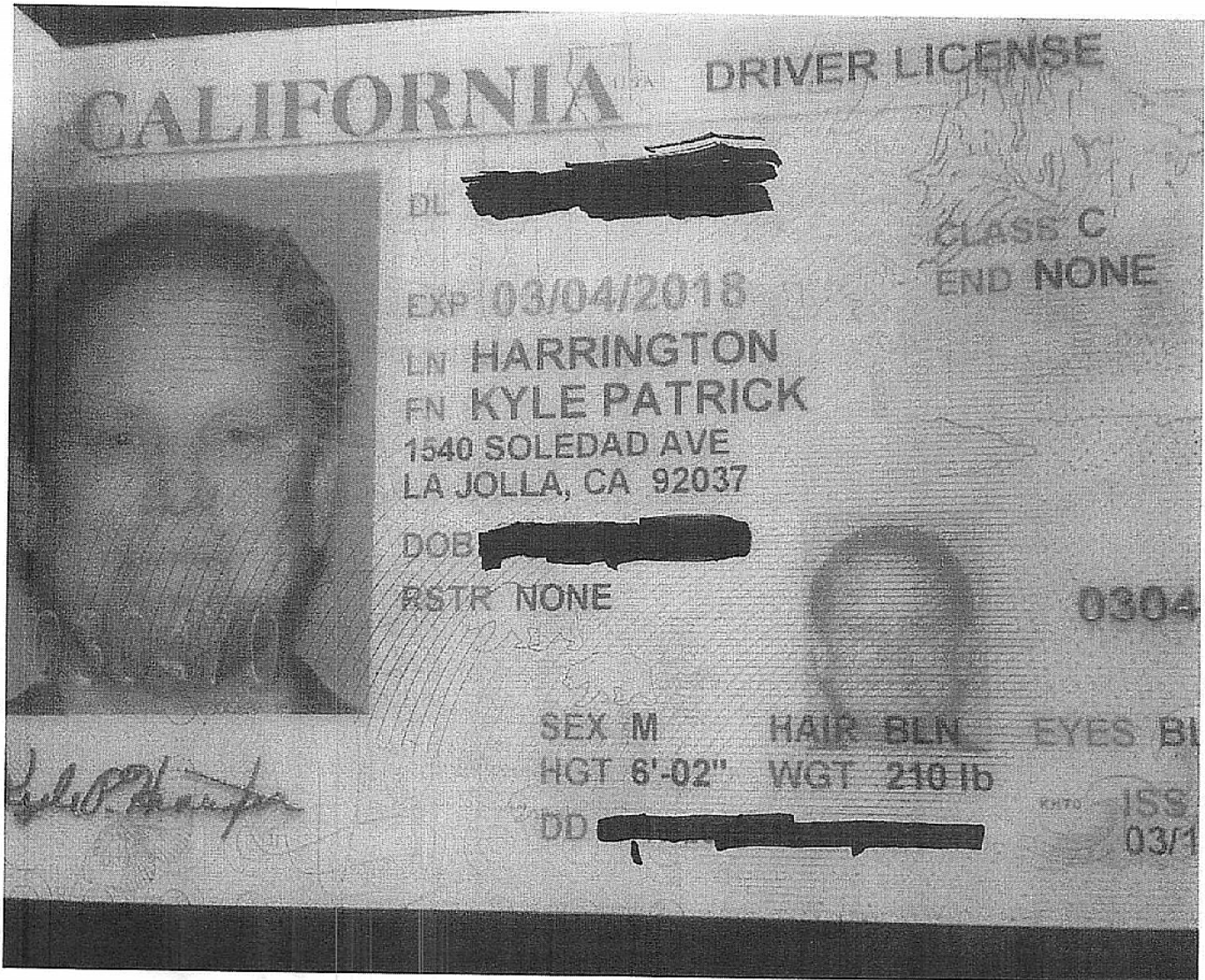
proved to me on the basis of satisfactory evidence to be the person who appeared before me.

  
(Signature of Notary)



**EXHIBIT E**





**EXHIBIT F**

12/9/2016

1540 soledad avenue la jolla ca 92037 to 5370 toscana way san diego ca - Google Search



1540 soledad avenue la jolla ca 92037 to 5370 toscana way san diego c



All Maps News Shopping Images More Settings Tools

About 118 results (1.16 seconds)

From 1540 Soledad Avenue, La Jolla, CA 92037  
To 5370 Toscana Way, San Diego, CA 92122

15 min (9.2 mi) via CA-52 E Directions

21 min (5.8 mi) via Torrey Pines Rd and La Jolla Village Dr

21 min (7.5 mi) via La Jolla Pkwy

**1540 Soledad Ave, La Jolla, CA 92037 | Zillow**  
[www.zillow.com](http://www.zillow.com) · California · San Diego · 92037 · La Jolla  
 View 5 photos of this 6 bed, 6.0 bath home located at 1540 Soledad Ave, La Jolla, CA 92037 ... This home. →. La Jolla. →. San Diego. → ...  
 Missing: 5370 toscana

**1540 Soledad Ave, San Diego, CA 92037 | Redfin**  
<https://www.redfin.com> · California · San Diego · La Jolla  
 1540 Soledad Ave is a house in San Diego, CA 92037. This 4,729 ... 1540 Soledad Ave is near Union Place Circle, La Jolla Natural Park and Ellen Browning Scripps Park. There are ..... 8495 Whale Watch Way La Jolla, CA 92037. 6. beds. 7.  
 Missing: 5370 toscana

**Tranquil Mediterranean Villa Near La Jolla... - VRBO**  
<https://www.vrbo.com> · ... · USA · California · San Diego County · La Jolla  
 Rating: 4.4 · 37 reviews  
 Tranquil Mediterranean Villa Near La Jolla Village and the Beach La Jolla, San Diego, CA, USA vacation House Rental - 4.4 star rating. ... The LaJolla Mansion on Soledad. ... The best way to contact us is by phone call or text at (757)364-2558 !!! ..... got back home from San Diego & we already miss being at 1540 Soledad.  
 Missing: 5370 toscana

**Whose number is this 858-455 ?**  
[www.peoplebyname.com/callerid/lookup-858-455](http://www.peoplebyname.com/callerid/lookup-858-455)  
 858-455-0001 M\*\*\*\* H L\*\*\*\*\* 5561 Stresemann St, San Diego, CA 92122 .... La Jolla, CA 92092; 858-455-0133 H\*\*\*\*\* A\*\*\*\* 5370 Toscana, San Diego, CA .... La Jolla, CA 92037; 858-455-0323 K\*\*\* J M\*\*\*\* 5365 Toscana Way, Apt 415, San ..... C\*\*\*\* 8650 Genesee Ave # 106, San Diego, CA 92122; 858-455-1540 P\*\*\*\*\* ...

**TaxiFareFinder: Recent taxi fare estimates**  
<https://www.taxifarefinder.com/recent.php?city=sd&lang=pt>  
 Taxi fare from Motel 6, 2nd Avenue, San Diego, CA, United States in San Diego, ... Taxi fare from San Diego Marriott La Jolla, La Jolla, San Diego, CA, United ..... Taxi fare from Toscana Way, San Diego, CA, United States in San Diego, CA ..... Taxi fare from 4240 La Jolla Village Drive, La Jolla, CA 92037 in San Diego, CA

<sup>[PDF]</sup> City of San Diego Business Tax Management System Quarterly Waste...

12/8/2016

1540 soledad avenue la jolla ca 92037 to 5370 toscana way san diego ca - Google Search

https://www.sandiego.gov/sites/default/files/legacy/treasurer/pdf/nbl/q\_s\_active5.pdf
Sep 23, 2009 - 2006001830 7357 NEBRASKA AVE. SAN DIEGO, CA ... LA JOLLA, CA 92037-7732.
200002420 ..... 1974009560 885 GATEWAY CENTER WAY ..... 2008013742 7790 VIA TOSCANA 2110.
RAFED A ..... SOLEDAD E MOREY, SOLE ..... (619) 813-5370. CORP ..... 1985010890 1540 NATIONAL
AVE.

City of San Diego Business Tax Management System Quarterly Waste...
https://www.sandiego.gov/sites/default/files/legacy/treasurer/nbl/pdf/q\_s\_active5.pdf
Jan 31, 2010 - SAN DIEGO, CA 92128-2426. PYSCHIATRIC CENTERS AT SAN DIEGO INC MED GRP ... LA
JOLLA, CA 92037-2646 .... 7357 NEBRASKA AVE ..... 885 GATEWAY CENTER WAY ..... 7790 VIA
TOSCANA 2110 ..... 5370 EASTGATE MALL ..... 1540 NATIONAL AVE ..... 5323 SOLEDAD MOUNTAIN
RD.

State of California—Health and Human Services Agency
https://www.cdph.ca.gov/pubsforms/Documents/fdbFrAFP3d.pdf
CA. 95678. 916-785-6655. 3 BRO BURGERS. 284 SUNSET AVE # B ... 840 EAST HOBSON WAY .... 7895
HIGHLAND VILLAGE PLACE SAN DIEGO, CA ..... 1540 WEST EL CAMINO .... CASA DE MANANA. 849
COAST BLVD. LA JOLLA. CA. 92037. 858-456-4354 ..... 18283 SOLEDAD CANYON RD ..... 619-656-
5370.

Landowner Information - California Energy Commission
www.energy.ca.gov/.../afcl/.../Appendix%201A\_Landowner%20Information.pdf
San Diego. CA. 92167. 15 ... Ascot Ave. Carlsbad. CA. 92009. 29. 204 150 34 03 Alex G. Roth. 341.
Chestnut Ave .... Buena Vista Way .... Soledad Rancho Rd. San .... Sugarman Dr. La Jolla. CA. 92037.
190. 204 231 13 01 Mark S & Ann E ..... 1540 206 222 21 05 GEZON JUDITH A TRUST 11-25-91 .....
Toscana Way #346.

—BEGIN PRIVACY-ENHANCED MESSAGE— Proc-Type: 2001 ...
https://www.sec.gov/Archives/edger/data/774352/0000774352-98-000119.txt
The foregoing provision shall not in any way limit a Subservicer's obligation to ..... 71 7.280 3,062.56
620,000.00 LA JOLLA CA 92037 2 01/14/98 00 0430677773 ..... 22 360 559,123.64 1 5370 SOUTH
KENYON STREET 7.250 3,820.19 80 7.000 ..... AVENUE 7.625 1,793.55 78 7.375 1,793.55 325,000.00
SAN DIEGO CA ...

Searches related to 1540 soledad avenue la jolla ca 92037 to 5370 toscana way san diego ca

- vrbo la jolla shores la jolla hotels
vrbo la jolla ca vrbo san diego
airbnb la jolla vacation rentals

1 2 3 4 5 Next

New York, NY - From your search history - Use precise location - Learn more

Help Send feedback Privacy Terms

**EXHIBIT G**

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

INTERIM ORDER
PART 35

HON. CAROL R. EDMEAD
PRESENT: J.S.C. Justice

Wells Fargo Bank, N.A.

INDEX NO. 850171/116

Kyle Harrington et al.

MOTION DATE

MOTION SEQ. NO.

The following papers, numbered 1 to , were read on this motion to/for

- Notice of Motion/Order to Show Cause -- Affidavits -- Exhibits No(s)
Answering Affidavits -- Exhibits No(s)
Replying Affidavits No(s)

Upon the foregoing papers, it is ordered that this motion is

In this mortgage foreclosure proceeding, the motion by defendant Kyle Harrington ("defendant") to dismiss the complaint is decided as follows:

As to the branch of defendant's motion to dismiss the complaint for lack of personal jurisdiction based on improper service, pursuant to CPLR §3211(a)(8), a party can move to dismiss a cause of action against a defendant on the ground that the Court lacks personal jurisdiction over the defendant.

As relevant herein, CPLR §308(2) provides that service upon a natural person be made:

by delivering the summons . . . to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence . . . ; . . . proof of service shall identify such person of suitable age and discretion and state the date, time and place of service, except in matrimonial actions . . . .

If such service is not made within 120 days after the filing of the Summons and Complaint, the Court, upon motion, "shall dismiss the action without prejudice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service" (McKinney's CPLR §306-b). Plaintiff has the burden of proving, by a preponderance of the credible evidence, that service was properly made (Persaud v. Teaneck Nursing Center, Inc., 290 A.D.2d 350, 736 N.Y.S.2d 367 [1st Dept 2002]), and the burden of proving jurisdiction is upon the party asserting it (Saratoga Harness Racing Assn. v Moss, 20 NY2d 733, 283 NYS2d 55 [1967]; Copp v Ramirez, 62 AD3d 23, 28, 874 NYS2d 52 [1st Dept 2009]; Jacobs v Zurich Ins.

Dated: , J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

Co., 53 AD2d 524, 384 NYS2d 452 [1<sup>st</sup> Dept 1976]).

Plaintiff's contention that defendant's motion is premature and should be denied on that ground, lacks merit. Although it has been stated that a motion to dismiss for improper service made prior to the expiration of the 120-day period provided for service in CPLR 306-b is premature, the Court is not precluded from considering the merits of such a motion (*see Bank of New York Mellon v. Scura*, 102 A.D.3d 714, 961 N.Y.S.2d 185 [2d Dept 2013] (finding that denial of dismissal for lack of jurisdiction properly based on affidavit of process server, even though "motion was premature as it was made within the initial 120-day period provided for service in CPLR 306-b)).

Plaintiff's initial affidavit of service indicates that Matthew Fitts served defendant by delivering the summons and complaint to a person of suitable age and discretion, *to wit*: Catherine Harrington, "spouse" at "5535 La Jolla Mesa Drive, La Jolla CA 92037" as "defendant's dwelling place/usual place of abode." (Emphasis added). In support of dismissal, defendant attests that this address is not, and was not in 2016, his dwelling place/usual place of abode, but that instead, he resides (and resided in 2016) at "1540 Soledad Avenue La Jolla, CA 92037." (Emphasis added) Defendant's California Driver's License depicts his address as "1540 Soledad Avenue La Jolla, CA 92037." (Affidavit, ¶¶ 5-6). Neither defendant's affidavit nor his Driver's License indicates any apartment number.

In response to defendant's motion, plaintiff submits an "Amended Affidavit of Service" indicating that Herb Thompson served defendant on November 2, 2016, 4:46 p.m. at "5370 Toscana Way Apt 115, San Diego, CA, 92112" by delivery of the summons and complaint to "Andrew Davis, Co-Occupant." (Emphasis added)

Defendant's Amended Affidavit of Service bearing this third address, coupled with the additional affidavits of services submitted by plaintiff in reply, supports plaintiff's request for traverse hearing on the issue of proper service.

*Conclusion*


Based on the foregoing, it is hereby

ORDERED that defendant's motion to dismiss the complaint pursuant to CPLR 3211(a)(8) for improper service and to cancel the notice of pendency pursuant to CPLR 6514 is held in abeyance pending a traverse hearing on the issue of proper service; and it is further

ORDERED that the parties shall appear for a traverse hearing on April 12, 2017, 10:00 a.m.

This constitutes the *interim* decision and order of the Court.

DATED: 2/6/17

  
2 J.S.C.

HON. CAROL R. EDMOAD  
J.S.C.

- 1. CHECK ONE :
- 2. CHECK AS APPROPRIATE :
- 3. CHECK IF APPROPRIATE :

CASE DISPOSED       NON-FINAL DISPOSITION  
 MOTION IS:  GRANTED     DENIED     GRANTED IN PART     OTHER  
 SETTLE ORDER                       SUBMIT ORDER

DO NOT POST       FIDUCIARY APPOINTMENT       REFERENCE

FILED: NEW YORK COUNTY CLERK 04/12/2017 11:47 AM

INDEX NO. 850171/2016

FILED: NEW YORK COUNTY CLERK 04/10/2017 04:25 PM

RECEIVED NYSCEF: 04/11/2017

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

Wells Fargo Bank, NA

STIPULATION OF  
ADJOURNMENT

Plaintiff,

Index No. 850171/2016

-against-

Kyle Harrington; Catherine Harrington; The Board of  
Managers of the Soma Condominium Homeowners  
Association; City of New York Environmental Control  
Board; City of New York Parking Violations Bureau; City of  
New York Transit Adjudication Bureau; New York City  
Department of Finance, et al.

Defendants.

IT IS HEREBY AGREED AND STIPULATED, by and between the undersigned, the  
attorneys for the parties to the above-captioned matter, as follows:

1. That the Traverse Hearing currently scheduled for April 12, 2017 at 10:00AM is  
hereby adjourned on consent to <sup>JUNE 14</sup> ~~May 24~~, 2017 at 10:00am or a date more convenient to the  
Court; and

2. That for the purposes of the instant Stipulation, a signature by fax copy shall be  
deemed an original signature.

Dated: April 7, 2017

By: Jason P. Dionisio, Esq.  
Shapiro, DiCaro & Barak, LLC  
Attorneys for the Plaintiff  
175 Mile Crossing Blvd.  
Rochester, NY 14624  
(585) 247-9000  
F: (585) 247-7330

By: Michael Kennedy Karlson, Esq.  
Attorney for Defendant  
5030 Broadway  
Suite 813  
New York, NY 10034  
(212) 567-1545  
F: (888) 502-3575

SO ORDERED

16-05884

Stipulation of Adjournalment

Page 1 of 1

CAROL EDMEAD  
J.S.C.



**EXHIBIT H**

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

Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5

Plaintiff,

-against-

Kyle Harrington, Catherine Harrington, Wells Fargo Bank, NA, Express Elevator Construction Co., Criminal Court of the City of New York, New York Supreme Court, Big Apple Compactor Co Inc., New York City Department of Finance, New York City Parking Violations Bureau and "JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to Plaintiff, the person or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein

Defendant(s).

Summons with Notice of Action to Foreclose a Mortgage

Index Number

Filed on

The basis of venue is the location of the subject premises.

**WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE**

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance on the Plaintiff's attorneys within 20 days after the service of this summons exclusive of the day of service or within 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.

**NOTICE**

**YOU ARE IN DANGER OF LOSING YOUR HOME**

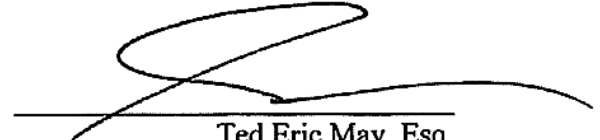
If you do not respond to this summons and complaint by serving a copy of the answer on the attorney for the mortgage company who filed this foreclosure proceeding against you and filing the answer with the court, a default judgment may be entered and you can lose your home.

Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.

**Sending a payment to your mortgage company will not stop this foreclosure action.**

**YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT.**

Dated: September 19, 2016  
Rockville Centre, New York



Ted Eric May, Esq.  
Sheldon May & Associates, P.C.  
Attorneys for Plaintiff  
Office & P.O. Address  
255 Merrick Road  
Rockville Centre, New York 11570  
(516) 763-3200

## **HELP FOR HOMEOWNERS IN FORECLOSURE**

**NEW YORK STATE LAW REQUIRES THAT WE SEND YOU THIS NOTICE ABOUT THE FORECLOSURE PROCESS. PLEASE READ IT CAREFULLY.**

### **SUMMONS AND COMPLAINT**

**YOU ARE IN DANGER OF LOSING YOUR HOME. IF YOU FAIL TO RESPOND TO THE SUMMONS AND COMPLAINT IN THIS FORECLOSURE ACTION, YOU MAY LOSE YOUR HOME. PLEASE READ THE SUMMONS AND COMPLAINT CAREFULLY. YOU SHOULD IMMEDIATELY CONTACT AN ATTORNEY OR YOUR LOCAL LEGAL AID OFFICE TO OBTAIN ADVICE ON HOW TO PROTECT YOURSELF.**

### **SOURCES OF INFORMATION AND ASSISTANCE**

**THE STATE ENCOURAGES YOU TO BECOME INFORMED ABOUT YOUR OPTIONS IN FORECLOSURE.**

**IN ADDITION TO SEEKING ASSISTANCE FROM AN ATTORNEY OR LEGAL AID OFFICE, THERE ARE GOVERNMENT AGENCIES AND NON-PROFIT ORGANIZATIONS THAT YOU MAY CONTACT FOR INFORMATION ABOUT POSSIBLE OPTIONS, INCLUDING TRYING TO WORK WITH YOUR LENDER DURING THIS PROCESS.**

**TO LOCATE AN ENTITY NEAR YOU, YOU MAY CALL THE TOLL-FREE HELPLINE MAINTAINED BY THE NEW YORK STATE BANKING DEPARTMENT AT 1-877-226-5697 OR VISIT THE DEPARTMENT'S WEBSITE AT [www.DFS.NY.GOV](http://www.DFS.NY.GOV)**

### **RIGHTS AND OBLIGATIONS**

**YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. YOU HAVE THE RIGHT TO STAY IN YOUR HOME DURING THE FORECLOSURE PROCESS. YOU ARE NOT REQUIRED TO LEAVE**

**YOUR HOME UNLESS AND UNTIL YOUR PROPERTY IS SOLD AT AUCTION PURSUANT TO A JUDGMENT OF FORECLOSURE AND SALE. REGARDLESS OF WHETHER YOU CHOOSE TO REMAIN IN YOUR HOME, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY AND PAY PROPERTY TAXES IN ACCORDANCE WITH STATE AND LOCAL LAW.**

### **FORECLOSURE RESCUE SCAMS**

**BE CAREFUL OF PEOPLE WHO APPROACH YOU WITH OFFERS TO "SAVE" YOUR HOME. THERE ARE INDIVIDUALS WHO WATCH FOR NOTICES OF FORECLOSURE ACTIONS IN ORDER TO UNFAIRLY PROFIT FROM A HOMEOWNER'S DISTRESS. YOU SHOULD BE EXTREMELY CAREFUL ABOUT ANY SUCH PROMISES AND ANY SUGGESTIONS THAT YOU PAY THEM A FEE OR SIGN OVER YOUR DEED. STATE LAW REQUIRES ANYONE OFFERING SUCH SERVICES FOR PROFIT TO ENTER INTO A CONTRACT WHICH FULLY DESCRIBES THE SERVICES THEY WILL PERFORM AND FEES THEY WILL CHARGE, AND WHICH PROHIBITS THEM FROM TAKING ANY MONEY FROM YOU UNTIL THEY HAVE COMPLETED ALL SUCH PROMISED SERVICES.**

## **Notice to Tenants of Buildings in Foreclosure**

**New York State Law requires that we provide you this notice about the foreclosure process. Please read it carefully.**

**We, Specialized Loan Servicing, LLC are the foreclosing party and are located at 8742 Lucent Blvd # 300, Littleton, Colorado 80129.**

**The dwelling where your apartment is located is the subject of a foreclosure proceeding. If you have a lease, are not the owner of the residence, and the lease requires payment of rent that at the time it was entered into was not substantially less than the fair market rent for the property, you may be entitled to remain in occupancy for the remainder of your lease term. If you do not have a lease, you will be entitled to remain in your home until ninety days after any person or entity who acquires title to the property provides you with a notice as required by section 1305 of the Real Property Actions and Proceedings Law. The notice shall provide information regarding the name and address of the new owner and your rights to remain in your home. These rights are in addition to any others you may have if you are a subsidized tenant under federal, state or local law or if you are a tenant subject to rent control, rent stabilization or a federal statutory scheme.**

**ALL RENT-STABILIZED TENANTS AND RENT-CONTROLLED TENANTS ARE PROTECTED UNDER THE RENT REGULATIONS WITH RESPECT TO EVICTION AND LEASE RENEWALS. THESE RIGHTS ARE UNAFFECTED BY A BUILDING ENTERING FORECLOSURE STATUS. THE TENANTS IN RENT-STABILIZED AND RENT-CONTROLLED BUILDINGS CONTINUE TO BE AFFORDED THE SAME LEVEL OF PROTECTION EVEN THOUGH THE BUILDING IS THE SUBJECT OF FORECLOSURE. EVICTIONS CAN ONLY OCCUR IN NEW YORK STATE PURSUANT TO A COURT ORDER AND AFTER A FULL HEARING IN COURT. IF YOU NEED FURTHER INFORMATION, PLEASE CALL THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES' TOLL-FREE HELPLINE AT 1-877-226-5697 OR VISIT THE DEPARTMENT'S WEBSITE AT WWW.DFS.NY.GOV.**

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

Wells Fargo Bank, N.A., as Trustee for Banc of America  
Funding Corporation Mortgage Pass-Through Certificates,  
Series 2007-5

Plaintiff,

-against-

Kyle Harrington, Catherine Harrington, Wells Fargo Bank, NA, Express Elevator Construction Co., Criminal Court of the City of New York, New York Supreme Court, Big Apple Compactor Co Inc., New York City Department of Finance, New York City Parking Violations Bureau and "JOHN DOE #1" through "JOHN DOE #12," the last twelve names being fictitious and unknown to Plaintiff, the person or parties intended being the tenants, occupants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein,

Defendants.

Verified Complaint for an  
Action to Foreclose a  
Mortgage

Index Number:

Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 by its attorneys, Sheldon May & Associates, complaining of Defendant(s), respectfully alleges upon information and belief as follows:

**I. Parties**

- A. Upon information and belief, Plaintiff is a national banking association duly organized and existing under the laws of the United States of America. Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 (hereinafter "Plaintiff") address is c/o Specialized Loan Servicing LLC, 8742 Lucent Boulevard, Suite 300, Highlands Ranch, Colorado 80129.
- B. Kyle Harrington, Catherine Harrington delivered to Bank of America, N.A. a note (a copy of which is attached hereto) dated February 28, 2007.
- C. As security for the note, Kyle Harrington, Catherine Harrington delivered to Bank of America, N.A. a mortgage (a copy of which is attached hereto) dated February 28, 2007 which was recorded in the Clerk's Office where the property is located on January 18, 2008, in Liber/Reel/Book/Instrument 200800025094 of Mortgages.
- D. All other named defendants and "John Does," have or may 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 the mortgage, or may have accrued prior to said mortgage, but is subject and subordinate thereto to the lien of said mortgage.
- E. The People of the State of New York, The State Tax Commission, The Environmental Control Board, The Environmental Fire Control Board, The Industrial Commissioner of the State of New York, The Parking Violations Bureau, and all other agencies or instrumentalities of the Federal (the United State

of America), State or local government (by whatever name designated) if made parties to this action and if appearing in the caption are made parties solely of the judgment hereinafter set forth and filed as noted in the amount set forth or by virtue of any estate taxes: SEE ATTACHED JUDGMENT(S)(If Any.)

- F. Upon information and belief, if applicable, any defendant captioned as a corporation is believed to be a New York corporation or licensed to do business in New York.

## II. Standing

- A. Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5, directly or through an agent, has possession and control of the promissory note. If applicable, Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 may have been delegated the authority to institute a foreclosure action. The promissory note is either made payable to Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 or has been duly endorsed or contains an allonge. Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 is either the original mortgagee or assignee of the security instrument for the subject loan. Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 has the right to foreclose the subject note and security instrument. The note was negotiated to the Plaintiff and the mortgage was assigned to the Plaintiff. Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 is the owner and holder of the subject mortgage and note, or has been delegated the authority to institute a foreclosure action by such owner and holder. The originals of the subject mortgage and note are in the foreclosing entity's possession and control or that of the custodian. Therefore, Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 has the right to foreclose. The original mortgage was given to Bank of America, N.A. on February 28, 2007 which was recorded in the Clerk's Office where the property is located on January 18, 2008, in Liber/Reel/Book/Instrument 200800025094 of Mortgages. Said mortgage was then assigned from Bank of America, N.A. to Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5, and the Assignment of Mortgage was dated August 20, 2015 and recorded in the Clerk's Office where the property is located on October 9, 2015 in Liber/Reel/Book/Instrument/CRFN 2015000362916 of Mortgages. A copy of which is attached hereto.
- B. Said Mortgage was duly recorded in the Clerk's Office / City Register's Office in the County where the property is located and any applicable recording tax was duly paid at the time of recording.

## III. Borrower's Non-Payment

- A. Kyle Harrington, Catherine Harrington failed to comply with the terms, covenants and conditions of the said Note by defaulting in the payment of the monthly installment due on November 1, 2008, and each subsequent month thereafter, all



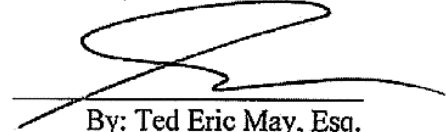
- of which have been unpaid for more than thirty (30) days and remain unpaid.
- B. Plaintiff and/or their servicing agent sent a default letter in accordance with paragraph 21 of the mortgage that is the subject of the within action.
  - C. Plaintiff and/or their servicing agent sent out a 90 day default notice to the borrower in full compliance with the requirements of RPAPL Section 1304.
  - D. The following amounts are now due and owing on said mortgage and the said instrument secured by said mortgage, no part of any of which has been paid although duly demanded: Entire Principal Balance in the amount of \$1,374,938.90 with interest from October 1, 2008 at the current interest rate of 6.875%, along with all other fees and costs permitted by the note and mortgage.
  - E. By reason of the default in the payment of the monthly installment of principal and interest, among other things, as hereinafter set forth, Plaintiff, the holder of the aforementioned note and mortgage, and/or their agents have elected to and hereby accelerate the mortgage and declare the entire mortgage indebtedness immediately due and payable.
  - F. The mortgage provides for the payment of counsel fees incurred by the Plaintiff in any action to foreclose the mortgage. The Plaintiff has incurred and will incur counsel fees until the termination of the foreclosure action.
- IV. Compliance with State Law**
- A. Upon information and belief, if applicable, Plaintiff has complied with all of the provisions of section five hundred ninety-five-a of the banking law and any rules and regulations promulgated there under, section six-1 or six-m of the banking law.
  - B. Upon information and belief, if applicable, the Plaintiff and/or their agents has/have complied with RPAPL §§1304 and 1306.
- V. Note and Mortgage Provisions**
- A. In the event that Plaintiff possesses any other lien(s) against said mortgaged premises either by way of judgment, junior mortgage or otherwise, Plaintiff requests that such other lien(s) shall not be merged in Plaintiff's cause(s) of action set forth in this complaint, but that Plaintiff shall be permitted to enforce said other lien(s) and/or seek determination of priority thereof in any independent action(s) or proceeding(s), including, without limitation, any surplus money proceedings.
  - B. Plaintiff shall not be deemed to have waived, altered, released, or changed the election hereinbefore made, by reason of any payment after the commencement of this action, of any or all of the defaults mentioned herein, and such election shall continue and remain effective.
  - C. Plaintiff believes that during the pendency of this action, in order to protect the security of the within mortgage, it may be compelled to make advances for the following item(s), including but not limited to, taxes, assessments, water, prior liens and insurance premiums that are or may become due, plus interest, as provided for in the mortgage.
- VI. Miscellaneous Provisions**
- A. Upon information and belief, no other action or proceeding is now pending at law or otherwise for the foreclosure of said mortgage based upon this default or for recovery of the said sum secured by said note and mortgage or any part thereof.

- B. Plaintiff requests that in the event that this action will proceed to judgment of foreclosure and sale, said premises should be sold subject to the following: (1) Any state of facts an accurate survey or personal inspection would disclose. (2) Covenants, restrictions, easements, declarations, rights of way, agreements and reservations, if any, of record and to any and all violations thereof. (3) Any and all building and zoning regulations, restrictions, ordinances and amendments thereto of the municipality, the State, the Federal Government, or any agency, bureau, commission or department in which said premises are situated, and to any violations or notices of violations of the same, including, but not limited to, reapportionment of lot lines, and vault charges, if any. (4) The rights of tenants, if any, whose tenancy has not been foreclosed by this action. (5) The rights of any lienors or prior mortgagees of record whose liens have not been foreclosed herein, if any. (6) The right of the United States of America to re-deem if a federal tax lien is filed against the premises as of the date of sale hereunder. (7) The physical condition of any buildings or structures on the premises as of the date of sale hereunder. (8) Conditional bills of sale, if any. (9) Any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said premises and violations of the same. (10) Rights of any Defendant(s) pursuant to CPLR section 317, CPLR Section 2003 and CPLR Section 5015, if any; (11) 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. (12) Outstanding condominium charges, if any. (13) The rights of holders of security in fixtures as defined by the Uniform Commercial Code. (14) Taxes, assessments and water rates which are liens on the premises at the time of sale, with accrued interest or penalties thereon. (15) Prior mortgage liens of record, if any, and any advances and arrears there under.

**WHEREFORE**, the Plaintiff demands judgment: (1) Adjudging and decreeing the amounts due the Plaintiff for principal, interest, costs, late charges, expenses of sale, allowances and disbursements, reasonable attorney's fees if provided for in the mortgage and any monies advanced and paid which are secured by the mortgage. (2) The Defendant(s) and any 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 a defendant in this action, be barred and foreclosed of and from all right, claim, lien, interest or equity of redemption in and to said mortgage premises. (3) The said mortgage premises, or such part thereof as may be necessary to raise the amounts due as aforesaid, be decreed to be sold according to law subject to the provisions of this complaint. (4) That out of the monies arising from the sale of the mortgaged property, the Plaintiff may be paid the amounts due on said note and mortgage, plus those items referenced in the complaint, together with any sums expended, with interest as allowed by law upon any advances from the dates of the respective payments, so far as the amount of such money properly applicable will pay the same. (5) That any of the parties to this action may become a purchaser upon the sale of the mortgaged premises. (6) The court, if requested, appoint a receiver of the rents and profits of said premises with the usual powers and duties. (7) The original Obligor(s) in this complaint and any subsequent Obligor(s) 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) In the event Plaintiff possesses any other liens against the premises, they shall not be merged. Plaintiff specifically reserves its right to share in any surplus monies arising from the sale of the subject premises by virtue of its position as a judgment or other lien creditor, excluding the mortgage being foreclosed herein. (9) The Plaintiff have such relief as requested in the complaint. (10) The Plaintiff may have such other and further relief as may be just, equitable and proper.

Sheldon May & Associates, P.C.



By: Ted Eric May, Esq.  
255 Merrick Road  
Rockville Centre, New York 11570  
(516) 763 - 3200

## Verification

State of New York, County of Nassau ) ss:

Ted Eric May, the undersigned, an attorney duly admitted to practice before the Courts of this State, respectfully shows:

That he is a member of the law firm of Sheldon May & Associates, P.C., and the attorneys of record for the Plaintiff in the above entitled action.


That he has read the foregoing Verified Complaint and knows the contents thereof, and the same is true to affiant's own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters believes them to be true.

The grounds of affiant's belief as to all matters not stated upon affiant's knowledge are based upon the records of Plaintiff in affiant's possession or the business records of Plaintiff and/or their servicer/agent.

The reason that this verification is made by the undersigned and not by the Plaintiff is because Plaintiff is domiciled outside Nassau County; that being the County in which your affiant maintains an office for the practice of law.

The undersigned affirms that the foregoing statements are true under penalty of perjury.

Dated: September 19, 2016  
Rockville Centre, New York



Ted Eric May, Esq.

# Note



**EXHIBIT I**

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

Wells Fargo Bank, N.A., as Trustee for Banc of  
America Funding Corporation Mortgage Pass-Through  
Certificates, Series 2007-5

Supplemental Summons with Notice  
of Action to Foreclose a Mortgage

Plaintiff(s),

Index Number: 850202/16

-against-

Property: 116 W 22nd St 3, New  
York, New York 10004

Unknown heirs at law of Kyle Harrington, and if they  
be dead, any and all persons unknown to plaintiff,  
claiming, or who may claim to have an interest in, or  
generally or specific lien upon the real property  
described in this action; such unknown persons being  
herein generally described and intended to be included  
in the following designation, namely: the wife, widow,  
husband, widower, heirs at law, next of kin,  
descendants, executors, administrators, devisees,  
legatees, creditors, trustees, committees, lienors, and  
assignees of such deceased, any and all persons  
deriving interest in or lien upon, or title to said real  
property by, through or under them, or either of them,  
and their respective wives, widows, husbands,  
widowers, heirs at law, next of kin, descendants,  
executors; administrators, devisees, legatees,  
creditors, trustees, committees, lienors and assigns, all  
of whom and whose names, except as stated, are  
unknown to plaintiff; Catherine Harrington, Wells  
Fargo Bank, NA, Express Elevator Construction Co.,  
Criminal Court of the City of New York, New York  
Supreme Court, Big Apple Compactor Co Inc., New  
York City Department of Finance, New York City  
Parking Violations Bureau, The People of the State of  
New York, and "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 being foreclosed herein,

Defendant(s).

**WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION  
OBTAINED WILL BE USED FOR THAT PURPOSE**

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a  
copy of your answer, or, if the complaint is not served with this summons, to serve a notice of  
appearance on the Plaintiff's attorneys within 20 days after the service of this summons exclusive  
of the day of service or within 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.

**NOTICE  
YOU ARE IN DANGER OF LOSING YOUR HOME**

**If you do not respond to this summons and complaint by serving a copy of the answer on the attorney for the mortgage company who filed this foreclosure proceeding against you and filing the answer with the court, a default judgment may be entered and you can lose your home.**

**Speak to an attorney or go to the court where your case is pending for further information on how to answer the summons and protect your property.**

**Sending a payment to your mortgage company will not stop this foreclosure action.**

**YOU MUST RESPOND BY SERVING A COPY OF THE ANSWER ON THE ATTORNEY FOR THE PLAINTIFF (MORTGAGE COMPANY) AND FILING THE ANSWER WITH THE COURT.**

**Dated: April 4, 2017  
Rockville Centre, New York**

**Sheldon May & Associates, P.C.  
Attorneys for Plaintiff  
Office & P.O. Address  
255 Merrick Road  
Rockville Centre, New York 11570  
(516) 763-3200**

## **HELP FOR HOMEOWNERS IN FORECLOSURE**

**NEW YORK STATE LAW REQUIRES THAT WE SEND YOU THIS NOTICE ABOUT THE FORECLOSURE PROCESS. PLEASE READ IT CAREFULLY.**

### **SUMMONS AND COMPLAINT**

**YOU ARE IN DANGER OF LOSING YOUR HOME. IF YOU FAIL TO RESPOND TO THE SUMMONS AND COMPLAINT IN THIS FORECLOSURE ACTION, YOU MAY LOSE YOUR HOME. PLEASE READ THE SUMMONS AND COMPLAINT CAREFULLY. YOU SHOULD IMMEDIATELY CONTACT AN ATTORNEY OR YOUR LOCAL LEGAL AID OFFICE TO OBTAIN ADVICE ON HOW TO PROTECT YOURSELF.**

### **SOURCES OF INFORMATION AND ASSISTANCE**

**THE STATE ENCOURAGES YOU TO BECOME INFORMED ABOUT YOUR OPTIONS IN FORECLOSURE.**

**IN ADDITION TO SEEKING ASSISTANCE FROM AN ATTORNEY OR LEGAL AID OFFICE, THERE ARE GOVERNMENT AGENCIES AND NON-PROFIT ORGANIZATIONS THAT YOU MAY CONTACT FOR INFORMATION ABOUT POSSIBLE OPTIONS, INCLUDING TRYING TO WORK WITH YOUR LENDER DURING THIS PROCESS.**

**TO LOCATE AN ENTITY NEAR YOU, YOU MAY CALL THE TOLL-FREE HELPLINE MAINTAINED BY THE NEW YORK STATE BANKING DEPARTMENT AT 1-877-226-5697 OR VISIT THE DEPARTMENT'S WEBSITE AT [www.DFS.NY.GOV](http://www.DFS.NY.GOV)**

### **RIGHTS AND OBLIGATIONS**

**YOU ARE NOT REQUIRED TO LEAVE YOUR HOME AT THIS TIME. YOU HAVE THE RIGHT TO STAY IN YOUR HOME DURING THE FORECLOSURE PROCESS. YOU ARE NOT REQUIRED TO LEAVE YOUR HOME UNLESS AND UNTIL YOUR PROPERTY IS SOLD AT AUCTION PURSUANT TO A JUDGMENT OF FORECLOSURE AND**

**SALE. REGARDLESS OF WHETHER YOU CHOOSE TO REMAIN IN YOUR HOME, YOU ARE REQUIRED TO TAKE CARE OF YOUR PROPERTY AND PAY PROPERTY TAXES IN ACCORDANCE WITH STATE AND LOCAL LAW.**

**FORECLOSURE RESCUE SCAMS**

**BE CAREFUL OF PEOPLE WHO APPROACH YOU WITH OFFERS TO "SAVE" YOUR HOME. THERE ARE INDIVIDUALS WHO WATCH FOR NOTICES OF FORECLOSURE ACTIONS IN ORDER TO UNFAIRLY PROFIT FROM A HOMEOWNER'S DISTRESS. YOU SHOULD BE EXTREMELY CAREFUL ABOUT ANY SUCH PROMISES AND ANY SUGGESTIONS THAT YOU PAY THEM A FEE OR SIGN OVER YOUR DEED. STATE LAW REQUIRES ANYONE OFFERING SUCH SERVICES FOR PROFIT TO ENTER INTO A CONTRACT WHICH FULLY DESCRIBES THE SERVICES THEY WILL PERFORM AND FEES THEY WILL CHARGE, AND WHICH PROHIBITS THEM FROM TAKING ANY MONEY FROM YOU UNTIL THEY HAVE COMPLETED ALL SUCH PROMISED SERVICES.**

## Notice to Tenants of Buildings in Foreclosure

New York State Law requires that we provide you this notice about the foreclosure process. Please read it carefully.

We, Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 by Specialized Loan Servicing, LLC, are the foreclosing party and are located at 8742 Lucent Boulevard, Highlands Ranch, Colorado 80129. We can be reached at (800) 315-4757.

The dwelling where your apartment is located is the subject of a foreclosure proceeding. If you have a lease, are not the owner of the residence, and the lease requires payment of rent that at the time it was entered into was not substantially less than the fair market rent for the property, you may be entitled to remain in occupancy for the remainder of your lease term. If you do not have a lease, you will be entitled to remain in your home until ninety days after any person or entity who acquires title to the property provides you with a notice as required by section 1305 of the Real Property Actions and Proceedings Law. The notice shall provide information regarding the name and address of the new owner and your rights to remain in your home. These rights are in addition to any others you may have if you are a subsidized tenant under federal, state or local law or if you are a tenant subject to rent control, rent stabilization or a federal statutory scheme.

**ALL RENT-STABILIZED TENANTS AND RENT-CONTROLLED TENANTS ARE PROTECTED UNDER THE RENT REGULATIONS WITH RESPECT TO EVICTION AND LEASE RENEWALS. THESE RIGHTS ARE UNAFFECTED BY A BUILDING ENTERING FORECLOSURE STATUS. THE TENANTS IN RENT-STABILIZED AND RENT-CONTROLLED BUILDINGS CONTINUE TO BE AFFORDED THE SAME LEVEL OF PROTECTION EVEN THOUGH THE BUILDING IS THE SUBJECT OF FORECLOSURE. EVICTIONS CAN ONLY OCCUR IN NEW YORK STATE PURSUANT TO A COURT ORDER AND AFTER A FULL HEARING IN COURT. IF YOU NEED FURTHER INFORMATION, PLEASE CALL THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES' TOLL-FREE HELPLINE AT 1-877-226-5697 OR VISIT THE DEPARTMENT'S WEBSITE AT WWW.DFS.NY.GOV.**

SUPREME COURT  
STATE OF NEW YORK, COUNTY OF NEW YORK. Index Number 850202/16

Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5

Plaintiff,

-against-

Unknown heirs at law of Kyle Harrington, and if they be dead, any and all persons unknown to plaintiff, claiming, or who may claim to have an interest in, or generally or specific lien upon the real property described in this action; such unknown persons being herein generally described and intended to be included in the following designation, namely: the wife, widow, husband, widower, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors, and assignees of such deceased, any and all persons deriving interest in or lien upon, or title to said real property by, through or under them, or either of them, and their respective wives, widows, husbands, widowers, heirs at law, next of kin, descendants, executors; administrators, devisees, legatees, creditors, trustees, committees, lienors and assigns, all of whom and whose names, except as stated, are unknown to plaintiff; Catherine Harrington, Wells Fargo Bank, NA, Express Elevator Construction Co., Criminal Court of the City of New York, New York Supreme Court, Big Apple Compactor Co Inc., New York City Department of Finance, New York City Parking Violations Bureau, The People of the State of New York, The United States of America and "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 being foreclosed herein,

Defendant(s).

Summons and Verified Complaint

Sheldon May & Associates, P.C.  
Attorneys for Plaintiff  
Office and Post Office Address  
255 Merrick Road  
Rockville Centre, New York 11570  
Telephone Number  
(516) 763 - 3200

To:

Signature pursuant to rule 130-1.1-a

Print Name: Ted Eric May, Esq.

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for:

PLEASE TAKE NOTICE:

NOTICE OF ENTRY

that the within is a (certified) true copy of a court on 200

Duly entered in the office of the clerk of the within named

NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the Honorable one of the judges of the within named court, at on 200 at M.

Dated:

Yours, etc.  
Sheldon May & Associates, P.C.  
255 Merrick Road  
Rockville Centre, New York 11570  
(516) 763 - 3200

**ORIGINAL**

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

Wells Fargo Bank, N.A., as Trustee for Banc of  
America Funding Corporation Mortgage Pass-Through  
Certificates, Series 2007-5

Plaintiff(s),

-against-

Kyle Harrington, Catherine Harrington, Wells Fargo  
Bank, NA, Express Elevator Construction Co.,  
Criminal Court of the City of New York, New York  
Supreme Court, Big Apple Compactor Co Inc., New  
York City Department of Finance, New York City  
Parking Violations Bureau and "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 being foreclosed  
herein ,

Defendant(s).

Affirmation in Support of Motion  
for Amendment, Publication and  
Appointment of Guardian Ad Litem

Index Number: 850202/16

Ted Eric May, an attorney duly admitted to practice law before the Courts of the State of New York, affirms the following to be true under penalty of perjury:

1. I am an attorney with Sheldon May & Associates, P.C., attorneys of record for the Plaintiff Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5 (hereinafter "Plaintiff") in the above-entitled action. Based upon the files maintained by this office, records of the Plaintiff and conversations with the Plaintiff's employee, I am fully familiar with all the facts and circumstances had herein. I submit this affirmation in support of Plaintiff's *Ex Parte* order for service by publication on defendant(s) Kyle Harrington.
2. The within action was brought to foreclose a mortgage lien on real property commonly known as 116 W 22nd St 3, New York, New York 10004, located in the County of NEW YORK, State of New York. The summons, complaint and notice of pendency of action were all duly and regularly filed on October 10, 2016, in the Office of the Clerk of the County of NEW YORK, that being the County in which the mortgage premises are situated. *See Exhibit "A."*
3. All of the defendants in this action have been duly served with a copy of the summons and verified complaint, except the defendant(s) Kyle Harrington. Copies of the affidavits of service upon all of the defendants, except the said defendant(s). *See Exhibit "B."*
4. The plaintiff has been and will be unable with due diligence to make service of the

summons and complaint in this action upon the defendant(s) Kyle Harrington.

5. The within motion prays for an order amending the complaint, directing service by publication of the summons on defendant(s) Kyle Harrington (hereinafter "defendant"), and his/her heirs-at-law, next-of-kin, distributees, executors, administrators, trustees, devisees, legatees, assignees, lienors, creditors and successors in interest and generally all persons having or claiming under, by or through said defendant who may be deceased, by purchase, inheritance, lien or otherwise, any right, title or interest in and to the real property described in the complaint herein.

6. Because it is believed that Kyle Harrington is no longer at the last known residence, and has left no forwarding address, service of the summons and complaint cannot be made with due diligence upon the defendant by any method prescribed in the CPLR other than by publication.

7. As more fully appears from the affidavit of due diligence showing attempted service upon Kyle Harrington submitted upon this application and incorporated by reference, counsel's regular process server attempted to effect personal service of the summons and complaint on the defendant(s) at his last known address, 116 W 22nd St 3, New York, New York 10004, and by calling at the aforesaid address. Additionally, the process server attempted to locate the defendant by leaving a copy of the summons and complaint at the noted address with instructions for the defendant to contact either the process server or this office. Still further, and as set forth in the affidavit, efforts to locate the defendant included speaking to neighbors; speaking with the postal employee servicing the area in which the defendant was purported to live; making formal requests upon the United States Post Office; mailing copies of the summons and complaint to the defendant with instructions for the defendant to contact either the process server or this office; visiting the Board of Elections in the defendant's county of residence; visiting the Surrogates Court in the defendant's county of residence; reviewing telephone listings in and around the surrounding Counties in order to determine any and all persons whose names may indicate them to be successors in interest to the defendant; making inquiries of telephone information in the aforesaid areas and making formal requests upon the Department of Motor Vehicles of the State of New York. For an even more expansive accounting of the breadth of efforts made to locate the defendant, the Court's attention is respectfully invited to the mentioned affidavit of our process server herewith submitted. *See Exhibit "C."* An investigation of the records of the Clerk's Office of the Surrogate's Court, has failed to indicate the probate of any Will of said defendant(s), or the application for Letters of Administration for that defendant. A search of the Department of Defense Manpower Data Center further reveals that the Defendant Kyle Harrington is not on active military duty of the United States or the State of New York as appears more closely from the annexed Affidavit of Due Diligence and Attempted Service. A copy of the Department of Defense Manpower Data Center search is annexed hereto. *See Exhibit "D."*

8. Based upon the foregoing, your affirmitant prays for an order directing service by Publication of the supplement summons upon and complaint (*See Exhibit "E."*) defendant, if living, and if he be dead, his heirs-at-law, next-of-kin, distributees, executors, administrators, trustees, devisees, legatees, assignees, lienors, creditors and successors in interest and generally all persons having or claiming under, by or through said defendant who may be deceased, by purchase, inheritance, lien



or otherwise, any right, title and interest in and to the real property described in the complaint herein; and that this matter should be referred to a suitable person, appointed by the Court to act as Guardian ad Litem and Military Attorney for said unknowns or absentees and those defendants who may be infants, incompetents or in the military service, if any.

9. Request is also herewith made, for compelling reason, that the time during which proof of service by the publication herein requested be extended for One Hundred Twenty (120) days from expiration of the period otherwise mandated by CPLR § 306b.

10. To briefly explain, but for the inability to locate defendant as aforesaid, service would have been made and proof thereof would have been filed. When the requested order is signed, publication must proceed. Although service shall be completed twenty-eight (28) days after the first publication (a time long enough in the future to assure running afoul of CPLR 306-b), there are other publications and the affidavit of publication therefor takes many additional weeks to issue from the selected newspaper. Hence, as both a practical and legal matter, plaintiff will suffer dismissal of the action against a necessary party by virtue of the time frames inherent in the publication process, therefore this it is respectfully submitted the requested extension of time pursuant to the authority of CPLR § 2004 should issue.

11. No party to this action is entitled to notice of this application. All proceedings herein have been regular and in accordance with the rules and practices of this Court.

12. No previous request has been made for the relief sought herein.

WHEREFORE, the plaintiff prays for the annexed order of publication permitting those unknowns, etc., as aforesaid, to be joined as parties defendant; permitting service of the summons by publication; and permitting to be issued, filed and served, where and as required, a supplemental summons, an amended complaint and an amended notice of pendency of action; designating a suitable person to act as Guardian ad Litem and Military Attorney for said unknowns, etc., and providing for such other and further relief as to the Court may seem just and proper, for all of which no previous application has been made to this Court or any Judge thereof.

Dated: February 14, 2017  
Rockville Centre, New York



Ted Eric May, Esq.

Sheldon May & Associates, P.C.  
255 Merrick Road  
Rockville Centre, NY 11570  
Phone: 516-763-3200

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

Wells Fargo Bank, N.A., as Trustee for Banc of America  
Funding Corporation Mortgage Pass-Through Certificates,  
Series 2007-5,

Plaintiff,

Vs.

AFFIDAVIT OF DUE  
DILIGENCE AND  
ATTEMPTED SERVICE

Index No. 850202/2016

Kyle Harrington, et al.

Defendant

County of Suffolk, State of New York:

01. Connor Tracey, being duly sworn, deposes and says that he is over the age of 18 years, is not a party to the above action, and resides in Suffolk County, State of New York. I am employed by Nationwide Court Services, Inc. as a researcher. I make this affidavit based upon my personal review and inquiry of business records prepared and maintained in the regular course of business of Nationwide Court Services, Inc.
02. Nationwide Court Services, Inc. received from Sheldon May & Associates, P.C., the attorneys for Plaintiff in the above named action, a request to serve KYLE HARRINGTON at 116 W 22<sup>nd</sup> Street, #3, New York, NY 10004.
03. On October 12, 2016, Nationwide Court Services, Inc., by its agent(s) and/or employee(s), made a formal request upon the United States Post Office in New York, NY 10004 for KYLE HARRINGTON at 116 W 22<sup>nd</sup> Street, #3, New York, NY 10004. To date, a response has not been received (Exhibit A).
04. Your deponent conducted an advanced online search for KYLE HARRINGTON. Said search returned the following information:
  - a. A listing for KYLE HARRINGTON at 327 Mount Hope Boulevard, Hastings on Hudson, NY 10706;
  - b. A listing for KYLE HARRINGTON at 5370 Toscana Way, Apartment 115, San Diego, CA 92122;

- c. A listing for KYLE HARRINGTON at 5535 La Jolla Mesa Drive, La Jolla, CA 92037;
  - d. A listing for KYLE HARRINGTON at 1540 Soledad Avenue. La Jolla, CA 92037;
  - e. A date of birth for KYLE HARRINGTON.  
(Exhibit B)
05. Your deponent conducted an online license search of the NYS Department of Motor Vehicles website for KYLE HARRINGTON, using the defendant's name and date of birth. Said search returned a record for KYLE HARRINGTON at 327 Mount Hope Boulevard, Hastings on Hudson, NY 10706. Said record has an expiration date of March 4, 2003 and a status of "valid" (Exhibit C).
06. Your deponent conducted an online voter registration search of the NYS Board of Elections website for KYLE HARRINGTON, in New York County, using the defendant's name, date of birth, and the zip code of 10004. Said search returned no results (Exhibit D).
07. On October 13, 2016, Nationwide Court Services, Inc., by its agent(s) and/or employee(s), made a formal request upon the United States Post Office in Hastings on Hudson, NY 10706 for KYLE HARRINGTON at 327 Mount Hope Boulevard, Hastings on Hudson, NY 10706. A response was received indicating, "property vacant" (Exhibit E).
08. On October 13, 2016, Nationwide Court Services, Inc., by its agent(s) and/or employee(s), made a formal request upon the United States Post Office in La Jolla, CA 92037 for KYLE HARRINGTON at 5535 La Jolla Mesa Drive, La Jolla, CA 92037. A response was received indicating, "good as addressed" (Exhibit F).
09. On October 14, 2016 and October 15, 2016, at 327 Mount Hope Boulevard, Hastings on Hudson, NY 10706, your deponent's agent, Michael Disciullo, attempted to serve KYLE HARRINGTON with the result, "The house on the property is visibly vacant" (Exhibit G).
10. On October 15, 2016, at 5535 La Jolla Mesa Drive, La Jolla, CA 92037, your deponent's agent, K. Wysong, attempted to serve KYLE HARRINGTON with the result, "Provided address is his ex-wives [sic] house. He no longer resides here. No forwarding info available" (Exhibit H).
11. On October 15, 2016 and October 18, 2016, at 116 W 22<sup>nd</sup> Street, #3, New York, NY 10004, your deponent's agent, Michael Cohen, attempted to serve KYLE HARRINGTON with the result, "Kyle Harrington does not reside here as per current occupant, Mr. Seldman – Full name not provided" (Exhibit I).
12. On November 1, 2016, Nationwide Court Services, Inc., by its agent(s) and/or employee(s), made a formal request upon the United States Post Office in La Jolla, CA

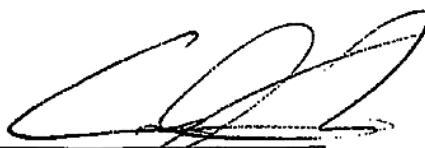
92037 for KYLE HARRINGTON at 1540 Soledad Avenue. La Jolla, CA 92037. A response was received indicating a new address of 5535 La Jolla Mesa Drive, La Jolla, CA 92037 (which was previously attempted) (Exhibit J).

13. On November 2, 2016, at 1540 Soledad Avenue, La Jolla, CA 92037, your deponent's agent, K. Wysong, attempted to serve KYLE HARRINGTON with the result, "Lock box on door. Spoke to gardner [sic] who said this is a weekend party rental house. There are no permanent tenants at this location" (Exhibit K).
14. At 5370 Toscana Way, Apartment 115, San Diego, CA 92122, your deponent's agent, Michael Rahtsachak, attempted to serve KYLE HARRINGTON on the following dates with the following results:
  - November 3, 2016 - Gated complex. Name not on directory. No answer at door. Neighbor unable to verify address.
  - November 4, 2016 - No response at door. Quiet. No activity.
  - November 5, 2016 - No answer at door. Movement seen through peephole. Waited 10 min but no luck.
  - November 7, 2016 - Light on inside. No movement seen or heard. Left contact card. (Exhibit L)
15. On December 5, 2016, your deponent's agent, Melissa Lucena, made a personal visit to the Surrogate's Court, County of New York, State of New York whose records revealed that KYLE HARRINGTON had no entries or documents on file with said court (Exhibit M).
16. Your deponent conducted an online search of "Google.com" for KYLE HARRINGTON. Said search returned a link to "Linkedin.com" which provided a current place of business for KYLE HARRINGTON recorded as Harrington Capital Management, LLC (Exhibit N).
17. Your deponent conducted an online search of "Google.com" for Harrington Capital Management, LLC. Said search returned a listing for Harrington Capital Management at 8895 Towne Centre Drive, San Diego, CA 92122 (Exhibit O).
18. On December 13, 2016, at 8895 Towne Centre Drive, San Diego, CA 92122, your deponent's agent, K. Wysong, attempted to serve KYLE HARRINGTON with the result, "Provided address is a commercial mail receiving agency 'Postal Annex.' Per Owner subject holds box #449" (Exhibit P).
19. Your deponent conducted an online search of "Facebook.com" for KYLE HARRINGTON. Said search returned multiple profiles for individuals by said name, none of which could be conclusively linked to the defendant (Exhibit Q).
20. Your deponent conducted an online search of the Department of Defense Manpower Data Center for KYLE HARRINGTON, using the defendant's name and date of birth. Said

search did not return any records for the defendant based upon the search criteria (Exhibit R).

- 21. Your deponent conducted an online search of the NYS Department of Corrections and Community Supervision for KYLE HARRINGTON. Said search returned a record for A "Kyle Harrington" however, the date of birth provided does not match that of the defendant's (Exhibit S).
- 22. Your deponent conducted an online search of the NYC Department of Correction for KYLE HARRINGTON. Said search returned no records for inmates incarcerated by said name (Exhibit T).
- 23. Your deponent conducted an online search of the Federal Bureau of Prisons for KYLE HARRINGTON. Said search returned no records for inmates incarcerated by said name (Exhibit U).

WHEREFORE, after due and diligent effort, Nationwide Court Services, Inc., by its agent(s) and/or employee(s), have been unable to serve the defendant, KYLE HARRINGTON, in this action for the reasons set forth above.



Prepared by:  
Connor Tracey  
Nationwide Court Services, Inc.  
761 Koehler Avenue, Suite A  
Ronkonkoma, New York 11779

Sworn to before me this  
9<sup>th</sup> day of January 2017



OLIVIA RENEE CHARPENTIER  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 01CH6331597  
Qualified in Suffolk County  
My Commission Expires October 13, 2019

**EXHIBIT J**

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

ORIGINAL

Wells Fargo Bank, N.A., as Trustee for Banc of America  
Funding Corporation Mortgage Pass-Through Certificates,  
Series 2007-5

Plaintiff,

-against-

Notice of Entry

Index Number: 850202/16

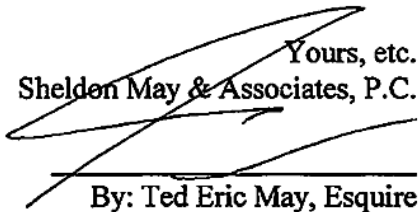
Unknown heirs at law of Kyle Harrington, and if they be dead, any and all persons unknown to plaintiff, claiming, or who may claim to have an interest in, or generally or specific lien upon the real property described in this action; such unknown persons being herein generally described and intended to be included in the following designation, namely: the wife, widow, husband, widower, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors, and assignees of such deceased, any and all persons deriving interest in or lien upon, or title to said real property by, through or under them, or either of them, and their respective wives, widows, husbands, widowers, heirs at law, next of kin, descendants, executors; administrators, devisees, legatees, creditors, trustees, committees, lienors and assigns, all of whom and whose names, except as stated, are unknown to plaintiff; Catherine Harrington, Wells Fargo Bank, NA, Express Elevator Construction Co., Criminal Court of the City of New York, New York Supreme Court, Big Apple Compactor Co Inc., New York City Department of Finance, New York City Parking Violations Bureau, The People of the State of New York, The United States of America, and "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 being foreclosed herein,

Defendants.

SIR:

PLEASE TAKE NOTICE that the within is a true copy of the Order Granting Amendment, Publication, and Appointment of Guardian Ad Litem that was duly entered in the office of the Clerk of the within named court on the April 4, 2017.

Dated: April 5, 2017  
Rockville Centre, New York

Yours, etc.  
Sheldon May & Associates, P.C.  


By: Ted Eric May, Esquire  
255 Merrick Road  
Rockville Centre, New York 11570  
(516) 763-3200

FORECLOSURE OF MORTGAGE

**ORIGINAL**

At a Term, Part <sup>37</sup> of the Supreme Court of the State of New York, held in and for the County of NEW YORK, at Motion Submission Part, Room 130 at the Supreme Court Located at 80 Centre Street, New York City, New York 10007 on the 30 day of March, 2017

**HON. ARLENE P. BLUTH  
J.S.C.**

Present: Honorable \_\_\_\_\_, Justice

Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5

Order Granting Amendment, Publication and Appointment of Guardian Ad Litem

Index Number: 850202/16

Plaintiff(s),

-against-

Kyle Harrington, Catherine Harrington, Wells Fargo Bank, NA, Express Elevator Construction Co., Criminal Court of the City of New York, New York Supreme Court, Big Apple Compactor Co Inc., New York City Department of Finance, New York City Parking Violations Bureau and "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 being foreclosed herein,

Defendant(s).

Upon the summons, verified complaint, and notice of pendency of action heretofore filed herein in the Office of the Clerk of the County/City Register's Office on October 10, 2016, and upon the annexed proposed supplemental summons, amended verified complaint, and amended notice of pendency of action, from all of which it appears that the verified complaint herein demands judgment foreclosing a mortgage against specific real property within this County and the State of New York, and it appearing that there is a sufficient cause of action stated therein against the defendant(s) Kyle Harrington, who is/are necessary parties defendant(s) herein; and upon the annexed affirmation of Ted Eric May, Esq., from which it appears that the defendants cannot be served personally, and plaintiff having thereby made proof to the Court's satisfaction that the location of the defendant(s) or their personal representatives cannot with due diligence be ascertained and that the plaintiff has been and will be unable in the exercise of such due diligence to make personal service of the summons herein or by any other prescribed method on the defendant(s);

NOW, on motion of Sheldon May & Associates, P.C., attorneys for the plaintiff, by Ted



Eric May, Esq., a member of the firm, it is hereby

ORDERED, that the motion for amendment, publication and the appointment of Guardian Ad Litem is granted without prejudice to any of the proceedings heretofore had herein; and it is further

ORDERED, that service of summons upon defendant Kyle Harrington, by publication is granted nunc pro tunc; and it is further

ORDERED that service be effectuated upon any possible unknown heirs at law of Kyle Harrington, if living, and if any be dead, their heirs-at-law, next-of-kin, distributees, executors, administrators, trustees, devisees, legatees, assignees, lienors, creditors, and successors in interest, and generally all persons having or claiming, under, by or through said defendants who may be deceased, by purchase, inheritance, lien, or otherwise, any right, title or interest in and to the premises described in the complaint herein, be made by publication of said supplemental summons in two (2) newspapers, at least one in the English language, hereby designated as most likely to give notice to the said defendants, viz: in the Jewish Press published in NEW YORK County, State of New York, and in the Wall Street Journal published in NEW YORK County, State of New York, together with a notice to the defendants, a brief statement of the object of this action, and a brief description of the property, once a week for four (4) successive weeks; and it is further

ORDERED that Elaine Shay, Esq with an address of 830 Third Ave 5th Floor NY NY 10022 and a phone number of 212 520 2690 Counselor-at-law, who is hereby authorized, empowered, and designated to appear herein as Guardian ad Litem and Military Attorney on behalf of any of the said defendants who may be an absentee, infant, or incompetent, or unknown successors in interest of defendant who may be deceased, or defendant who may be in military service, and to protect and defend the interests of said defendant in the action upon filing his/her acknowledged consent and qualifying affidavit; and if the plaintiff and GAL can not agree, the court shall set an hourly fee; and it is further

ORDERED, that said Guardian Ad Litem and Military Attorney shall also act for said defendants should they be in default or be in the military service of the United States of America, and is hereby authorized and appointed for said purpose of representing them and protecting their interest in this action pursuant to the provisions of the Soldiers' and Sailors' Civil Relief Act and Military Law of 1940, as amended, and the Military Law of the State of New York, and it is further

ORDERED that the date of entry of this order with the county clerk shall be and hereby is deemed to be the date of granting this order for the purpose of compliance with CPLR §316; and it is further

ORDERED that The People of the State of New York and the United States of America be added as party defendant herein, and that the caption of this action is amended accordingly, without prejudice to all of the proceedings hereto fore had herein, and it is further

ORDERED that pursuant to the provisions of CPLR §306-b the plaintiff's time in which to effect service of the supplemental summons and amended complaint is extended 120 days from the entry of the Order; and it is further

**ORDERED** that any appointee named herein shall comply with Section 35-a of the Judiciary Law of the State of New York, and it is further

**ORDERED** that the caption of this action be amended to read as follows:

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

Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5

Index Number: 850202/16

Plaintiff(s),

-against-

Unknown heirs at law of Kyle Harrington, and if they be dead, any and all persons unknown to plaintiff, claiming, or who may claim to have an interest in, or generally or specific lien upon the real property described in this action; such unknown persons being herein generally described and intended to be included in the following designation, namely: the wife, widow, husband, widower, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors, and assignees of such deceased, any and all persons deriving interest in or lien upon, or title to said real property by, through or under them, or either of them, and their respective wives, widows, husbands, widowers, heirs at law, next of kin, descendants, executors; administrators, devisees, legatees, creditors, trustees, committees, lienors and assigns, all of whom and whose names, except as stated, are unknown to plaintiff; Catherine Harrington, Wells Fargo Bank, NA, Express Elevator Construction Co., Criminal Court of the City of New York, New York Supreme Court, Big Apple Compactor Co Inc., New York City Department of Finance, New York City Parking Violations Bureau, The People of the State of New York, The United States of America, and "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 being foreclosed herein,

Defendant(s).

**ORDERED**, that service of the supplemental summons, amended verified complaint and amended notice of pendency of action on those defendants who have already been served be and

the same is hereby dispensed with, all without prejudice to proceedings heretofore had herein;  
and it is further

**ORDERED**, that this Order, the supplemental summons, amended verified complaint  
and amended notice of pendency of action be filed; and it is further

**ORDERED**, that the first publication of the supplemental summons be made within ~~One~~<sup>thirty (30)</sup>  
~~Hundred Twenty (120)~~ days after the date of entry of this Order.

ENTER:

Justice of the Supreme Court

*and it is further ordered*

- ① all appropriate documents shall be delivered to  
the GAL appointed within thirty days
- ② Plaintiff to serve this order upon the  
Clerk of County and the trial support  
Clerk, each of whom are respectfully  
requested to amend the caption in  
the court's computer systems.

3/30/17  
NY NY

HON. ARLENE P. BLUTH  
J.S.C.

SUPREME COURT

STATE OF NEW YORK, COUNTY OF NEW YORK Index Number 850202/16

Wells Fargo Bank, N.A., as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-5

Plaintiff(s),

-against-

Unknown heirs at law of Kyle Harrington, and if they be dead, any and all persons unknown to plaintiff, claiming, or who may claim to have an interest in, or generally or specific lien upon the real property described in this action; such unknown persons being herein generally described and intended to be included in the following designation, namely: the wife, widow, husband, widower, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors, and assignees of such deceased, any and all persons deriving interest in or lien upon, or title to said real property by, through or under them, or either of them, and their respective wives, widows, husbands, widowers, heirs at law, next of kin, descendants, executors; administrators, devisees, legatees, creditors, trustees, committees, lienors and assigns, all of whom and whose names, except as stated, are unknown to plaintiff; Catherine Harrington, Wells Fargo Bank, NA, Express Elevator Construction Co., Criminal Court of the City of New York, New York Supreme Court, Big Apple Compactor Co Inc., New York City Department of Finance, New York City Parking Violations Bureau, The People of the State of New York, The United States of America, and "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 being foreclosed herein,

Defendant(s).

Notice of Entry

Sheldon May & Associates, P.C.  
Attorneys for assignee of the Plaintiff  
Office and Post Office Address  
255 Merrick Road  
Rockville Centre, New York 11570  
Telephone Number  
(516) 763 - 3200

To:

Signature pursuant to rule 130-1.1-a

Print Name: Ted Eric May, Esq.  
Dated: April 5, 2017

Service of a copy of the within is hereby admitted.

Dated:

Attorney(s) for:

PLEASE TAKE NOTICE:

■ NOTICE OF ENTRY

that the within is a (certified) true copy of a Order Granting Amendment, Publication, and Appointment of Guardian Ad Litem Duly entered in the office of the clerk of the within named court on April 4, 2017.

□ NOTICE OF SETTLEMENT

that an order of which the within is a true copy will be presented for settlement to the Honorable one of the judges of the within named court, at on 200 at .M.

Dated:

Yours, etc.  
Sheldon May & Associates, P.C.  
255 Merrick Road  
Rockville Centre, New York 11570  
(516) 763 - 3200

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

Wells Fargo Bank, N.A., as Trustee for Banc of America  
Funding Corporation Mortgage Pass-Through Certificates,  
Series 2007-5

Plaintiff(s),

-against-

Unknown heirs at law of Kyle Harrington, and if they be dead, any and all persons unknown to plaintiff, claiming, or who may claim to have an interest in, or generally or specific lien upon the real property described in this action; such unknown persons being herein generally described and intended to be included in the following designation, namely: the wife, widow, husband, widower, heirs at law, next of kin, descendants, executors, administrators, devisees, legatees, creditors, trustees, committees, lienors, and assignees of such deceased, any and all persons deriving interest in or lien upon, or title to said real property by, through or under them, or either of them, and their respective wives, widows, husbands, widowers, heirs at law, next of kin, descendants, executors; administrators, devisees, legatees, creditors, trustees, committees, lienors and assigns, all of whom and whose names, except as stated, are unknown to plaintiff; Catherine Harrington, Wells Fargo Bank, NA, Express Elevator Construction Co., Criminal Court of the City of New York, New York Supreme Court, Big Apple Compactor Co Inc., New York City Department of Finance, New York City Parking Violations Bureau, The People of the State of New York, The United States of America, and "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 being foreclosed herein,,

Defendant(s).

State of New York, County of Nassau )

Affidavit of Service

Index Number: 850202/16

I, the undersigned, being duly sworn, states as follows: I am employed in the County of Nassau, State of New York by Sheldon May & Associates, P.C.. I am over the age of 18 and not a party to the within action. My business address is 255 Merrick Road, Rockville Centre, New York 11570.

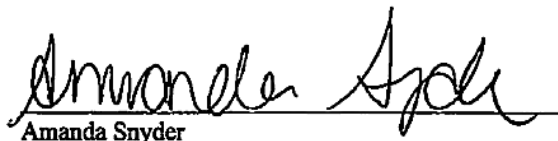
Service was made by Regular Mail on April 5, 2017, I served the following documents Notice of Entry upon the person or parties designated below at their last known address in this action by placing a true and correct copy thereof in a sealed envelope with postage thereon fully prepaid in the United States Mail Box at the Rockville Centre Post Office, at the addresses set forth below:

Kyle Harrington 116 W 22nd Street, #3 New York, NY 10004	Catherine Harrington 5535 La Jolla Mesa Drive La Jolla, CA 92037	Wells Fargo Bank, NA 601 Portion Road, Suite 19 Ronkonkoma, NY 11779
Express Elevator Construction Co One Commerce Plaza, 99 Washington Avenue Albany, NY 12231	Criminal Court of the City of New York 25 Beaver Street, New York, NY 10004	New York Supreme Court 60 Centre Street, New York, NY 10013

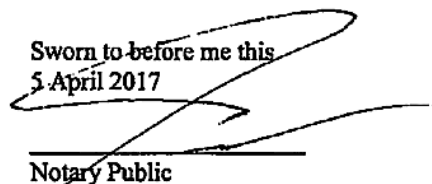
Big Apple Compactor Co Inc., One Commerce Plaza, 99 Washington Avenue Albany, NY 12231	New York City Department of Finance 100 Church Street, New York, NY 10007	New York City Parking Violations Bureau 100 Church Street, New York, NY 10007
Mr. Seldman - Full name not provided S/H/A John Doe #1 116 W 22nd Street, #3 New York, NY 10004		

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Rockville Centre, New York  
April 5, 2017

  
Amanda Snyder

Sworn to before me this  
5 April 2017

  
Notary Public

TED ERIC MAY  
NOTARY PUBLIC, State of New York  
No. 02MA5087205  
Qualified in Nassau County  
Commission Expires OCTOBER 27, 2017

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

Index # 850202/2016

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WELLSFARGO BANK, N.A.,  
Plaintiff,

V.

UNKNOWN HEIRS AT LAW OF KYLE HARRINGTON., et al.,  
Defendants.

---

ORDER TO SHOW CAUSE

---

Michael Kennedy Karlson  
Attorney for Defendant  
Kyle Harrington  
5030 Broadway, 813  
New York, New York  
10034  
(212) 567-1545

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

**Wells Fargo Bank, N.A., as Trustee for Banc of  
America Funding Corporation Mortgage Pass-Through  
Certificates, Series 2007-5**

**Index No. 850202/2016  
EMERGENCY  
AFFIRMATION**

**Plaintiff,**

**- against -**

**UNKNOWN HEIRS AT LAW OF KYLE HARRINGTON, ET AL,**

**Defendant(s).**

MICHAEL KENNEDY KARLSON, an attorney admitted to practice before the Courts of the State of New York, affirms the following under penalty of perjury:

1. I am the attorney for Defendant Kyle Harrington in this real-estate foreclosure action. (See Exhibit A)

**EMERGENCY OSC**

2. We are proceeding by Emergency Order to Show Cause application because, upon information and belief, Plaintiff has obtained an order allowing for service by publication and may already be publishing the supplemental summons and amended complaint.

3. Movant will suffer irreparable injury if this publication is completed. Firstly, Plaintiff is attempting to establish jurisdiction based upon false claims of ignorance of Defendant's address and also because Plaintiff is publishing things that make it appear that Defendant is deceased and others may see this and believe him to be dead.



5. On the 9<sup>th</sup> day of May, 2017, at approximately 12:44pm I called the offices of Plaintiff's attorneys, Sheldon May & Associates at 516-763-3200 and spoke with the receptionist. I informed her of my name, whom I represent, the matter I was calling regarding and the nature of the application I would be bringing and where and when I would be bringing it. She then transferred my call to Jordan Slavins, I informed her of my name, whom I represent, the matter I was calling regarding and the nature of the application I would be bringing and where and when I would be bringing it. He said they would have someone there to oppose the application.

6. On the 9<sup>th</sup> day of 2017 at approximately 12:34pm I spoke with the guardian ad litem Elaine Shay, 212-520-2690 and informed her of my name and whom I represent and the nature of the application I would be bringing and when I would be bringing it. I started to tell her where I would be bringing it but she interrupted and did not want me to read her that, saying "just tell me what you want instead of reading to me from a document." I assume she knows where the Courthouse it. She said she thought the file was on hold for loss mitigation. She has no response to the application. She refused to give her fax number.

7. We are proceeding by Emergency Order to show cause as Plaintiff may be publishing the process for this case now.

8. I have made no prior application to any Court or Judge for the relief requested herein.

WHEREFORE, Defendants respectfully request that this Court process this matter of an emergency order to show cause basis.

State of New York  
County of New York  
Dated: May 9, 2017



---

Michael Kennedy Karlson  
Attorney for Defendant  
(Kyle Harrington)  
5030 Broadway, Suite 813  
New York, NY 10034  
(212) 569-9597

Michael | (888) 502-3576  
Get Help  
Log Out

Tools ▾

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- [Desktop Apps](#)
- [Authorized Apps](#)
- [Tell a Friend](#)
- [Appearance](#)
- [Session Timeout](#)
- [HIPAA Conduit Setting](#)
- 

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## Messages



Inbox



Outbox



Sent Items



Deleted Items

Sent Items (5 new)

No messages

Delete	Mark read	Mark unread	Block	Show: 25 ▾	Recipient	Sent	Save	Forward			
				25 ▾	Open	Document	To	Recipient	Sent	Save	Forward
				25 ▾	2 pages	<b>Invite.p...</b>	<b>(516) 763-3243</b>	<b>Add Contact</b>	<b>Today</b>		
				25 ▾	1 page	Invite M...	<b>Rockville Centr...</b>	<b>Add Contact</b>	<b>12:38 PM</b>		
				25 ▾	1 page	time.pdf	(516) 780-0342	<b>Add Contact</b>	Tue 05/02/2017		
				25 ▾	2 pages	Invite M...	Garden City, NY	<b>Add Contact</b>	2:41 PM		
				25 ▾	2 pages	Invite M...	(914) 615-9278	<b>Add Contact</b>	Tue 05/02/2017		
				25 ▾	9 pages	Subpoena...	White Plains, N...	<b>Add Contact</b>	1:51 PM		
				25 ▾			(516) 222-0394	<b>Add Contact</b>	Tue 05/02/2017		
				25 ▾			Mineola, NY	<b>Add Contact</b>	11:06 AM		
				25 ▾			(914) 206-4066	<b>Leopold &amp; Assoc...</b>	Tue 05/02/2017		
				25 ▾			Westchester, NY	<b>Add Contact</b>	11:05 AM		
				25 ▾			(347) 809-6937	<b>Add Contact</b>	Thu 04/27/2017		
				25 ▾			New York City, ...	<b>Add Contact</b>	2:24 PM		

**FAX**

**Date:** 05/09/2017

**Pages including cover sheet:** 2

<b>To:</b>	
<b>Phone</b>	
<b>Fax Number</b>	(516) 763-3243

<b>From:</b>	Michael Karlson
	5030 Broadway Suite 813
	New York
	NY 10034
<b>Phone</b>	12125699597
<b>Fax Number</b>	(888) 502-3576

**NOTE:**

Re: Kyle Harrington  
 Prop: 116 West 22nd Street, #3 New York, NY 10004.

**MICHAEL KENNEDY KARLSON  
ATTORNEY-AT-LAW  
5030 BROADWAY, SUITE 813  
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May 9, 2017

Sheldon May & Associates  
Via fax: 516-763-3243

RE: Wells Fargo Bank v. Kyle Harrington  
New York County Supreme Court Index # 850202/2016  
Property: 116 West 22<sup>nd</sup> Street, #3, New York, New York 10004

To Whom it May Concern:

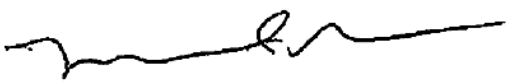
I represent the Defendant Kyle Harrington, who is very much alive, in this matter.

Please also be advised that I will move by emergency order to show cause application to. Inter alia, stay the publication of any process, dismiss this action in its entirety, vacate all prior orders and the notice of pendency and grant Defendant Kyle Harrington such other and further relief as may be found to be just and proper under the circumstances.

I will make this application at 2:30pm, or as soon thereafter as counsel may be heard, on the 10<sup>th</sup> day of May, 2017 at the Supreme Court of the State of New York, of and for the County of New York, at the Courthouse thereof located at 60 Centre Street, New York, NY 10013 at the Ex Parte Office of said Courthouse.

If there is any possibility that you would consent to the relief sought, please let me know. Thank you.

Sincerely,



Michael Kennedy Karlson

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

Index # 850202/2016

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WELLSFARGO BANK, N.A.,  
Plaintiff,

v.

UNKNOWN HEIRS AT LAW OF KYLE HARRINGTON., et al.,  
Defendants.

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EMERGENCY AFFIRMATION  
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Michael Kennedy Karlson  
Attorney for Defendant  
Kyle Harrington  
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