

April 16, 2010

Daniel K. Barbagelata, Esq.  
McCurdy and Chandler, LLC  
P.O. Box 57  
Decatur, GA 30031

RE: Kerry Walker, a/k/a Kerrone Craig Walker v Wells Fargo Bank, National  
Association, et al.  
Superior Court of Cherokee County  
Civil Action File No. 09-CV-3373-JH

Dear Mr. Babagelata:

Enclosed please find Plaintiff's First Notice to Produce and Request for  
Production of Documents to Defendants to Defendant Wells Fargo Bank National  
Association and Plaintiff's First Continuing Interrogatories to Wells Fargo Bank, National  
Association in the above case. If you have any questions, please do not hesitate to call our  
office.

Sincerely,



Kelly Cooney  
Paralegal

:kc  
Enclosure

cc: Kerry Walker

April 16, 2010

The Law Offices of Sam Maguire, Jr., P.C.  
c/o Samuel F. Maguire  
4840 Roswell Road  
E-400  
Atlanta, GA 30342

Re: Request for Production of Documents to Non-Party  
*Kerry Walker v. Wells Fargo Bank, National Association, et al.*  
Superior Court of Cherokee County  
Civil Action File No. 09-CV-3373-JH

Dear Mr. Maguire,

On February 16, 2010, this firm sent to you Plaintiff's Request for Production of Documents to Non-Party the Law Offices of Sam Maguire, Jr., P.C. pursuant to O.C.G.A. § 9-11-34(c). As of the date of this letter, we have not received your responses to said request. I am requesting that you respond to our request on or before May 1, 2010. If we do not receive your responses on or before May 1, 2010, we will unfortunately be forced to file a motion to compel. I have included an additional copy of the request for your review.

Please feel free to contact me if you wish to discuss this further.

Sincerely,

  
Alicia M. Argo

Enclosure

cc: Kerry Walker  
Daniel K. Barbagelata  
Leonard R. Medley

IN THE SUPERIOR COURT OF CHEROKEE COUNTY

STATE OF GEORGIA

KERRY WALKER, )  
a/k/a KERRONE CRAIG WALKER, )  
 )  
Plaintiff, )

v. )

CIVIL ACTION  
FILE NO. 09-CV-3373-JH

WELLS FARGO BANK, NATIONAL )  
ASSOCIATION, as Indenture Trustee )  
Under the Indenture Relating to IMH )  
Assets Corp., Collateralized Asset- )  
Backed Bonds, Series 2004-9, and )  
LOUIS TOBACK, )  
 )  
Defendants. )

**PLAINTIFF'S FIRST NOTICE TO PRODUCE AND REQUEST FOR  
PRODUCTION OF DOCUMENTS TO DEFENDANT WELLS FARGO BANK,  
NATIONAL ASSOCIATION**

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION  
By and through its attorney of record  
Daniel K. Barbagelata  
McCurdy and Chandler, LLC  
P.O. Box 57  
Decatur, GA 30031

A. NOTICE TO PRODUCE:

You are hereby requested, pursuant to O.C.G.A. § 24-10-26 to produce upon the trial or any hearing and upon any deposition of any party or witness taken in the above-styled case by either party and at the time and place of such trial, hearing or deposition held herein, and from day to day and time to time thereafter the documents and the items described in **Exhibit "A"** attached hereto and made a part hereof.

B. REQUEST TO PRODUCE:

You are hereby requested, pursuant to O.C.G.A. § 9-11-34, to produce at the office of S. Jeffrey Rusbridge and Alicia M. Argo, Dyer & Rusbridge, P.C., 291 East Main Street, Canton, Georgia 30114, on the 30th day subsequent to service of this request, and to permit the inspection, copying and photocopying of documents and tangible items described in **Exhibit "A"** attached hereto and made a part hereof.

C. DEFINITIONS AND INSTRUCTIONS


In lieu of producing documents, for your convenience (excluding other tangible items such as photographs, wire equipment, etc.), you may, at your convenience, make copies of said documents and mail them to the undersigned together with a statement of Plaintiff's counsel that "the documents so furnished constitute all of the documents requested" (with any exception clearly noted and identified), further stating that the same are true, correct and complete, and that said copies may be substituted and used as originals subject to all other pertinent objections.

As used herein, the enumerated words, or phrases shall be defined as follows:

"Document or Documents" - every writing, record, graphic, photograph, photographic or sound reproduction of every type and description that is in your possession, control, or custody and which was prepared during or referred to the relevant time period of the suit, including but not by way of limitation, correspondence, contracts, memoranda or agreements, assignments, licenses, minutes, stenographic or handwritten notes, diaries, notebooks, books of account, orders, invoices, statement, bills, checks (or check stubs or record), canceled checks (and/or carbon copies or impressions of said checks), analysis, publications, books, pamphlets, periodicals, catalogues, brochures,

schedules, circulars, bulletins, notices, instructions, manuals, journals, data sheets, work sheets, statistical compilations, data processing cards, computer records, tapes and printouts, photographs, drawings, films, pictures, voice records, every copy of such writing or record where such copy contains any commentary or notation whatsoever that does not appear on the original.

This 16<sup>th</sup> day of April, 2010.



S. JEFFREY RUSBRIDGE

Georgia Bar No. 619533

ALICIA M. ARGO

Georgia Bar No. 859330

Attorneys for Plaintiff

Dyer & Rusbridge, P.C.  
291 East Main Street  
Canton, Georgia 30114  
(770) 479-7418

**EXHIBIT "A"**

1.

All documents identified by Wells Fargo in response to Plaintiff's First Continuing Interrogatories.

2.

All documents consulted, referred to, or otherwise utilized in any way in connection with the preparation of Wells Fargo's responses to Plaintiff's First Continuing Interrogatories.

3.

All documents held by Wells Fargo in any file pertaining to the property or to the security deed obtained from Tobak.

4.

All documents evidencing any inspection or investigation of the property by SouthStar Funding, LLC prior to obtaining the security deed from Tobak.

5.

All documents evidencing any inspection or investigation of the property by Wells Fargo prior to purchasing the loan from SouthStar Funding, LLC.

6.

Any and all reports prepared by or for Wells Fargo or SouthStar Funding, LLC regarding the property.

7.

All correspondence between Wells Fargo and Plaintiff.

8.

All documents that Wells Fargo contends support its defenses against Plaintiff's claims.

9.

Any and all documents that Wells Fargo will use at the trial of this matter.

IN THE SUPERIOR COURT OF CHEROKEE COUNTY

STATE OF GEORGIA

KERRY WALKER, )  
a/k/a KERRONE CRAIG WALKER, )

Plaintiff, )

v. )

CIVIL ACTION  
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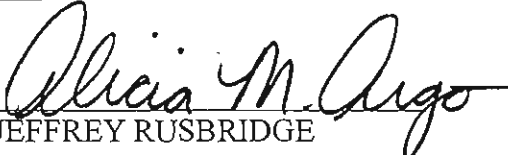
Defendants. )

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing PLAINTIFF'S FIRST NOTICE TO PRODUCE AND REQUEST FOR PRODUCTION OF DOCUMENTS TO WELLS FARGO BANK, NATIONAL ASSOCIATION by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Daniel K. Barbagelata  
McCurdy and Chandler, LLC  
P.O. Box 57  
Decatur, GA 30031

This 16<sup>th</sup> day of April, 2010.

  
S. JEFFREY RUSBRIDGE  
Georgia Bar No. 619533  
ALICIA M. ARGO  
Georgia Bar No. 859330  
Attorneys for Plaintiff

Dyer & Rusbridge, P.C.  
291 East Main Street  
Canton, Georgia 30114  
770-479-7418

IN THE SUPERIOR COURT OF CHEROKEE COUNTY

STATE OF GEORGIA

KERRY WALKER, )  
a/k/a KERRONE CRAIG WALKER, )  
 )  
Plaintiff, )

v. )

CIVIL ACTION  
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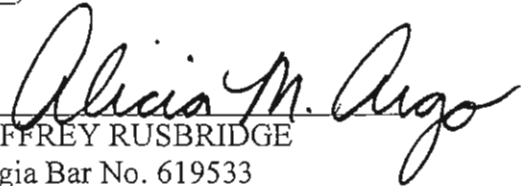
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Under the Indenture Relating to IMH )  
Assets Corp., Collateralized Asset- )  
Backed Bonds, Series 2004-9, and )  
LOUIS TOBACK, )  
 )  
Defendants. )

CERTIFICATE OF FILING

This is to certify that, pursuant to Uniform Superior Court Rule 5.2(2), as amended, I have this day served counsel for the Plaintiff in the foregoing action with true and correct copies of PLAINTIFF'S FIRST NOTICE TO PRODUCE AND REQUEST FOR PRODUCTION OF DOCUMENTS TO WELLS FARGO BANK, NATIONAL ASSOCIATION on all parties to this matter by U.S. mail, with adequate postage prepaid, and addressed as follows:

Daniel K. Barbagelata  
McCurdy and Chandler, LLC  
P.O. Box 57  
Decatur, GA 30031

This 16<sup>th</sup> day of April, 2010.

  
S. JEFFREY RUSBRIDGE  
Georgia Bar No. 619533  
ALICIA M. ARGO  
Georgia Bar No. 859330  
Attorneys for Plaintiff

Dyer & Rusbridge, P.C.  
291 East Main Street  
Canton, Georgia 30114  
770-479-7418

IN THE SUPERIOR COURT OF CHEROKEE COUNTY

STATE OF GEORGIA

KERRY WALKER, )  
a/k/a KERRONE CRAIG WALKER, )

Plaintiff, )

v. )

WELLS FARGO BANK, NATIONAL )  
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Under the Indenture Relating to IMH )  
Assets Corp., Collateralized Asset- )  
Backed Bonds, Series 2004-9, and )  
LOUIS TOBACK, )

Defendants. )

CIVIL ACTION  
FILE NO. 09-CV-3373-JH

**PLAINTIFF'S FIRST CONTINUING INTERROGATORIES TO DEFENDANT  
WELLS FARGO BANK, NATIONAL ASSOCIATION**

COMES NOW Plaintiff Kerry Walker ("Plaintiff") and serves these Interrogatories upon Defendant Wells Fargo Bank, National Association ("Wells Fargo") as an opposite party and asks that they be answered fully and in writing under oath within thirty (30) days from the date of service thereof, all in accordance with O.C.G.A. § 9-11-33.

Each Interrogatory is addressed to the personal knowledge of Defendant, as well as to the knowledge and information of Defendant, its attorneys, agents, and other representatives. When a question is directed to Defendant, the question is also directed to each of the aforementioned persons.

These Interrogatories shall be deemed continuing so as require supplemental answers if the persons to whom these Interrogatories are addressed obtain further or

different information between the time answers are served and time of trial, as required by law.

**Additional Instructions**

1.

In lieu of identifying any document, it shall be a sufficient response to produce such document and attach a copy thereof to your answers to these Interrogatories.

2.

With regards to the terms defined herein, all terms used in the singular shall include the plural, and all terms used in the plural shall include the singular.

3.

Whenever these interrogatories request information which was furnished in response to a previous interrogatory, such information need not be restated, and it is sufficient to identify, by number, the previous answer which contains the information requested.

4.

Whenever these interrogatories request information which is not available to the defendant in the form requested, but is available in another form or can be obtained elsewhere, so state or either supply the information requested in the form in which it is available or supply the data from which the information requested can be obtained.

5.

Each interrogatory should be construed independently and not with reference to any other interrogatory for purposes of limitation, except where specifically so designated.

6.

If any information requested by these interrogatories is withheld because defendant claims that the information is privileged, state the basis upon which any privilege is claimed and the general subject matter of the information withheld.

### **DEFINITIONS**

As used herein, the terms listed below are defined as follows:

1.

"Document" means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in whatever form, including copies, drafts, and reproductions. "Document" also refers to any other data compilations from which information can be obtained, and translated, if necessary, by you through computers or detection devices into reasonably usable form.

2.

"Person" means any natural person, corporation, partnership, proprietorship, association, governmental entity, agency, group, organization, or group of persons.

3.

To "identify" a "document" means to provide the following information irrespective of whether the document is deemed privileged or subject to any claim of privilege:

- (a) The title or other means of identification of each such document;
- (b) The type of document (*e.g.*, letter, memorandum, record);
- (c) The date of each such document;
- (d) The author of each such document;
- (e) The recipient or recipients of each such document, including but not limited to Plaintiff or anyone who purports to represent the Plaintiff;
- (f) The present location of any and all copies of each such document in the care, custody, or control of Defendant;
- (g) The names and current addresses of any and all persons who have custody or control of each such document or copies thereof; and
- (h) If all copies of the document have been destroyed, the names and current addresses of the person or persons authorizing the destruction of the document and the date the document was destroyed.

In lieu of "identifying" any document, it shall be deemed a sufficient compliance with these interrogatories to attach a copy of each such document to the answers hereto and reference said document to the particular interrogatory to which the document is responsive.

4.

To "identify" a natural person means to state that person's full name, title, or affiliation, and last known address and telephone number. To "identify" a person that is a business, organization, or group of persons means to state the full name of such business, organization, or group of persons, the form of the business, organization, or group of persons (*e.g.*, government agency, corporation, partnership, joint venture, etc.), and to

"identify" the natural person who would have knowledge of the information sought by the interrogatory.

5.

"Plaintiff," "you," or "your" refers to, without limitation, the named Plaintiff, Kerry Walker.

6.

"Defendant" or "defendants" refers to, without limitation, the named defendant, Wells Fargo Bank, National Association, and all business entities with which it is or has been affiliated, together with any predecessor, successor, parent, or subsidiary entity as well as any officer, director, employee, attorney, agent, or representative of Wells Fargo Bank, National Association, or any such other business entity previously described herein.

7.

"Complaint" refers to the Complaint filed by plaintiff in this action.

8.

Terms in the singular shall be deemed to include the plural and terms in the plural shall be deemed to include the singular.

9.

Use of feminine pronouns shall be deemed to include the masculine and neuter and use of masculine pronouns shall be deemed to include the feminine and neuter.

## INTERROGATORIES

1.

State all facts that Wells Fargo contends support its defense of failure to state a claim upon which relief may be granted.

2.

State all facts that Wells Fargo contends support its defense of subject matter jurisdiction.

3.

State all facts that Wells Fargo contends support its defense of estoppel.

4.

State all facts that Wells Fargo contends support its defense of waiver.

5.

State all facts that Wells Fargo contends support its defense of failure of condition precedent.

6.

State all facts that Wells Fargo contends support its defense of laches.

7.

State all facts that Wells Fargo contends support its defense of Plaintiff's failure to exercise reasonable prudence.

8.

State all facts that Wells Fargo contends support its defense of Plaintiff's failure to exercise due diligence.

9.

State all facts that Wells Fargo contends support its defense of unclean hands.

10.

State all facts that Wells Fargo contends support its defense of he who would have equity must do equity and muse give effect to all equitable rights of the other party respecting the subject matter of the action.

11.

State all facts that Wells Fargo contends support its defense of the operation of the general rules of law are not and would not be deficient in protecting Plaintiff from anticipated wrongs or relieving for injuries allegedly done.

12.

State all facts that Wells Fargo contends support its defense of compliance with all applicable Georgia and federal law and authority when conducting the dispossessory.

13.

State all facts that Wells Fargo contends support its defense of Plaintiff's failure to comply with O.C.G.A. § 23-3-60.

14.

State the name, title, telephone number, and address of each and every person who has knowledge of the facts pertaining to the subject matter of this litigation.

15.

State the name, title, telephone number, and address of each and every person who inspected, on behalf of Wells Fargo or SouthStar Funding, LLC, the property lying and being in Land Lot 17 of the 22<sup>nd</sup> District of Cherokee County and which is the

subject matter of this litigation prior to obtaining the security deed recorded at Deed Book 5896, Page 386, Cherokee County Records (“the property”).

16.

Describe in detail any inspection or investigation that Wells Fargo or SouthStar Funding, LLC conducted on the property prior to obtaining the Security Deed from Toback. Include the date of any such inspection or investigation, the person(s) who performed the inspection or investigation, and the findings of any such inspection or investigation.

17.

Describe in detail all documents that were produced by Wells Fargo or SouthStar Funding, LLC after the completion of any inspection or investigation of the property prior to obtaining the security deed.

18.

State the date upon which Wells Fargo first inspected the property.

19.

State the date upon which Wells Fargo first discovered that Plaintiff had a residence and personal property located on the property.

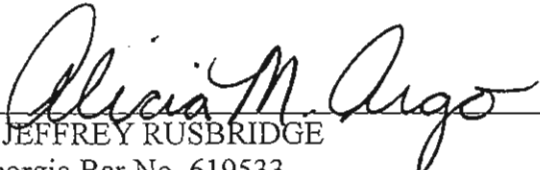
20.

Describe in detail the efforts that Wells Fargo made prior to obtaining the security deed to determine whether or not other individuals or entities possessed an interest in the property.

21.

State the name, title, telephone number, and address of all individuals whom  
Wells Fargo will call as a witness at the trial of this matter.

This 16<sup>th</sup> day of April, 2010.

  
S. JEFFREY RUSBRIDGE  
Georgia Bar No. 619533  
ALICIA M. ARGO  
Georgia Bar No. 859330  
Attorneys for Plaintiff

Dyer & Rusbridge, P.C.  
291 East Main Street  
Canton, Georgia 30114  
(770) 479-7418

IN THE SUPERIOR COURT OF CHEROKEE COUNTY

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Daniel K. Barbagelata  
McCurdy and Chandler, LLC  
P.O. Box 57  
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Georgia Bar No. 619533  
ALICIA M. ARGO  
Georgia Bar No. 859330  
Attorneys for Plaintiff

Dyer & Rusbridge, P.C.  
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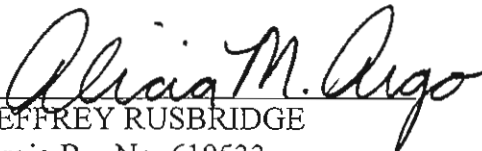
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S. JEFFREY RUSBRIDGE  
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