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**\*E-FILED - 1/29/09\***

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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

10  
11 KIMBERLY A. BROCKINGTON, also  
known as KIMBERLY A. SCHATZ, and  
12 LALLY BROCKINGTON,

13 Plaintiffs,

14 vs.

15 J. P. MORGAN CHASE BANK N.A., a  
National Banking Association, NDEX  
16 WEST, LLC, a Texas Limited Liability  
Company, and DOES 1 to 20, inclusive,

17 Defendants.  
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Case No. C08-05795 RMW

**STIPULATION AND [~~PROPOSED~~]  
ORDER CONTINUING MOTION TO  
DISMISS THE COMPLAINT FOR  
FAILURE TO STATE A CLAIM**

DATE: February 13, 2009  
TIME: 9:00 a.m.  
CTRM: 6, 4<sup>th</sup> Floor  
JUDGE: Hon. Ronald M. Whyte

19  
20 Pursuant to an agreement to continue the hearing date reached between the attorney for  
21 plaintiffs and the attorney for defendant, J.P. Morgan Chase Bank, N.A., IT IS HEREBY  
22 STIPULATED AND AGREED that the Motion to Dismiss the Complaint for Failure to State a  
23 Claim be continued to March 20, 2009, at 9:00 a.m.

24 IT IS FURTHER AGREED THAT THE PARTIES HEREBY STIPULATE to the  
25 granting and extension of the Temporary Restraining Order previously ordered by the State  
26 Court, and that plaintiffs' Motion for Preliminary Injunction filed in State Court on November  
27 21, 2008 will be heard in this court, also on March 20, 2009, at 9:00 a.m.  
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1 DECLARATION OF CONSENT

2 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under  
3 penalty of perjury that concurrence in the filing of this document has been obtained from S.  
4 Christopher Yoo.

5 Dated: January 23, 2009.

LAW OFFICES OF JOHN S. PERKINS

6  
7 By /s/ John S. Perkins  
8 John S. Perkins  
9 Attorney for Plaintiffs  
10 KIMBERLY BROCKINGTON and  
11 LALLY BROCKINGTON

12 Dated: January 23, 2009.

ADORNO YOSS ALVARADO & SMITH

13 By /s/ S. Christopher Yoo  
14 S. Christopher Yoo  
15 Attorneys for Defendant  
16 J.P. MORGAN CHASE BANK, N.A.

17 ~~PROPOSED~~ ORDER

18 PURSUANT TO STIPULATION, IT IS ORDERED:

19 1. That defendant J.P. Morgan Chase Bank, N.A.’s Motion to Dismiss the  
20 Complaint for Failure to State a Claim is hereby continued to March 20, 2009, at 9:00 a.m.

21 2. That plaintiffs’ previously filed State Court Motion for Issuance of a Preliminary  
22 Injunction Staying Foreclosure of plaintiffs’ real property shall also be heard in this court on  
23 March 20, 2009, at 9:00 a.m.

24 3. That pending said hearings, defendants, and each of them, and their officers,  
25 agents, employees, representatives, and all persons acting in concert or participating with them,  
26 are restrained and enjoined from engaging in or performing, directly or indirectly, any and all of  
27 the following acts:

- 28 a. Proceeding with a judicial foreclosure and sale of plaintiffs’ real property  
commonly known as 4939 Arundel Court, San Jose, California 95136  
(the Property).

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b. Interfering in any way with plaintiffs' right to possession or quiet enjoyment of the Property. However defendants may contact plaintiffs or their counsel to discuss loan workouts.

Dated: 1/29/08



Honorable Ronald M. Whyte  
United States District Judge