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E-Filed 1/19/2011

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

GABRIELA R. CARNERO,
Plaintiff,
v.
WASHINGTON MUTUAL, et al.,
Defendants.

Case Number 5:09-cv-05330-JF
ORDER GRANTING MOTION TO
EXPUNGE LIS PENDENS; AND
VACATING HEARING
[re: document no. 104]

After considering Defendants’ motion to expunge lis pendens, Plaintiff’s opposition, and Defendants’ reply, the Court concludes that this matter is appropriate for submission without oral argument pursuant to Civil Local Rule 7-1(b).

A lis pendens is a “recorded document giving constructive notice that an action has been filed affecting title or right to possession of the real property described in the notice.” *Urez Corp. v. Superior Court*, 190 Cal. App. 3d 1141, 1144 (1987). The practical effect of a lis pendens is to cloud the property’s title and prevent its transfer until the litigation is resolved or the lis pendens is expunged or released. *Malcom v. Superior Court*, 29 Cal. 3d 518, 523-24 (1981). “The court shall order that the notice be expunged if the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property

1 claim.” Cal. Civ. Code § 405.32. “The court shall direct that the party prevailing on any motion
2 [regarding lis pendens] be awarded the reasonable attorney’s fees and costs of making or
3 opposing the motion unless the court finds that the other party acted with substantial
4 justification or that other circumstances make the imposition of attorney's fees and costs unjust.”
5 Cal. Civ. Code § 405.38.

6 On November 22, 2010, the Court dismissed the instant action on the merits and entered
7 judgment against Plaintiff and for Defendants. Under these circumstances, Plaintiff cannot
8 establish the probable validity of her federal claims. Moreover, even if Plaintiff has actions
9 pending in other courts, Plaintiff acted without substantial justification in opposing the motion to
10 expunge with respect to this action, as her opposition was filed *after* the court dismissed the
11 action. Accordingly, the Court will direct Plaintiff to pay Defendants’ reasonable attorneys’ fees
12 in the amount of \$800.00.

13 **ORDER**

- 14 (1) Defendants’ motion to expunge lis pendens is GRANTED; and
15 (2) Plaintiff is ordered to pay Defendants’ attorneys’ fees in the amount of \$800.00.

16
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18 DATED: January 19, 2011

19 
20 JEREMY FOGEL
21 United States District Judge

1 Copies of Order served on:

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