

1 Gabriela R. Carnero & Jose R. Carnero - Pro Se
 2 5645 Blossom Ave.
 3 San Jose, CA. 95123
 4 Jose R. Carnero
 5 1558 Minnesota Ave. 1/2
 6 San Jose CA. 95125-4445
 7 408-269-2954

FILED

2009 DEC 17 A 8:58

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 N.D. CA. - SAN JOSE

CJF

8 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
 9 SAN JOSE DIVISION

10		) Case No. : 5:09-CV-05330-JF
11	Gabriela R. Carnero and Jose R.	) APPLICATION FOR EX PARTE
12	Carnero,	) ORDER FOR HONORABLE JEREMY
13	Plaintiff,	) FOGEL TO GRANT NOTICE OF LIS
14	Vs.	) PENDENS DUE TO THE DEFENDANTS
15	Washington Mutual (WAMU), Chase	) PREDATORY LENDING ABUSES.
16	Bank, Randy Omoto doing)
17	Business as Silicon Valley	) DECLARATION OF PLAINTIFFS RE EX
18	Capital Funding (SVCF), SVCF,	) PARTE NOTICE; DECLARATION OF
19	Flagstar Bank (FSB), Alliance	) PLAINTIFFS IN SUPPORT OF
20	Title (AT), Quality Loan	) APPLICATION; MEMORANDUM OF
21	Service Corp. (QLSC), Chase Home	) POINTS AND AUTHORITIES; ORDER
22	Finance LLC, DOES 1-100	) THEREON
23	inclusive,	) Date: 12-17-2009
24	Defendants,	) Time: 9:00 AM
25		) Judge: Hon. Jeremy Fogel
		) Ctrm: 3, 5 th Floor
		) Trial: None

APPLICATION

1. Pursuant to California Code of Civil Procedure sections
 484.510-484.530 and 165-167, Plaintiffs - Pro Se, Jose R.
 Carnero and Gabriela R. Carnero, in the above-entitled action,

Case No. : 5:09-CV-05330-JF

Carneros vs. WAMU/CHASE - Ex Parte Application to Grant Lis Pendens

1-6

1 apply for an order to grant the Notice of Lis Pendens, as
2 depicted below, and to Restrain Defendants from selling,
3 invading or trespassing, or soliciting Plaintiff Gabriela R.
4 Carnero's private property located on 5645 Blossom Ave, San
5 Jose, CA. 95123 as the pleading case No. 5:09-CV-05330-JF
6 which specifies the predatory lending abuses that these
7 Defendants have committed.

8 **DECLARATION OF PLAINTIFFS RE NOTICE OF EX PARTE HEARING**

9 2. Jose R. Carnero and Gabriela R. Carnero, plaintiffs, declare
10 the following: "that on Thursday Dec. 17th 2009, at 9:00 PM, or
11 as soon thereafter as the matter could be heard, at United
12 States District Court Northern district of California San Jose
13 Civil Division at 280 South First Street, San Jose, California
14 95113. Plaintiffs would move this court for an order in this
15 action to grant the Notice of Lis Pendens mentioned below and
16 to Restrain Defendants from selling, invading or trespassing,
17 or soliciting the Plaintiff Gabriela's private property
18 located on 5645 Blossom Ave, San Jose, CA. 95123 as the
19 pleading case No. 5:09-CV-05330 specifies". This declaration
20 applies to the following parties:

21 3. On 12/16/2009, Plaintiffs called JPMorgan Chase Bank (Formerly
22 WAMU or Chase Home Financial) ATTN: Lawyer Mathew Podmenik at
23 (619)685-4800, around 2:52 PM and Jose R. Carnero left in his
24 voice mail the declared message above. Note, this application
25 has been faxed to Mathew Podmenik at (619)685-4811.

4. On 12/16/2009, Plaintiffs called Randy Omoto and Silicon
Valley Capital Funding at 408-558-9211, around 4:24 PM and
Jose R. Carnero left the declared message above. Note, this
application has been faxed to Randy Omoto at (408)558-6610.

5. On 12/16/2009, Plaintiffs called Flagstar Bank, FSB and left a
message with Emily's voice mail for Lawyer Lawrence D. Harris

1 at the Law Offices of Glen H. Wechsler 925-274-0200, around
2 5:28 PM and Jose R. Carnero left the declared message above.
3 Note, this application has been faxed to Lawrence D. Harris at
4 (925) 274 0202.

5 6. On 12/16/2009, Plaintiffs cannot call Alliance Title Company
6 because the company number (408) 513-3005 is disconnected and
7 the company has filed for bankruptcy.

8 7. On 12/16/2009, Plaintiffs called Quality Loan Service
9 Corporation's lawyer Seth Harris at (619)685-4800 at 6:00 PM.
10 Note, this application has been faxed to Seth Harris at (619)
11 685-4811.

12 DECLARATION IN SUPPORT OF APPLICATION

13 DECLARATION OF PLAINTIFFS IN SUPPORT OF APPLICATION

14 Gabriela R. Carnero and Jose R. Carnero - Pro Se, declare as
15 follows:

16 8. Plaintiffs reserve the right to be heard under this court's
17 case management conference as already scheduled for March 22nd
18 2010 at 10:00am on 4th floor room 8 with Honorable Judge James
19 Ware before the sale of the Plaintiff Gabriela's primary
20 residence is considered.

21 9. Plaintiff Gabriela is informed and believes that she was to
22 loose her primary house due to the Defendant's predatory
23 lending abuses; the harm will be irreparable to Gabriela and
24 the general public.

25 10. Pursuant to California Code of Civil Procedure sections
484.510-484.530 and 165-167, Plaintiffs - Pro Se The Carneros
have the right to seek the granting of the Notice of Lis
Pendens through the ex part process.

1 11. Honorable Judge Jeremy Fogel, it will be unconscionable and
2 unconstitutional to let the sale of the Plaintiff Gabriela R.
3 Carnero's property to proceed due to the fact that the
4 Plaintiffs have the right to due process especially after
5 Plaintiffs have filed the complaint under State Case No. 1-09-
6 CV-155302 on October 22nd 2009 which has been moved to Federal
7 Case No 5:09-CV-05330-JF.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 **STATEMENT OF FACTS**

10 12. The Plaintiff Gabriela R. Carnero is at risk of loosing her
11 primary residence because of the predatory lending abuses that
12 Defendants continue to inflict on Plaintiffs and on the
13 general public, please refer to the contents of the pleading
14 filed for more detailed information.

15 13. Defendants have ignored Federal and State Laws as specified
16 in the pleading.

17 14. The Carneros have sent a rescission letter and a demand
18 letter to stop the selling of Gabriela's property, the debt
19 has been in dispute since May 15th 2009 but WAMU, JPMorgan
20 Chase Bank, and Quality Loan Services have gone ahead to
21 record a trustee's sale scheduled for January 7th 2010.

22 15. Please refer federal case 5:09-CV-05330-JF which should
23 guide you through to all of these predatory lending abuses
24 that Defendants have committed.

25 16. Honorable Judge Jeremy Fogel, please grant this notice of
Lis Pendens as soon as possible because Gabriela's residence
has a recorded trustee sale scheduled for this January 7th
2010.

CONCLUSION

17. Based on the reasons set forth above, Plaintiffs respectfully requests that the court grant Plaintiff's motion for approval of the Notice of Lis Pendens.

NOTICE OF LIS PENDENS

TO THE ABOVE STYLED DEFENDANTS AND ALL OTHER WHOM IT MAY CONCERN:

18. YOU ARE HEREBY NOTIFIED of the institution of this action by the Plaintiffs against you seeking to foreclose a mortgage recorded on 06/29/2007 as Instrument No. 19387327 of the office of the Recorder on the following property of Santa Clara County, California: 5645 Blossom Ave. San Jose, California. See Exhibit A, for a legal description.

19. NOTICE IS HEREBY GIVEN that an action has been instituted and is now pending in the USA District Court Northern District of California Case Number 5:09-CV-05330-JF against the above-named Defendants.

Gabriela R. Carnero 12-16-09
Gabriela R. Carnero Date

Jose R. Carnero 12-16-09
Jose R. Carnero Date

Gabriela R. Carnero - Pro Se

5645 Blossom Ave.

San Jose, CA. 95123

Jose R. Carnero - Pro Se

1558 Minnesota Ave. 1/2

San Jose CA. 95125-4445

408-269-2954

Attached Documents:

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Exhibit A "Property Legal Description"

Order of Court

Exhibit A

DESCRIPTION

Order No. 38601695 -

CITY OF SAN JOSE

LOT 117, AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 2836, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA ON OCTOBER 6, 1961, IN BOOK 138 OF MAPS, PAGE(S) 50 & 51.