

1 Deanne Brewer, "In Pro Per"  
2 369 Bellevue Avenue #104  
3 Oakland, CA 94610  
4 (510)459-0254

ADR

FILED

2011 NOV -7 A 11:16

NP  
②

5 UNITED STATES DISTRICT COURT  
6 Robert F. Peckham Federal Building  
7 280 South 1st Street  
8 San Jose, CA 95113

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NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

Case No: CV 11 - 05373

HRL

9 The Bank of New York Mellon FKA; The  
10 Bank of New York as Trustee for The Benefit  
11 of the Certificate Holders, CWMBMS, Inc.,  
12 CHL Mortgage Pass-Through Trust 2007-J2  
13 Mortgage Pass Thorough Certificates,

NOTICE REMOVAL BY DEFENDANT  
PURSUANT TO 28 U.S.C. § 1332

(Diversity Jurisdiction)

Plaintiffs,

v.

13 Deanne Brewer and Spencer Brown ("In Pro  
14 Per"),

Defendants.

16 TO PLAINTIFF, BY AND THROUGH ITS COUNSEL OF RECORD, THE  
17 CLERK OF THE ABOVE-ENTITLED COURT AND THE HONORABLE UNITED  
18 STATES DISTRICT JUDGE, AS ASSIGNED:

19 PLEASE TAKE NOTICE that Deanne Brewer ("Defendant") hereby provides this  
20 Notice of Removal pursuant to 28 U.S.C. § 1332, based on diversity of citizenship. The  
21 action is should be removed to this Court from the state court, as more particularly set forth  
22 below:

23 1. THE STATE COURT ACTION

24 On February 18, 2011, Plaintiffs filed an Unlawful Detainer Complaint in  
25 Santa Clara County Superior Court, case number 1-10-CV-163857. A true and correct copy  
26 of this complaint is attached as Exhibit A.  
27  
28

1                   2. JURISDICTION

2                   a. Diversity of Citizenship

3                   This Court has jurisdiction in this case pursuant to 28 U.S.C. § 1332 because  
4 the citizenship of the parties is entirely diverse, and the amount in controversy exceeds  
5 \$75,000.00.

6                   Defendant is a citizen of California based on domicile, as she resides at 369  
7 Bellevue Avenue #104, Oakland, CA 94610.

8                   The Bank of New York Mellon is a citizen of the state where its main office is  
9 located. *Wachovia Bank v. Schmidt*, 546 US 303, 306-307 (2006). The Bank of New York  
10 Mellon with its main office of located at One Wall Street, New York, New York, complete  
11 diversity of citizenship of the parties exists under 28 U.S.C. § 1332(a).

12                   3. AMOUNT IN CONTROVERSY

13                   Generally, “[t]he amount in controversy is determined from the allegations of  
14 prayer of the Complaint” *Schwarzer*, Fed. Civ. Pro. Before Trial, ¶ 2:450 (citing *St. Paul*  
15 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938), which held that an inability to  
16 recover an amount adequate to give the court jurisdiction does not oust the court of  
17 jurisdiction.)

18                   Here, Plaintiffs seek to remove Defendant from her house. Defendant’s home  
19 is valued at approximately over \$400,000.00. Thus, the minimum amount in controversy is at  
20 least \$400,000.00, which is above the \$75,000 requirement. If the primary purpose of a  
21 lawsuit is to enjoin a bank from selling or transferring property, then the property is the object  
22 of the litigation. *Reyes v. Wells Fargo Bank, N.A.*, 2010 U.S. Dist. LEXIS 113821, \*12-\*13  
23 (N.D. Cal. June 29, 2010) (citations omitted.)

24                   4. TIMELINESS

25                   This Notice is timely, pursuant to 28 U.S.C. § 1446(b), because it is filed  
26 within thirty (30) days of Defendant becoming aware that Plaintiff’s claim that they are not  
27 domiciled in California  
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5. REQUEST FOR JUDICIAL NOTICE

Defendant, Deanne Brewer, respectfully requests this court to take judicial notice of the documents filed by Plaintiff in their Notice of Removal.

Date: November 4, 2011

Respectfully submitted,

/s/ Deanne Brewer, "In Pro Per"  
369 Bellevue Avenue #104  
Oakland, CA 94610  
(510)459-0254

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**Proof of Service**

CCP §§ 1012, 1013 & 1013(a)

Case: The Bank of New York Mellon FKA; The Bank of New York as Trustee for The Benefit of the Certificate Holders, CWMBS, Inc., CHL Mortgage Pass-Through Trust 2007-J2 Mortgage Pass Thorough Certificates, Plaintiffs, v. Deanne Brewer and Spencer Brown ("In Pro Per")

Court/No: United States District Court -- Northern District of California

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to the within action; My business address is 10195 Viceroy Ct, Cupertino, CA 95014.

On this date I served the attached document, **NOTICE OF REMOVAL** as follows:

Plaintiff's Attorney of Record  
Brian H. Tran, Esq. Bar No. 255577  
Miles, Bauer, Bergstrom & Winters, LLP  
1665 Scenic Avenue, Suite 200  
Costa Mesa, CA 92626

I declare under penalty of perjury that the forgoing is true and correct. Executed on November 4, 2011, at San Jose, California.

/s/ Ryan Baidya  
Ryan Baidya

1 MILES, BAUER, BERGSTROM & WINTERS, LLP  
2 Brian H. Tran, Esq., Bar No. 255577  
3 1665 Scenic Avenue, Suite 200 (BREWSTER 09-11164)  
4 Costa Mesa, CA 92626  
5 Phone: (714) 481-9100  
6 Facsimile: (714) 481-9151

7 Attorneys for Plaintiff,  
8 THE BANK OF NEW YORK MELLON FKA THE  
9 BANK OF NEW YORK AS TRUSTEE FOR THE  
10 BENEFIT OF THE CERTIFICATEHOLDERS.  
11 CWMBS, INC., CHL MORTGAGE PASS-THROUGH  
12 TRUST 2007-J2 MORTGAGE PASS-THROUGH  
13 CERTIFICATES

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF SANTA CLARA  
16 DOWNTOWN SUPERIOR COURT

17 THE BANK OF NEW YORK MELLON FKA  
18 THE BANK OF NEW YORK AS TRUSTEE  
19 FOR THE BENEFIT OF THE  
20 CERTIFICATEHOLDERS, CWMBS, INC.,  
21 CHL MORTGAGE PASS-THROUGH  
22 TRUST 2007-J2 MORTGAGE PASS-  
23 THROUGH CERTIFICATES,

24 Plaintiff(s),

vs.

DEANNE BREWER and DOES I through X,  
Inclusive,

Defendant.

CASE NO.: 110CV163857  
APPLICATION FOR ORDER TO POST  
AND MAIL SUMMONS AND  
COMPLAINT - UNLAWFUL  
DETAINER (C.C.P. 415.45)

(ENDORSED)  
**FILED**

MAR 01 2010

DAVID H. YAMASAKI  
Chief Executive Officer/Clerk  
Superior Court of CA County of Santa Clara  
BY Lisa Wilson DEPUTY

**EXHIBIT A**


Pursuant to C.C.P. 415.45 and the attached Declaration re Diligent Attempts at Personal Service (incorporated herein by reference), Plaintiff hereby requests a court order to post in a manner most likely to give actual notice and to mail on Defendant, DEANNE BREWER and all occupants by certified mail, Plaintiff's Summons and Complaint-Unlawful Detainer at

# EXHIBIT A

1 Defendant's last known residence of 1303 CHEWPON AVENUE, MILPITAS, CALIFORNIA  
2 95035. Every reasonable attempt has been made to personally serve DEANNE BREWER and  
3 all occupants. The business address is unknown to Plaintiff. Defendant is a necessary party to  
4 this action.

5 I declare under penalty of perjury that the foregoing is true and correct. Executed this  
6 25th day of February, 2010, at Costa Mesa, California.

7 MILES BAUER, BERGSTROM & WINTERS, LLP

8   
9 Brian H. Tran, Esq.  
10 Attorneys for Plaintiff

## 11 ORDER

12 IT IS HEREBY ORDERED that Plaintiff may post and mail on Defendant, DEANNE  
13 BREWER and all other occupants in possession by certified mail, its Summons and Complaint-  
14 Unlawful Detainer at Defendant's last known residence of 1303 CHEWPON AVENUE,  
15 MILPITAS, CALIFORNIA 95035 in this proceeding pursuant to C.C.P. 415.45.

16 Dated: 2/27/10

17 Judge Lucy H. Koh  
18 Judge of the Superior Court  
19  
20  
21  
22  
23  
24

# EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) BRIAN H. TRAN Esq., Bar No. 255577 Miles, Bauer, Bergstrom & Winters, LLP 1665 Scenic Avenue, Suite 200 Costa Mesa, California 92626 Telephone: (714)481-9100 Fax: (714)481-9151 Attorney(s) for: Plaintiff Ref: 9015051			FOR COURT USE ONLY	
Superior Court of California, County of SANTA CLARA, DOWNTOWN SUPERIOR COURT				
THE BANK OF NEW YORK VS BREWER				
DECLARATION OF DUE DILIGENCE	DATE:	TIME:	DEPT.:	CASE NUMBER: 110CV163857

I ERIK DE LA FUENTE on the dates herein mentioned, over the age of 18 years and not a party to the action.  
I received copies of Summons-Unlawful Detainer-Eviction; Complaint for Unlawful Detainer; Prejudgment Claim of Right to Possession; Civil Case Cover Sheet.  
On 2/19/10, and that after due and diligent effort, I have been unable to effect personal service on the within named party.  
Dates and times of attempts with reported detail is listed below:

PARTY SERVED:

ALL OTHER OCCUPANTS

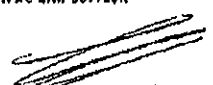
ADDRESS DATES AND TIMES ATTEMPTED

1303 CHEWPON AVENUE  
MILPITAS, CALIFORNIA 95035

02/19/10	08:50 PM	1 CAR IN DRIVEWAY, MERCEDES #6AZF974, NO ANSWER
02/20/10	07:50 AM	2 CARS IN DRIVEWAY, SAME MERCEDES AND ANOTHER CAR #3AVK006, NO ANSWER
02/21/10	01:00 PM	NO ANSWER, NO CARS
02/22/10	02:30 PM	NO ANSWER, NO CARS
02/23/10	08:00 PM	SAME 2 CARS ON DRIVEWAY, LIGHTS ON, NO ANSWER

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: February 24, 2010

Signature:   
ERIK DE LA FUENTE/2006-895/SAN FRANCISCO

# EXHIBIT B

SJM-130

## SUMMONS (CITACION JUDICIAL) UNLAWFUL DETAINER—EVICTION (RETENCION ILICITA DE UN INMUEBLE—DESALOJO)

### NOTICE TO DEFENDANT:

(AVISO AL DEMANDADO):

DEANNE BREWER and DOES I through X, Inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

SEE ADDITIONAL PARTIES ATTACHMENT

ENDORSED.

2010 FEB 18 P 12:54

Clark Sakai

CLERK OF SUPERIOR COURT  
SANTA CLARA COUNTY, CALIFORNIA

You have 5 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. (To calculate the five days, count Saturday and Sunday, but do not count other court holidays. If the last day falls on a Saturday, Sunday, or a court holiday then you have the next court day to file a written response.) A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county-law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

Tiene 5 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. (Para calcular los cinco días, cuente los sábados y los domingos pero no los otros días feriados de la corte. Si el último día cae en sábado o domingo, o en un día en que la corte esté cerrada, tiene hasta el próximo día de corte para presentar una respuesta por escrito). Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

1. The name and address of the court is:  
(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA  
191 NORTH FIRST STREET

CASE NUMBER:  
(Número del caso):

110CV163857

SAN JOSE, CALIFORNIA 95113  
DOWNTOWN SUPERIOR COURT

2. The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Brian H. Tran, Esq., Bar No. 255577 (714) 481-9100  
MILES, BAUER, BERGSTROM & WINTERS, LLP (714) 481-9151  
1665 Scenic Avenue, Suite 200 (09-11164)  
Costa Mesa, CA 92626

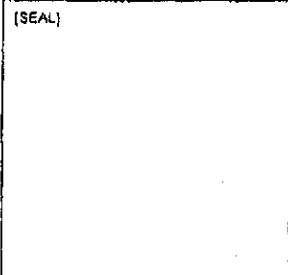
3. (Must be answered in all cases) An unlawful detainer assistant (Bus. & Prof. Code, §§ 6400-6415)  did not  did for compensation give advice or assistance with this form. (If plaintiff has received any help or advice for pay from an unlawful detainer assistant, complete item 6 on the next page.)

Date: FEB 18 2010  
(Fecha)

Clerk, by \_\_\_\_\_ Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

Clark Sakai



4. NOTICE TO THE PERSON SERVED: You are served

- a.  as an individual defendant.
  - b.  as the person sued under the fictitious name of (specify):
  - c.  as an occupant
  - d.  on behalf of (specify):
- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 CCP 415.46 (occupant)  other (specify):

DAVID H. YAMASAKI  
Chief Executive Officer, Clerk

5.  by personal delivery on (date):

Page 1 of 2



SHORT TITLE: THE BANK OF NEW YORK V. BREWER	CASE NUMBER:
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## INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff     Defendant     Cross-Complainant     Cross-Defendant

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATEHOLDERS, CWMBS, INC., CHL MORTGAGE PASS-THROUGH TRUST 2007-J2 MORTGAGE PASS-THROUGH CERTIFICATES

**EXHIBIT B**

1 MILES, BAUER, BERGSTROM & WINTERS, LLP  
Brian H. Tran, Esq., Bar No. 255577  
2 1665 Scenic Avenue, Suite 200 (BREWER / 09-11164)  
Costa Mesa, CA 92626  
3 Phone: (714) 481-9100  
Facsimile: (714) 481-9151  
4

Attorneys for Plaintiff,  
5 THE BANK OF NEW YORK MELLON FKA THE  
BANK OF NEW YORK AS TRUSTEE FOR THE  
6 BENEFIT OF THE CERTIFICATEHOLDERS,  
CWMBS, INC., CHL MORTGAGE PASS-THROUGH  
7 TRUST 2007-J2 MORTGAGE PASS-THROUGH  
CERTIFICATES  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SANTA CLARA  
11 DOWNTOWN SUPERIOR COURT  
12

13 THE BANK OF NEW YORK MELLON FKA  
THE BANK OF NEW YORK AS TRUSTEE  
14 FOR THE BENEFIT OF THE  
CERTIFICATEHOLDERS, CWMBS, INC.,  
15 CHL MORTGAGE PASS-THROUGH  
TRUST 2007-J2 MORTGAGE PASS-  
THROUGH CERTIFICATES,  
16

Plaintiff(s),  
17

vs.  
18

DEANNE BREWER and DOES I through X,  
19 Inclusive,  
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Defendant.  
21

Plaintiff alleges:  
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23 1. Plaintiff, THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW  
YORK AS TRUSTEE FOR THE BENEFIT OF THE CERTIFICATEHOLDERS, CWMBS,  
24 INC., CHL MORTGAGE PASS-THROUGH TRUST 2007-J2 MORTGAGE PASS-THROUGH  
CERTIFICATES ("Plaintiff"), is at all times mentioned a Corporation authorized to do business

ENDORSED

2010 FEB 18 P 12:54

CLERK OF SUPERIOR COURT  
SANTA CLARA COUNTY

Clark Sakai

EXHIBIT B

CASE NO. 10CV163857

COMPLAINT FOR UNLAWFUL  
DETAINER

[THE DEMAND DOES NOT EXCEED  
\$10,000]

## EXHIBIT B

1 in California and is the owner of and entitled to immediate possession of the subject property  
2 generally described as 1303 CHEWPON AVENUE, MILPITAS, CALIFORNIA 95035  
3 ("Property").

4 2. Plaintiff is informed and believes that Defendant, and each of them, are now and at all  
5 times mentioned herein were resident(s) of the County of SANTA CLARA, State of California.

6 3. Plaintiff is unaware of the true names and capacities whether individual, corporate,  
7 associate or otherwise of the Defendants sued as Does 1 through 10, inclusive, and therefore  
8 Defendants are sued under fictitious names. When the true names and capacities of the  
9 fictitiously named Defendants have been ascertained, Plaintiff will seek leave of the Court to  
10 amend this Complaint accordingly. Plaintiff is informed and believes that the fictitiously named  
11 Defendants are responsible in some manner for the events and happenings hereinafter referred to,  
12 thereby causing Plaintiff the damages herein alleged.

13 4. Plaintiff is informed and believes that DEANNE BREWER is in possession of the  
14 Property.

15 5. Prior to the commencement of this action, title to the subject Property was vested in  
16 the name or names of DEANNE BREWER. DEANNE BREWER was the original Trustor  
17 under a Deed of Trust, which secured the Property, recorded in the official records of SANTA  
18 CLARA County, California. The Deed of Trust contained a power of sale clause that allowed  
19 the Trustee to proceed with a non-judicial foreclosure upon default.

20 6. The Property was sold by the Trustee to Plaintiff at a Trustee's Sale. Said Trustee's  
21 Sale was held in accordance with California Civil Code §2924 et. seq.

22 7. The Trustee's Sale was duly perfected by recording a Trustee's Deed Upon Sale in the  
23 Office of the County Recorder of SANTA CLARA County, California. A true and correct copy  
24

## EXHIBIT B

1 of the Trustee's Deed Upon Sale is attached hereto as Exhibit "A" and incorporated herein by  
2 reference.

3 8. After Plaintiff obtained legal title to the Property, Plaintiff caused to be served on the  
4 Defendant a Notice to Quit. The Notice to Quit gave any tenant thirty (30) or ninety (90) days in  
5 which to vacate the Property and the previous owner or any other occupant three (3) days in  
6 which to vacate the Property upon service of the Notice to Quit.

7 9. Service of the Notice to Quit on DEANNE BREWER was effected by posting a copy  
8 of the Notice to Quit on the premises on November 13, 2009, and by mailing a copy of same on  
9 November 13, 2009, because defendant could not be found on the premises. Service of the  
10 Notice to Quit on all other occupants was effected by posting a copy of the Notice to Quit on the  
11 premises on November 13, 2009, and by mailing a copy of same on November 13, 2009, because  
12 the occupants could not be found on the premises. Attached hereto as Exhibit "B" is a true and  
13 correct copy of the Notice to Quit along with copies of the Proof of Service.

14 10. More than ninety (90) days have elapsed since service of said Notice to Quit on the  
15 Defendant, but Defendant has failed and refused to deliver up possession of the Property.

16 11. Plaintiff demands possession of the Property from the Defendant, and each of them,  
17 pursuant to California Code of Civil Procedure §1161a(b) and §1161a(c).

18 12. Defendant continues in possession of the Property without Plaintiff's permission or  
19 consent.

20 13. The reasonable daily rental value of the Property is \$152.05.

21 WHEREFORE, Plaintiff prays for Judgment against Defendant, and each of them, as  
22 follows:

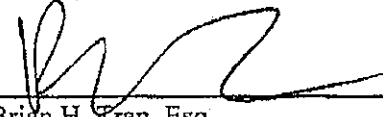
23 a) Restitution and possession of the Property;

## EXHIBIT B

- 1 b) An Order directing Defendant to quit and deliver up possession of the Property to  
2 Plaintiff;
- 3 c) Damages at the rate of \$152.05 per day, from and including February 12, 2010, for  
4 each day that Defendant continues in possession of the Property up to date of  
5 Judgment;
- 6 d) For costs of suit herein;
- 7 e) For such other relief as the Court deems just and proper.

8 Dated: February 12, 2010

MILES, BAUER, BERGSTROM & WINTERS, LLP

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11 Brian H. Tran, Esq.  
12 Attorneys for Plaintiff  
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