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6 Attorney for Plaintiff
7 MARGARET CARSWELL

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

11 MARGARET CARSWELL,
12 Plaintiff,
13 v.
14 JP MORGAN CHASE BANK N.A.,
15 CALIFORNIA RECONVEYANCE
16 CO., and DOES 1-150, inclusive,
17 Defendants.

No. CV10 5152 GW PLAx

DECLARATION OF PLAINTIFF
MARGARET CARSWELL IN
SUPPORT OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION

20 Margaret Carswell declares:

- 21 1. I am the plaintiff in this Action, I have personal knowledge of the facts
22 contained in this declaration and I am willing and competent to testify to their truth if
23 called as a witness.
24 2. I am the owner and resident of the single-family residence located at 845 Sea
25 Ranch Drive, Santa Barbara, California ("Property").
26 3. In December 2006 I borrowed money from Washington Mutual Bank and
27 signed a Promissory Note and a Deed of Trust. This was a refinance and the sixth such
28 loan I have obtained since purchasing the property.

1 4. In 1978 I graduated from McGill Law School in Montreal with two law
2 degrees. I have never practiced law full time.

3 5. In 1992 I was served with divorce papers, following a 12-year marriage that
4 resulted in three children, several residences and considerable material wealth. Soon
5 thereafter, I and my young children were evicted from our Santa Barbara home. I then
6 designed and built the home at issue in these pleadings.

7 6. In 2006 my property was subject to a \$1,200,000 mortgage. Illness, brought
8 on by the stress of the divorce, prevented me from being able to maintain paying
9 employment. In June of that year I suffered a nervous breakdown. During my recovery
10 I was introduced to a mortgage broker who convinced me to obtain a \$2,500,000
11 mortgage from Washington Mutual Bank. I signed a blank loan application in early
12 December.

13 7. Although I had the opportunity to contract with either of two other mortgage
14 companies, I chose to work with Washington Mutual, partly because I had had a
15 satisfactory previous mortgage with them and partly because of their reputation of not
16 selling off their loans but rather, keeping them in-house.

17 8. I signed the mortgage documents around 8 in the evening of December 20,
18 2006 at my home alone with a notary public, four days after the sudden death of my
19 mother. I was given no opportunity to review the documents. After I signed, the notary
20 took all the documents and told me that WaMu or Alliance Title Company would
21 forward the finalized documents to me. I never received any documents from either
22 source.

23 9. I did not enter into the mortgage contract lightly. I and a team of advisors
24 came up with a four-part plan for repayment of the mortgage loan, which plan has been
25 implemented.

26 10. I made regular monthly payments to the bank, was never late with a
27 payment and I have no other debt. I stopped making payments to Chase Bank in
28 December 2009 when the research I had begun two months earlier started to reveal non

1 disclosed securitization of my mortgage and many irregularities departing from usual
2 mortgage procedure.

3 11. I learned that after the repeal of the Glass-Steagall Act in 1999 and
4 certainly by 2001, the national banks changed the way they issued and dealt with
5 mortgages.

6 12. A laundry list of manipulations and misrepresentations on the part of these
7 national banks has come to my attention. Some of them include:

- 8 -predatory lending practices;
- 9 -altering loan applications;
- 10 -failure to follow usual underwriting procedures;
- 11 -financial coercion of underwriters;
- 12 -inventing questionable loans, such as option ARM's and negative amortization;
- 13 -failure to record assignments and notices;
- 14 -creation of REMIC Trusts to avoid IRS liability;
- 15 -failure to follow Consumer Protection laws such as the Truth in Lending Act,
16 the Real Estate Settlement Procedures Act, the Fair Debt Collection Act, and
17 California Business Code fair business procedures legislation;
- 18 -failure to respect the laws of equity regarding irrevocable trusts;
- 19 -multiple securitizations of the same loan;
- 20 -financial coercion of rating agencies;
- 21 -Credit Default Swaps, which caused the near bankruptcy of AIG and the
22 consequent government bail out of the "too big to fail" banks;
- 23 -misrepresentations to investment companies and/or potential investors;
- 24 -harassment of and disrespect toward borrowers.

25 13. The monies used to fund the mortgage loans were no longer derived from
26 within the bank's own assets but originated from money which investors provided to
27 purchase the Mortgage Backed Securities.

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1 14. The mortgage notes were separated from their collateral Deeds of Trust,
2 bundled into mortgage “pools” and securitized, rendering impossible the usual
3 completion of a mortgage contract where the promissory note and deed of trust are
4 returned to the original borrower.

5 15. When I finally received a copy of the Loan Application from Chase in
6 November 2009, I discovered the application stated that my income was \$50,300.00
7 per month and my California nonprofit corporation, Earth First Construction, had a net
8 worth of \$1,000,000. I did not provide these fictitious figures to the broker or the bank.

9 16. In early 2010, I received in the mail a copy of the Adjustable Rate Note
10 (“Note”) in the amount of \$2,500,000.00. The Note is not indorsed to Chase or anyone
11 else pursuant to UCC 3-204. It identifies the lender as WASHINGTON MUTUAL
12 BANK, FA. Neither my name nor initials appear in the body of the Note. The
13 signature page is undated and separate from all of the content of the Note, which
14 begins in paragraph 1: “In return for a loan that I have received...” The Note is dated
15 December 20, 2006. Funds were received and the Deed of Trust was recorded on
16 December 28, 2006.

17 17. I did a search at the County Recorder’s Office that led to the discovery of an
18 Assignment of Deed of Trust to Bank of America concerning “WaMu Mortgage Pass-
19 Through Certificates Series 2007-OA1Trust”. On January 29, 2010 I visited the
20 manager of our local BofA, who informed me unequivocally that BofA had no interest
21 in my mortgage. Subsequent research into this “Trust” revealed that my Note was
22 bundled along with thousands of other mortgage notes on or before January 1, 2007,
23 securitized by Pacific Investment Management Company and listed with at least two
24 companies, Transamerica Funds and Allianz Global Investors. Several of the
25 mortgages contained in the Trust have already been foreclosed.

26 18. None of these facts was disclosed to me by the lender or the broker. If I had
27 been informed that the lender intended to immediately sell my mortgage into one or
28 several Collateral Debt Obligations along with thousands of other mortgages, which

1 had not been subjected to correct underwriting standards and which the lender knew
2 had a strong possibility of failing, to such point that the lender in all probability took
3 out Credit Default Swaps in order to collect handsomely on the failure, in addition to
4 then foreclosing on the mortgaged properties, I would not have agreed to enter into a
5 mortgage contract with WaMu. I would have gone with another lender.

6 19. I was manipulated into signing a mortgage contract with WaMu by overt
7 and covert misrepresentations and nondisclosures. There was no meeting of the minds
8 with respect to the essential terms of the mortgage contract and the contract was void
9 *ab initio*.

10 20. In September 2008, WaMu was forced into bankruptcy and the bank's
11 assets, totaling over \$300 billion, which including 2,200 operating bank branches
12 throughout the West, were transferred to Chase by the FDIC for \$1.9 billion—2/3 of a
13 penny on the dollar.

14 21. Although there is a prevailing belief in our society that borrowers should be
15 liable for what they owe, a refinement of that belief, according to Bankruptcy Judge
16 John K Olson, is that borrowers should not be compelled to pay money to somebody
17 who doesn't have a right to it. Chase Bank has no right to receive payment under my
18 mortgage loan and has no right to foreclose on my property. Nor does Chase know,
19 any more than I do, who is the real owner and holder of the Note and Deed of Trust. At
20 any rate, it is not Chase Bank.

21 22. The terms of the Deed Of Trust were drafted by the defendants and their
22 agents and I was unable to contribute anything to this document except my signature.
23 The Deed of Trust states that the borrower is Margaret Carswell and also that the
24 borrower is the trustor. The lender is Washington Mutual Bank, FA and the lender is
25 the beneficiary. The trustee is California Reconveyance Company. Page three of this
26 document states that the "Borrower irrevocably grants and conveys to Trustee, in trust,
27 with power of sale, the following described property..." If borrower grants
28 irrevocably, the resulting trust becomes an irrevocable trust. This creates a fiduciary

1 duty in the trustee to operate in an arm's length capacity between the trustor and the
2 beneficiary. If the beneficiary no longer exists, the trustee must return the property to
3 the trustor.

4 23. No investor has shown up to claim an interest in my property. In mid-March
5 2010, I realized that Washington Mutual had sold my mortgage by early 2007 and
6 purportedly assigned the beneficial interest to LaSalle Bank, which was taken over by
7 Bank of America later in 2007. So on March 31, 2010, I wrote to California
8 Reconveyance (the Trustee named in the Deed of Trust) formally requesting it to file a
9 Full Reconveyance of my property title back to me, as being the only interested party
10 still remaining. They have refused to do so.

11 24. On April 30, 2010, I sent a Qualified Written Request (QWR) to defendant
12 CRC and WaMu, care of Chase Bank, pursuant to §6 of the Real Estate Settlement
13 Procedures Act. I have yet to receive any of the requested items.

14 25. On July 1, 2010, defendants recorded a Notice of Trustee's Sale stating that
15 they intend to sell my property at public auction on July 22, 2010.

16 26. I will be irreparably harmed if my home is sold at the Santa Barbara
17 courthouse on July 22, 2010.

18 27. Chase, employing tactics of harassment, intimidation and threats, has sought
19 to coerce me into paying loan monies to the bank. This behavior is oppressive.

20 28. Given that Chase has no interest in my mortgage, payments made by me to
21 this bank and a foreclosure of my residence by this bank would be unjust enrichment.
22 In good faith I paid \$107,766.23 to Chase and I am now requesting this sum be
23 returned to me as restitution and that Chase be ordered to cease and desist in its
24 attempts to unlawfully take my property.

25 29. My land and home are unique. I designed and built my home myself and
26 raised my three children there. I am turning my land into a showcase of design
27 sustainability for the community. If defendants' conduct is allowed to proceed, there
28 will be no adequate remedy in law. Furthermore, there is no harm or injury to

1 defendants to postpone the sale and allow this dispute to be resolved in court.

2 34. Therefore I respectfully ask the Court to enjoin defendants from proceeding
3 with the foreclosure sale, transferring ownership, encumbering my Property, or any
4 other action until the matter is resolved in Court.

5
6 DECLARATION

7 MARGARET CARSWELL declares: I am the Plaintiff in the above action. I declare
8 under penalty of perjury under the laws of California that the foregoing is true and
9 correct, except for matters stated on information and belief, and as to those matters, I
10 believe them to be true. Executed in Santa Barbara, CA on July 13, 2010.

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12 MS

13 Margaret Carswell
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