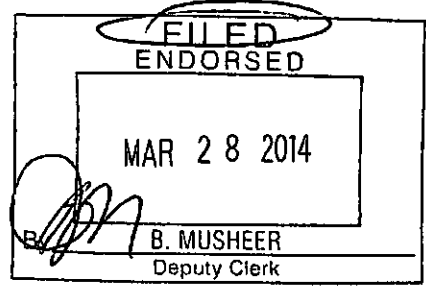


1 Ted A. Greene, Esq. (SBN: 220392)  
2 **LAW OFFICES OF TED A. GREENE, INC.**  
3 1912 F Street, Suite 110  
4 Sacramento, California 95811  
5 Telephone: (916) 442-6400  
6 Facsimile: (916) 266-9395  
7 Email: tgreene@tedgreenelaw.com

8 Attorneys for Plaintiffs,  
9 **THADDEUS J. POTOCKI and KELLY R. DAVENPORT**



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11  
12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF SACRAMENTO**

LAW OFFICES OF TED A. GREENE, INC.  
1912 F Street, Suite 110, Sacramento, California 95811  
Telephone: (916) 442-6400

12 THADDEUS J. POTOCKI and KELLY R.  
13 DAVENPORT,  
14  
15 Plaintiffs,  
16  
17 vs.  
18 WELLS FARGO BANK, N.A.; FIRST  
19 AMERICAN SERVICING SOLUTIONS, LLC;  
20 U.S. BANK, N.A.; and DOES 1 through 100,  
21 inclusive,  
22  
23 Defendants.

24 **CASE NO.: 34-2014-00160873**  
25  
26 **SUPPLEMENTAL MEMORANDUM**  
27 **OF POINTS AND AUTHORITIES IN**  
28 **SUPPORT OF EX PARTE**  
**APPLICATION FOR A TEMPORARY**  
**RESTRAINING ORDER AND AN**  
**ORDER TO SHOW CAUSE WHY A**  
**PRELIMINARY INJUNCTION**  
**SHOULD NOT BE ISSUED**

Date: March 28, 2014  
Time: 9:15 a.m.  
Dept.: 53

1 Plaintiffs THADDEUS J. POTOCKI and KELLY R. DAVENPORT (“Plaintiffs” or “Mr.  
2 Potocki and Mrs. Davenport”), by and through counsel, submit this Supplemental Memorandum  
3 of Points and Authorities in Support of the Ex Parte Application for a Temporary Restraining  
4 Order as follows:

5 **FACTUAL BACKGROUND**

6 Mr. Potocki and Mrs. Davenport purchased the subject property located at 3410 West  
7 Country Club Lane, Sacramento, California 95821, in 2004. The Trustee and only party  
8 authorized to foreclose under the subject Deed of Trust is Fidelity National Title. Plaintiffs have  
9 lived in and owned the home for nearly ten (10) years. It is their primary residence.

10 Plaintiffs fell several months behind on the subject mortgage. On February 4, 2010, a  
11 Notice of Default (“NOD”) was recorded against the primary mortgage secured by his home, the  
12 subject property. The NOD was filed by FIRSTAMERICAN and is believed to be filed on behalf  
13 of USBANK. However, the beneficiary under the Deed of Trust was Wells Fargo Bank, N.A.

14 Shortly thereafter, on April 9, 2010, a Substitution of Trustee was recorded by  
15 WELLSFARGO contending to substitute Plaintiffs’ trustee with FIRSTAMERICAN.

16 On April 29, 2010, Robert Bourne signed an Assignment of Deed of Trust purporting to  
17 transfer all beneficial interest in Plaintiffs’ Deed of Trust from WELLSFARGO to USBANK on  
18 behalf of WELLSFARGO.

19 On March 11, 2014, FIRSTAMERICAN recorded a Notice of Trustee’s Sale (“NTS”)  
20 (referencing T.S. No. CA1000192071) noting that the home was up for sale on April 1, 2014. In  
21 the NTS, FIRSTAMERICAN purports to be the Trustee under the Deed of Trust. However, the  
22 NTS is at odds with the Deed of Trust as the Deed of Trust explicitly names Fidelity National  
23 Title as Trustee and not FIRSTAMERICAN.

24 Plaintiffs allege that USBANK is acting on behalf of a trust that closed in 2005.  
25 Securitize trusts require the mortgage be pooled in prior to the closing date. As such, the 2010  
26 purported transfer was executed five (5) years late is void as a matter of law. Therefore,  
27

LAW OFFICES OF TED A. GREENE, INC.  
1912 F Street, Suite 110, Sacramento, California 95811  
Telephone: (916) 442-6400

1 USBANK is not the beneficiary and cannot authorize FIRSTAMERICAN and WELLSFARGO  
2 to foreclose on the subject mortgage.

3 As of the date of this Complaint, WELLSFARGO nor FIRSTAMERICAN are able to  
4 provide Plaintiffs or their counsel, confirmation that the April 1, 2014 sale has been taken off  
5 calendar. If Plaintiffs' home is sold at a foreclosure sale, they will be homeless.

6 **ARGUMENT**

7 **A. Recent Case Law Provides That The Parties Are Not Authorized To Foreclose And**  
8 **Plaintiff Is Likely To Succeed.**

9 As set forth in the Complaint and Plaintiffs' ex parte application, this mortgage originated  
10 through Wells Fargo but was subsequently assigned to a securitized trust known as WFASC or  
11 Wells Fargo Asset Securities Corporation. Any interest in a mortgage must be assigned to a trust  
12 prior to the closing of the trust or the assignment is void and the parties are not authorized to  
13 foreclose. (See *Glaski v. Bank of America* (2013) 218 Cal.App.4th 1079) Upon review of the  
14 WFASC trust's prospectus, the trust closed sometime in 2005. Accordingly, the 2010 assignment  
15 did not make the cutoff and is void.

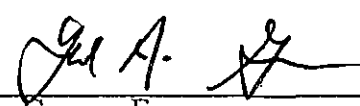
16 **CONCLUSION**

17 Based on the foregoing, Plaintiffs respectfully request this Court to issue a temporary  
18 restraining order enjoining defendants, and any and all of their employees, agents, servants, or  
19 anyone acting on their behalf, from advertising, holding, conducting or participating in any  
20 foreclosure sale or Trustee's Sale of Plaintiffs' real property commonly known as 3410 West  
21 Country Club Lane, Sacramento, California 95821, pending the resolution of this litigation or  
22 until further Order of this Court.

23  
24 DATED: March 28, 2014

Respectfully submitted,

LAW OFFICES OF TED A. GREENE, INC.

25  
26  
27 By:   
Ted A. Greene, Esq.

*Attorney for Plaintiff*

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1912 F Street, Suite 110, Sacramento, California 95811  
Telephone: (916) 442-6400

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DOWNTOWN COURTHOUSE  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO