

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SEE ATTACHED PAGE

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

THE PEOPLE OF THE STATE OF CALIFORNIA, and
THE CITY OF OAKLAND, a municipal corporation,

551186

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 11 2009

CLERK OF THE SUPERIOR COURT

By _____ Deputy

You have 30 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. 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), 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), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 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. 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.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede 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), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
1225 Fallon Street, Oakland, California 94612

CASE NUMBER
(Número del caso) **09440648**

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):

JOHN A. RUSSO, City Attorney - State Bar No. 129729, One Frank H. Ogawa Plaza, 6th Floor, Oakland, CA
AMBER MACAULAY, Attorney - State Bar No. 253925 Telephone: (510) 238-7543 Fax: (510) 238-6500

DATE: **MAR 11 2009**
(Fecha)

PAT S. SWEETEN

Clerk, by _____ Deputy
(Secretario) Executive Officer/Clerk of the Superior Court (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)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):

- 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)

other (specify):

- by personal delivery on (date):

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

JOSEPH MCNULTY, an individual;
BELLE ROSE PROPERTIES, INC., a business
organization; JP MORGAN CHASE BANK,
CHASE HOME FINANCE LLC,
CHASE MANHATTAN MORTGAGE CORPORATION,
and EMC MORTGAGE CORPORATION, business
organizations; GINA FORONDA, an individual;
DANIEL FELTON, an individual; and DOES 1
through 20, inclusive,

ENDORSED
FILED
ALAMEDA COUNTY

MAR 11 2009

CLERK OF THE SUPERIOR COURT
By E. BAKER

Deputy

1 JOHN A. RUSSO, City Attorney - SB #129729
2 RANDOLPH W. HALL, Chief Assistant City Attorney - SB #080142
3 JAMES F. HODGKINS, Supervising Trial Attorney - SB #142561
4 SHEENA WADHAWAN, Attorney - SB #248335
5 DAVID HALL, Attorney - SB #250736
6 AMBER MACAULAY, Attorney - SB #253925
7 One Frank H. Ogawa Plaza, 6th Floor
8 Oakland, California 94612
9 Telephone: (510) 238-7543 Fax: (510) 238-6500
10 X03305/555674

11 Attorneys for Plaintiff, The People of the
12 State of California and Plaintiff and
13 Real Party in Interest, The City of Oakland

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA
16 (UNLIMITED JURISDICTION)

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA,
19 Plaintiff, and
20 THE CITY OF OAKLAND, a municipal
21 corporation,
22 Plaintiff and Real
23 Party in Interest,

24 v.
25 JOSEPH MCNULTY, an individual; BELLE
26 ROSE PROPERTIES, INC., a business
organization; JP MORGAN CHASE BANK,
CHASE HOME FINANCE LLC, CHASE
MANHATTAN MORTGAGE
CORPORATION, and EMC MORTGAGE
CORPORATION, business organizations;
GINA FORONDA, an individual; DANIEL
FELTON, an individual; and DOES 1
through 20, inclusive,
Defendants.

Case No. 0909440648

COMPLAINT FOR VIOLATION OF
OAKLAND'S JUST CAUSE
ORDINANCE, INJUNCTIVE RELIEF,
AND OTHER EQUITABLE RELIEF

1 The People of the State of California as Plaintiff and the City of Oakland, as
2 Plaintiff and Real Party, hereinafter "Plaintiff" alleges against Defendants JOSEPH
3 MCNULTY, BELLE ROSE PROPERTIES, JP MORGAN CHASE BANK, CHASE HOME
4 FINANCE LLC, CHASE MANHATTAN MORTGAGE CORPORATION, EMC MORTGAGE
5 CORPORATION, GINA FORONDA, DANIEL FELTON and DOES 1 through 20,
6 hereinafter "Defendants", and each of them, as follows:

7 1. Plaintiff, the City of Oakland, is a municipal corporation and a
8 chartered city, organized and existing under the laws of the State of California.

9 2. Defendant JOSEPH MCNULTY is a licensed real estate broker with a
10 principal place of business in Mill Valley, California. He is licensed by the State of
11 California, and currently does business in Oakland, California.

12 3. Defendant BELLE ROSE PROPERTIES, INC. is a real estate
13 brokerage company. BELLE ROSE PROPERTIES is incorporated in the State of
14 California, has a business office in San Bruno, California, and currently does business in
15 Oakland, CA.

16 4. Defendant JP MORGAN CHASE BANK has an agent for service of
17 process in California, and currently does business in Oakland, CA through its subsidiaries
18 CHASE HOME FINANCE LLC, CHASE MANHATTAN MORTGAGE CORPORATION,
19 and EMC MORTGAGE CORPORATION.

20 5. Plaintiff is informed and believes and on that basis alleges that
21 Defendant GINA FORONDA is a California licensed real estate agent. Defendant GINA
22 FORONDA is an agent of Defendant EMC MORTGAGE CORPORATION, and currently
23 does business in Oakland, California.

24 6. Defendant DANIEL FELTON is a California licensed real estate
25 broker with a principal place of business in Hayward, California. DANIEL FELTON
26 currently does business in Oakland, California. During all times relevant to this complaint,

1 DANIEL FELTON acted as an employee and/or agent of Defendant CHASE HOME
2 FINANCE, LLC.

3 7. Venue is proper in Alameda County because the actions that give rise
4 to the allegations occurred at properties in Oakland, California, a city in Alameda County.

5 8. Defendants DOES 1 through 20 are sued as fictitious names, their
6 names and capacities being unknown to Plaintiff. When their true names and capacities
7 are ascertained, Plaintiff will amend this complaint.

8 9. Whenever reference is made to an act performed by Defendants
9 such allegations include the Defendants, their agents, managers, representatives,
10 employees or DOES 1 through 20 who performed or authorized such acts while engaged
11 in the operation, management, direction or control of the Defendants' affairs, and acting
12 within the scope of their duties.

13 **PRELIMINARY ALLEGATIONS**

14 10. Defendants JOSEPH MCNULTY, BELLE ROSE PROPERTIES, JP
15 MORGAN CHASE BANK, CHASE HOME FINANCE LLC, CHASE MANHATTAN
16 MORTGAGE CORPORATION, EMC MORTGAGE CORPORATION, GINA FORONDA,
17 and DANIEL FELTON provide eviction/foreclosure services as part of their real estate
18 business operations.

19 11. Defendants JOSEPH MCNULTY, BELLE ROSE PROPERTIES, JP
20 MORGAN CHASE BANK, CHASE HOME FINANCE LLC, CHASE MANHATTAN
21 MORTGAGE CORPORATION, EMC MORTGAGE CORPORATION, GINA FORONDA,
22 and DANIEL FELTON achieve sales of vacant foreclosed properties by violating
23 Oakland's Just Cause Ordinance (Oakland Municipal Code Sections 8.22.300 through
24 8.22.390). Plaintiff is informed and believes and on that basis alleges that tenants were
25 ousted from their homes by Defendants because a vacant home is more marketable and
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1 easier to sell. It is also the stated policy of Defendant CHASE HOME FINANCE, LLC to
2 "maintain its properties in an unoccupied status until they are sold." Defendants'
3 violations of the ordinance, include but are not limited to: 1) initiating the eviction process
4 without a specific just cause ground; 2) providing written eviction notices that do not state
5 a just cause ground, 3) failing to advise tenants of the Just Cause Ordinance or the
6 tenant's right to seek advice from the Oakland Rent Board; and 4) failing to file copies of
7 eviction notices served on the tenant with the Oakland Rent Board.

8 12. Plaintiff is informed and believes, and based on such information and
9 belief alleges that Defendants JOSEPH MCNULTY, BELLE ROSE PROPERTIES, JP
10 MORGAN CHASE BANK, CHASE HOME FINANCE LLC, and CHASE MANHATTAN
11 MORTGAGE CORPORATION, have violated tenants' rights and the Just Cause
12 Ordinance by the initiation of the eviction process at 848 A 54th Street, Oakland, CA, and
13 5410 Genoa Street, Oakland, CA. Defendants JP MORGAN CHASE, CHASE HOME
14 FINANCE LLC, CHASE MANHATTAN MORTGAGE CORPORATION, EMC MORTGAGE
15 CORPORATION, and GINA FORONDA have violated tenants' rights and the Just Cause
16 Ordinance by the initiation of the eviction process at 1640-1642 12th Street, Oakland, CA.
17 Defendants JP MORGAN CHASE, CHASE HOME FINANCE LLC, CHASE MANHATTAN
18 MORTGAGE CORPORATION, and DANIEL FELTON have violated tenants' rights and
19 the Just Cause Ordinance by the initiation of the eviction process at 2638 75th Avenue,
20 Oakland, CA.

21 13. Defendants JOSEPH MCNULTY, BELLE ROSE PROPERTIES, JP
22 MORGAN CHASE BANK, CHASE HOME FINANCE LLC, CHASE MANHATTAN
23 MORTGAGE CORPORATION, EMC MORTGAGE CORPORATION, GINA FORONDA,
24 and DANIEL FELTON additionally employ scare tactics through misleading language
25 contained in the standardized and illegal eviction notice that they serve on tenants. The
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1 notice advises tenants that the eviction process has already started and will not be
2 stopped, and that the bank will pursue legal action against the tenant for rent, possession
3 of the property, and monetary damages; acts which are plainly prohibited by state law
4 governing eviction procedure or predicated upon a lawful eviction proceeding being
5 initiated. Such actions also violate Oakland's Just Cause Ordinance.

6
7 **FIRST CAUSE OF ACTION**

8 **(Against Defendants JOSEPH MCNULTY, BELLE ROSE PROPERTIES, JP MORGAN**
9 **CHASE BANK, CHASE HOME FINANCE LLC, CHASE MANHATTAN MORTGAGE**
10 **CORPORATION, EMC MORTGAGE CORPORATION, GINA FORONDA, DANIEL**
11 **FELTON and DOES 1 THROUGH 20 - Violation of Oakland's Just Cause**
12 **Ordinance [Oakland Municipal Code Sections 8.22.300-390])**

13 14. Plaintiff incorporates by reference Paragraphs 1 through 13 as though
14 fully set forth herein.

15 15. The City of Oakland brings this action pursuant to Section 401(6) of
16 the Oakland City Charter, which authorizes the City Attorney to commence an action to
17 abate or remove a violation and restrain and enjoin any person from violating any
18 provisions of the Municipal Code, or other applicable laws, rules, and regulations. The
19 City Attorney is additionally empowered to enforce Oakland's Just Cause Ordinance
20 pursuant to Oakland Municipal Code Section 8.22.370.

21 16. Oakland's Just Cause Ordinance (Municipal Code Sections 8.22.300
22 through 8.22.390), provides multiple safeguards to tenant renters in the City of Oakland.
23 Protective elements of the ordinance include, *inter alia*, requirements that:

- 24 • a property owner must have just cause in order to evict (8.22.360(A));
- 25 • a written eviction notice must advise a tenant of the applicable just
26 cause ground, the Just Cause Ordinance and the tenant's right to
seek advice from the Oakland Rent Board (8.22.360(B)); and

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- copies of eviction notices must be filed with the Oakland Rent Board within 10 days of service on a tenant (8.22.360(B)).

17. Defendants JOSEPH MCNULTY, BELLE ROSE PROPERTIES, JP MORGAN CHASE, CHASE HOME FINANCE LLC, CHASE MANHATTAN MORTGAGE CORPORATION, EMC MORTGAGE CORPORATION, GINA FORONDA, and DANIEL FELTON have violated the Just Cause Ordinance at least as to the initiation of the eviction process at 848 A 54th Street, 5410 Genoa Street, 1640-1642 12th Street, and/or 2638 75th Avenue, Oakland, CA. Plaintiff is informed and believes that Defendants violated the Just Cause Ordinance at other, as yet unascertained, locations in Oakland as well. These violations include, but are not limited to: 1) initiating the eviction process without just cause; 2) providing written eviction notices that do not i) state a just cause ground, ii) advise tenants of the Just Cause ordinance or iii) advise tenants of their right to seek advice from the Oakland Rent Board; and 3) failing to file copies of eviction notices with the Oakland Rent Board within 10 days of service on the tenant.

18. Wherefore, Plaintiff seeks relief as hereinafter set forth.

SECOND CAUSE OF ACTION

**(Against Defendants JOSEPH MCNULTY, BELLE ROSE PROPERTIES, JP MORGAN CHASE BANK, CHASE HOME FINANCE LLC, CHASE MANHATTAN MORTGAGE CORPORATION, EMC MORTGAGE CORPORATION, GINA FORONDA, DANIEL FELTON and DOES 1 THROUGH 20 – Injunctive Relief
[Temporary Restraining Order, Preliminary and Permanent Injunctions])**

19. Plaintiff incorporates by reference Paragraphs 1 through 18 as though fully set forth herein.

20. Defendants' wrongful conduct, unless and until enjoined and restrained by order of this court, will cause great and irreparable injury to Plaintiff. During the pendency of the instant lawsuit, Defendants' on-going violations of Oakland's Just Cause Ordinance will cause harm to the City of Oakland through repeated and unchecked

1 violations of its municipal code. Tenants within the City of Oakland will also continue to be
2 subjected to Defendants' illegal "disposition procedures" during the pendency of litigation.

3 21. Plaintiff has no adequate remedy at law for the injuries currently being
4 suffered, and that are threatened. Pecuniary compensation will not afford adequate relief
5 from the unceasing violations of Oakland's municipal code and the resulting displacement
6 of tenants and their families from their lawful dwellings (Civ. Code § 3422(1)).

7 22. Wherefore, Plaintiff seeks relief as hereinafter set forth.

8
9 **PRAYER**

10 WHEREFORE Plaintiff prays for judgment as follows:

11 1. That pursuant to Oakland Municipal Code §§ 8.22.370(C), and Civil
12 Code § 1942.4, Defendants be ordered to pay Plaintiff's actual damages, costs and
13 attorney's fees.

14 2. That pursuant to Oakland Municipal Code § 8.22.370(C), and the
15 court's inherent equity powers, Defendants, and each of them, and their employees,
16 agents, salesmen, representatives, successors, assigns and all other persons,
17 corporations or other entities acting under, by, through or on behalf of said Defendants, or
18 acting in concert or participation with or for them with actual or constructive notice of this
19 injunction, be permanently enjoined from violating the provisions of Oakland's Just Cause
20 Ordinance (Oakland Municipal Code §§ 8.22.300 – 8.22.390) including, but not limited to,
21 the violations alleged in this complaint.

22 3. That pursuant to the court's inherent equity powers, Defendants, and
23 each of them, be ordered to allow tenants evicted by Defendants' unlawful actions to be
24 restored to their prior residence. Alternatively, if tenants have already found a new
25 residence, or Defendants are unable to restore tenants to their prior residence, that
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1 Defendants, and each of them, be ordered to pay the moving expenses and costs of
2 tenants.

3 4. That pursuant to the court's inherent equity powers, Defendants, and
4 each of them, be ordered to reimburse tenants for any other expenses incurred as a result
5 of Defendants' unlawful attempts to evict or evictions.

6 5. That Plaintiff has such other and further relief as the nature of the
7 case may require and the court deems appropriate and just.

8 DATED: March 11, 2009

9 JOHN A. RUSSO, City Attorney
10 RANDOLPH W. HALL, Chief Assistant City Attorney
11 JAMES F. HODGKINS, Supervising Trial Attorney
12 SHEENA WADHAWAN, Attorney
13 DAVID HALL, Attorney
14 AMBER MACAULAY, Attorney

15 By: Amber Macaulay
16 Attorneys for Plaintiff, The People of the State of
17 California and Plaintiff and Real Party in Interest
18 The City of Oakland
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