



1 Defendant Aurora filed its motion for judgment on the pleadings and completely  
2 failed to comply with this Court's Order. While the motion filed was called a "motion  
3 for judgment on the pleadings," Aurora advocates throughout the motion that it is  
4 decided on the Federal Rule of Civil Procedure 12(b)(6) standard (*see, e.g.*, Doc. 1833 at  
5 3). Thus, the Court does not see a distinction between a motion to dismiss under 12(b)(6)  
6 and a motion for judgment on the pleadings for purposes of Defendants' obligation to  
7 comply with the Order at Doc. 1803.

8 Further, the Court advised Defendant Aurora at the Rule 16 conference that the  
9 Court was "surprised" it did not even cite the Court of Appeals decision in the motion for  
10 judgment on the pleadings. Aurora's response was to indicate they would address it only  
11 if Plaintiffs addressed it in their response. However, a lawyer should address controlling  
12 case law even if the opposing side fails to cite it.<sup>1</sup> Moreover, the Court had twice told

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14 <sup>1</sup> Specifically, Aurora argues,

15 ..., even if Stejic's "and/or" allegation were [*sic*] generously construed as  
16 alleging Aurora caused the Deed to be recorded, Stejic offers zero factual  
17 enhancement for this bare allegation. Specifically, Stejic alleges no facts  
18 showing how or when Aurora allegedly caused QLS to record the Deed.  
19 Purely conclusory allegations of this type are insufficient to state a claim,  
20 and this pleading deficiency also requires dismissal. *See Haller v. Advanced*  
21 *Indus. Comp. Inc.*, 13 F. Supp. 3d 1027, 1029 (D. Ariz. 2014) (a motion for  
22 judgment on the pleadings, like a Rule 12(b)(6) motion, "is directed at the  
23 legal sufficiency of the opposing party's pleadings") (internal quotation  
24 omitted); *Twombly*, 550 U.S. at 555 (a pleader must provide "more than  
25 labels and conclusions, and a formulaic recitation of the elements of a cause  
of action will not do").

Doc. 1833 at 6-7.

In its opinion, the Court of Appeals stated:

Fourth, the MDL Court held that appellants had not pleaded their  
roboing claims with sufficient particularity to satisfy Federal Rule of  
Civil Procedure 8(a). We disagree. ... [T]he CAC also alleges that Jim  
Montes, who purportedly signed the substitution of trustee for the property  
for Milan Stejic had, on the same day, "signed and recorded, with differing  
signatures, numerous Substitutions of Trustee in the Maricopa County  
Recorder's Office....Many of the signatures appear visibly different than  
one another." These and similar allegations of the CAC "plausibly suggest  
an entitlement to relief," *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009) and

1 Defendants that the Court expected the Court of Appeals decision to be addressed.  
2 Nonetheless, in their Reply, Aurora still fails to mention it.

3 **Rule of Mandate**

4 ...the *Ischay* court instructed that the “so-called rule of mandate ‘presents a  
5 specific and more binding variant of the law of the case doctrine.’ The rule  
6 of mandate requires that, on remand, the lower court's actions must be  
7 consistent with both the letter *and the spirit* of the higher court's  
8 decision.”*Ischay*, 383 F.Supp.2d at 1214 (citations omitted). The court  
9 continued:

10 The rule of mandate is similar to, but broader than, the law of  
11 the case doctrine. A district court, upon receiving the mandate  
12 of an appellate court cannot vary it or examine it for any other  
13 purpose than execution. Thus, a district court could not refuse  
14 to dismiss a case when the mandate required it, and a district  
15 court could not revisit its already final determinations unless  
16 the mandate allowed it[.]

17 *Id.*, quoting *Cote*, 51 F.3d at 181 (citations omitted in original).

18 *Coto v. Astrue*, No. CV 07-3559-PLA, 2008 WL 4642965, at \*6 (C.D. Cal. Oct. 20,  
19 2008).

20 Here, as discussed above, Aurora fails to explain how this Court granting  
21 judgment on the pleadings under the exact same legal standard as the 12(b)(6) standard  
22 on which this Court has already been reversed would not violate the Rule of Mandate.  
23 This Court has reviewed the Opinion of the Court of Appeals and finds that it bars this  
24 Court from reconsidering dismissal under 12(b)(6) by way of a 12(c) motion.  
25 Accordingly,

**IT IS ORDERED** that Aurora’s motion for judgment on the pleadings (Doc.  
1833; CV 10-1547, Doc. 22) is denied.

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provide defendants fair notice as to the nature of appellants’ claims against  
them, *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

Doc. 1797-1 at 24-25.

Based on the foregoing, this Court finds that the Court of Appeals has already  
directly decided that Plaintiff Stejic stated a claim against defendants.

1           **IT IS FURTHER ORDERED** that Plaintiff's request for oral argument is denied  
2 because the parties have been given multiple opportunities to address the issue of concern  
3 to the Court and have repeatedly failed to do so. Thus, the Court finds that oral argument  
4 would not aid the Court's decisional process on this topic because the parties will not  
5 address it. *See e.g., Partridge v. Reich*, 141 F.3d 920, 926 (9<sup>th</sup> Cir. 1998); *Lake at Las*  
6 *Vegas Investors Group, Inc. v. Pacific. Dev. Malibu Corp.*, 933 F.2d 724, 729 (9<sup>th</sup> Cir.  
7 1991).

8           **IT IS FINALLY ORDERED** that the Clerk of the Court shall file a copy of this  
9 Order in both cases listed above.

10           Dated this 28th day of May, 2015.

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14           James A. Teilborg  
15           Senior United States District Judge  
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