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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BANK OF NEW YORK MELLON, AS  
INDENTURE TRUSTEE FOR ENCORE  
CREDIT RECEIVABLES TRUST  
2005-1,

Plaintiff,

v.

PEGGY GOMEZ; DAVID ALAN  
BOUCHER; NORTH AMERICAN  
TITLE; EXPEDIA LENDING GROUP;  
ALL PARTIES WITH ANY RIGHT,  
TITLE, OR INTEREST IN THE REAL  
PROPERTY AT 16225 DOUBLEGROVE  
STREET, LA PUENTE, CALIFORNIA;  
and DOES 1 through 25,

Defendants.

Case No. 2:12-cv-10622-ODW(JCx)

**ORDER DENYING DEFENDANTS'  
MOTIONS TO DISMISS [9], [16]**

**I. INTRODUCTION**

Defendants Boucher and Expedia Lending Group filed almost identical motions to dismiss Plaintiff Bank of New York Mellon's Complaint. (ECF Nos. 9, 16.) The Court finds that Defendants have not shown that Plaintiff failed to properly state a claim in its Complaint. The Court therefore **DENIES** the motions to dismiss.<sup>1</sup>

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<sup>1</sup> **Error! Main Document Only.** Having carefully considered the papers filed in support of and in opposition to the instant motions, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.



1 Rule 12(b)(6). *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003); Fed. R. Civ. P.  
2 8(a)(2).

3 For a complaint to sufficiently state a claim, its “[f]actual allegations must be  
4 enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v.*  
5 *Twombly*, 550 U.S. 544, 555 (2007). While specific facts are not necessary so long as  
6 the complaint gives the defendant fair notice of the claim and the grounds upon which  
7 the claim rests, a complaint must nevertheless “contain sufficient factual matter,  
8 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*  
9 *Iqbal*, 556 U.S. 662, 678 (2009).

10 *Iqbal*’s plausibility standard “asks for more than a sheer possibility that a  
11 defendant has acted unlawfully,” but does not go so far as to impose a “probability  
12 requirement.” *Id.* Rule 8 demands more than a complaint that is merely consistent  
13 with a defendant’s liability—labels and conclusions, or formulaic recitals of the  
14 elements of a cause of action do not suffice. *Id.* Instead, the complaint must allege  
15 sufficient underlying facts to provide fair notice and enable the defendant to defend  
16 itself effectively. *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011). The  
17 determination whether a complaint satisfies the plausibility standard is a “context-  
18 specific task that requires the reviewing court to draw on its judicial experience and  
19 common sense.” *Iqbal*, 556 U.S. at 679.

20 When considering a Rule 12(b)(6) motion, a court is generally limited to the  
21 pleadings and must construe “[a]ll factual allegations set forth in the complaint . . . as  
22 true and . . . in the light most favorable to [the plaintiff].” *Lee v. City of L.A.*, 250 F.3d  
23 668, 688 (9th Cir. 2001). Conclusory allegations, unwarranted deductions of fact, and  
24 unreasonable inferences need not be blindly accepted as true by the court. *Sprewell v.*  
25 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Yet, a complaint should be  
26 dismissed only if “it appears beyond doubt that the plaintiff can prove no set of facts”  
27 supporting plaintiff’s claim for relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.  
28 1999).

1 **IV. DISCUSSION**

2 Defendants’ motions to dismiss are nearly identical—they are incoherent and  
3 do not state a grounds for dismissal. First, Defendants contend Plaintiff’s verification  
4 of the Complaint is improper, and therefore the Complaint should be dismissed. Next,  
5 Defendants appear to argue that without production of documents from Plaintiff, the  
6 Complaint is somehow insufficient and should be dismissed. The Court addresses  
7 these arguments in turn.

8 **A. Verification of the Complaint**

9 Defendants argue that Diane Weinberger, the person who verified the  
10 Complaint on behalf of Plaintiff, “is not a competent fact based witness, nor is she the  
11 trespassed party in this instant action.” (ECF No. 4, at 3.) Defendants claim that  
12 Weinberger’s verification is therefore invalid, rendering the Complaint invalid.

13 The general rule in federal court is that a party need not verify a complaint  
14 unless a federal rule or statute provides otherwise. Fed. R. Civ. P. 11(a). Plaintiff’s  
15 analysis starts with the premise that this case is a quiet title action and therefore, is a  
16 proceeding in rem. *40235 Wash. St. Corp. v. Lusardi*, 976 F.2d 587, 589 (9th Cir.  
17 1992). Plaintiff then asserts that a complaint in an in rem action must be verified, and  
18 the Court must “look to the law of the state in which the district court is located to  
19 determine what constitutes proper verification” because the Federal Rules are silent on  
20 the correct form for a verification. Fed. R. Civ. P. Supplemental R. C(2)(a); *United*  
21 *States v. \$84,740.00 U.S. Currency*, 900 F.2d 1402, 1404 (9th Cir. 1990), *abrogated*  
22 *on other grounds by Republic Nat’l Bank of Miami v. United States*, 506 U.S. 80, 89  
23 (1992).

24 This analysis is incorrect. In *United States v. \$84,740.00 U.S. Currency*, the  
25 Ninth Circuit cited to Federal Rules of Civil Procedure Supplemental Rule C(2) and  
26 noted that a “complaint in an *in rem* action must be verified.” 900 F.2d at 1404.  
27 Based on this holding, Plaintiff suggests that the Complaint needs to be verified  
28 because it is an in rem action. But this reading is too broad—that holding concerned a

1 U.S. Government civil-forfeiture action against illicitly-derived currency. 900 F.2d at  
2 1403. The requirement of verifying a complaint does not apply in every in rem action  
3 brought in federal court. It is limited to actions described in the Supplemental Rules,  
4 and the Supplemental Rules only apply to admiralty and maritime claims or asset  
5 forfeiture actions. Fed. R. Civ. P. Supplemental R. A(1).

6 Notwithstanding Plaintiff's incorrect analysis, it was under no obligation to  
7 verify the Complaint. Thus, the Court **DENIES** the motions to dismiss on this  
8 ground.

9 **B. Request for documents**

10 Defendants also request a litany of documents in their motions—mostly  
11 originals of the documents referenced in the Complaint. Defendants appear to  
12 contend that this is a basis for dismissal because the Complaint is somehow defective  
13 unless Plaintiff produces these documents.

14 The Court **DENIES** Defendants' document requests and the motions to dismiss  
15 on this ground. This contention is not a proper basis for a dismissal. A motion to  
16 dismiss attacks the sufficiency of a plaintiff's pleadings. Failure to produce  
17 documents at this stage of litigation means nothing. Indeed, no discovery shall  
18 commence until the parties have conducted their Rule 26(f) conference. Fed. R. Civ.  
19 P. (d)(1).

20 **C. Artificial entities cannot proceed pro se**

21 Plaintiff also argues that Nicholas Griego cannot represent Expedia Lending  
22 Group for the purposes of the motion because Griego is not a licensed attorney. A  
23 corporation may appear in the federal courts only through licensed counsel. *Rowland*  
24 *v. Cal. Men's Colony*, 506 U.S. 194, 201–02 (1993).

25 But it is unclear exactly what type of entity Expedia Lending Group is. If it is  
26 the case that Expedia Lending Group is an alias under which Griego does business,  
27 then Griego may represent himself pro se. Nevertheless, because the motions to  
28 dismiss are **DENIED** on other grounds, the Court needs not rule on this point.

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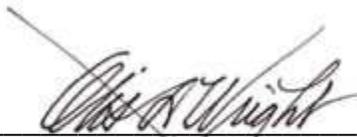
**V. CONCLUSION**

For the reasons discussed above, Defendants' motions to dismiss are **DENIED**. Defendants shall have 14 days to file an answer.

Further, the Court advises Defendants that a Federal Pro Se Clinic is located in the United States Courthouse at 312 N. Spring Street, Room 525, Fifth Floor, Los Angeles, California 90012. The clinic is open for appointments on Mondays, Wednesdays, and Fridays from 9:30 a.m. to 12:00 p.m. and from 2:00 p.m. to 4:00 p.m. The Federal Pro Se Clinic offers on-site information and guidance to individuals who are representing themselves in federal civil actions. Defendants are strongly encouraged to visit the clinic prior to filing their answer.

**IT IS SO ORDERED.**

March 11, 2013



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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**