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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANK NGUYEN, CHEERIE T. )  
MAGALIT, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
HOME 123 CORPORATION; DEUTSCHE )  
BANK NATIONAL TRUST COMPANY AS )  
TRUSTEE UNDER POOLING AND )  
SERVICING AGREEMENT DATED AS OF )  
APRIL 1, 2006 MORGAN STANLEY ABS )  
CAPITAL 1, INC. TRUST 2006-NC3 )  
MORTGAGE PASS-THROUGH )  
CERTIFICATES, SERIES 2006 NC3; )  
HOMEQ; T.D. SERVICES COMPANY; )  
and DOES 1 through 100 )  
inclusive, )  
 )  
Defendants. )  
\_\_\_\_\_ )

2:11-cv-01070-GEB-KJN

**OFFICIAL JUDICIAL CAPACITY  
COMPLAINT REQUESTING  
INVESTIGATION RE: WHETHER  
ATTORNEY PETER JASON  
CABBINESS (CALIFORNIA BAR NO.  
185376) VIOLATED CALIFORNIA  
RULES OF COURT 9.20(a)(1)  
AND/OR (4), AND/OR ABANDONED  
HIS CLIENTS IN THIS CASE; AND  
ORDER DISMISSING CASE FOR  
FAILURE TO PROSECUTE**

On June 14, 2011, counsel for Defendants that have filed a pending dismissal motion informed my deputy clerk via telephone that Plaintiffs' listed counsel of record, **Peter Jason Cabbiness (California Bar License No. 185376)**, is not eligible to practice law in California since his license is suspended. My deputy clerk informed me of the suspension on June 14, 2011, and on the same day I called and spoke to a representative of the California State Bar for the purpose of

1 confirming the suspension, the duration thereof, and whether Mr.  
2 Cabbiness was obligated to inform the court about his suspension.

3           The California State Bar representative informed me that Mr.  
4 Cabbiness was suspended from the practice of law on January 9, 2011, and  
5 could be eligible to have his suspension lifted on July 9, 2011. The  
6 representative of the California State Bar also informed me that  
7 California Rule of Court 9.20(a) requires suspended attorneys to give  
8 the following notifications:

9           Notify all clients being represented in pending  
10 matters and any co-counsel of [the attorney's] . .  
11 . suspension . . . and his or her consequent  
12 disqualification to act as an attorney after the  
13 effective date of the . . . suspension . . . and,  
14 in the absence of co-counsel, also notify the  
15 clients to seek legal advice elsewhere, calling  
16 attention to any urgency in seeking the  
17 substitution of another attorney or attorneys[.]

18 . . . .

19           Notify opposing counsel in pending litigation . . .  
20 of [a] . . . suspension . . . and consequent  
21 disqualification to act as an attorney after the  
22 effective date of the . . . suspension[,]. . . **and**  
23 **file a copy of the notice with the court . . .**  
24 **before which the litigation is pending for**  
25 **inclusion in the respective file or files.**

26 CAL. RULES OF COURT 9.20(a)(1), (4) (emphasis added).

27           Following receipt of this notice information from the  
28 California State Bar, I looked at the federal docket sheet for this case  
to determine on whom documents have been served and saw that a deputy  
clerk in the clerk's office made the following docket entry on April 21,  
2011, concerning Mr. Cabbiness's suspension:

          The electronic notifications of the filings in this  
case are undeliverable to Peter Cabbiness, counsel  
for plaintiffs. Therefore, the Clerk's Office  
looked at the website for the California State Bar  
and saw that Mr. Cabbiness is not eligible to  
practice law because of disciplinary action with  
actual suspension commencing on 1/9/2011.

1 (ECF No. 7.)

2 When reviewing the docket sheets, I also saw this case was  
3 removed from the California Superior Court in the County of San Joaquin  
4 ("state court"), and attempted to determine if the federal and/or state  
5 court docket sheets contained the notice required by California Rule of  
6 Court 9.20(a)(4). A portion of the state court docket sheet is attached  
7 to the Removal Petition (and also attached to this Order under the cover  
8 sheet marked "State Court Docket Sheet Attached to Removal Petition").  
9 I also examined the state court's electronic docket on its website (the  
10 portion of the state court electronic docket examined is attached to  
11 this Order under the cover sheet marked "Information on State Court  
12 Website Independently Reviewed by this Federal Court"). The federal  
13 court docket sheet also is attached to this Order (it is located under  
14 the cover sheet marked "Federal Court Docket Sheet"). Nothing I saw in  
15 the federal or state court docket sheets indicates that Mr. Cabbiness  
16 has notified either court of his suspended status.

17 Additionally, there is no indication in the federal or state  
18 court docket sheets that Mr. Cabbiness filed a substitution of counsel  
19 document in connection with his suspension, or that Plaintiffs retained  
20 new counsel, or that Plaintiffs are proceeding in propria persona. Under  
21 these circumstances, it is apparent that Plaintiffs have been proceeding  
22 in this case in propria persona even though the docket sheets do not  
23 indicate that Mr. Cabbiness has filed a request to withdraw as counsel  
24 of record for Plaintiffs.

25 Local Rule 182(d) of this federal court concerns formal  
26 withdrawal motions of counsel when the withdrawal could leave a client  
27 in propria persona, and prescribes:

28 [A]n attorney who has appeared may not withdraw  
leaving the client in propria persona without leave

1 of court upon noticed motion and notice to the  
2 client and all other parties who have appeared. The  
3 attorney shall provide an affidavit stating the  
4 current or last known address or addresses of the  
5 client and the efforts made to notify the client of  
6 the motion to withdraw.

7 E.D. Cal. R. 182(d); see also CAL. RULES OF PROF'L CONDUCT 3-700(B)(2) ("A  
8 member representing a client before a tribunal **shall withdraw from**  
9 **employment with the permission of the tribunal, if required by its**  
10 **rules, . . . if: . . . [t]he member knows or should know that continued**  
11 **employment will result in violation of these rules or of the State Bar**  
12 **Act[.]") (emphasis added); CAL. BUS. & PROF. CODE § 6125 (State Bar Act**  
13 **provision prescribing: "No person shall practice law in California**  
14 **unless the person is an active member of the State Bar").<sup>1</sup>**

15 Further, Local Rule 183(b) of this federal court requires "[a]  
16 party appearing in propria persona [to] keep the Court and opposing  
17 parties advised as to his or her current address." E.D. Cal. R. 183(b).  
18 This rule further prescribes:

19 If mail directed to a plaintiff in propria persona  
20 by the Clerk is returned by the U.S. Postal  
21 Service, **and if such plaintiff fails to notify the**  
22 **Court and opposing parties within sixty-three (63)**  
23 **days thereafter of a current address, the Court may**  
24 **dismiss the action without prejudice for failure to**  
25 **prosecute.**

26 Id. (emphasis added).  
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<sup>1</sup> It is unclear whether the California Rules of Court or Rules of Professional Conduct require an attorney to formally file a motion for an order authorizing withdrawal as counsel of record when the attorney is suspended from the practice of law. However, this is a clear requirement in Oklahoma's "Rules Governing Disciplinary Proceedings" in which the following is prescribed: "When the action of the [Oklahoma] Supreme Court [suspending an attorney from practicing law] becomes final, a lawyer who is . . . suspended . . . shall . . . file a formal withdrawal as counsel in all cases pending in any tribunal." OKLA. STAT. tit. 5, ch. 1, app. 1-A, Rule 9.1.

1           Local Rules 182(d) and 183(b) are intended, in part, to ensure  
2 that client contact information is known by the court so that the court  
3 and a party can communicate with a person litigating in propria persona.  
4 Nothing in the attached docket sheets indicates that Mr. Cabbiness or  
5 Plaintiffs have ever provided such contact information in this case;  
6 therefore, the court is unaware of each Plaintiff's whereabouts.

7           Since Plaintiffs were proceeding in this case in propria  
8 persona on April 21, 2011, when the clerk's office deputy clerk  
9 discovered that electronic notifications sent to Mr. Cabbiness were  
10 undeliverable, and because Plaintiffs failed to advise the federal court  
11 of their current address "within sixty-three (63) days thereafter," as  
12 required by Local Rule 183(b), this action is dismissed without  
13 prejudice under the rationale of Local Rule 183(b), which prescribes  
14 that "**the Court may dismiss [an] action without prejudice for failure to**  
15 **prosecute**" if the court has not been provided with contact information  
16 for a party proceeding in propria person within 63 days after a court's  
17 filed communication to the party is returned to the court. E.D. Cal. R.  
18 183(b) (emphasis added).

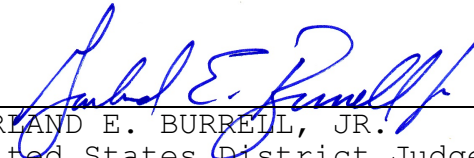
19           Lastly, since this Order contains a complaint requesting the  
20 California State Bar to investigate Mr. Cabbiness, the Clerk of the  
21 federal court shall mail a copy of this Order to:

22                   Office of the Chief Trial Counsel/Intake  
23                   The State Bar of California  
24                   1149 South Hill Street  
25                   Los Angeles, California 90015-2299

26           Specifically, I request the California State Bar to investigate whether  
27 Mr. Cabbiness abandoned Plaintiffs in this case by failing to notify  
28 either of them of his suspension, and by failing to file contact

1 information for either of them with this federal court or the state  
2 court.

3 Dated: June 24, 2011

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6 GARLAND E. BURRELL, JR.  
United States District Judge

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