

E-filed 6/15/2011

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CAROL G. NELMIDA, an individual,

Plaintiff,

v.

FLAGSTAR BANK, FSB; JOAN H. ANDERSON,
an individual; CITIMORTGAGE, INC., a New
York Corporation; CAL WESTERN
RECONVEYANCE CORPORATION, a California
Corporation; FANNIE MAE A/K/A FEDERAL
NATIONAL MORTGAGE ASSOCIATION;
MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC., a Delaware Corporation; and
Does 1 through 50, inclusive

Defendants.

Case Number 5:11-cv-1580-JF/HRL

ORDER¹ GRANTING MOTION TO
DISMISS WITH LEAVE TO AMEND

[Re: Docket No. 4]

Plaintiff Carol G. Nelmidia filed the instant action on March 8, 2011, in the Santa Clara Superior Court, alleging twenty-nine claims arising from home loans she obtained on June 10, 2003. Defendants CitiMortgage Inc., Federal National Mortgage Association (Fannie Mae), and Mortgage Electronic Registration Systems, Inc. (MERS) removed the case to this Court and moved to dismiss the complaint.

¹ This disposition is not designated for publication in the official reports.

1 Under this Court's Civil Local Rules, Plaintiff's opposition was due at least twenty-one
2 days before the noticed hearing date of June 24, 2011—here, not later than June 3, 2011. *See* Civ.
3 L.R. 7-3(a). As of the date of this order, Plaintiff has not filed opposition papers.

4 Several of Plaintiffs' claims arise from a loan obtained more than seven years before the
5 action was filed and do not allege facts sufficient to allege that the relevant statutes of limitations
6 should be tolled. In addition, several of the claims appear to be based on the allegation that the
7 note or deed of trust are void or voidable because the note was not produced prior to foreclosure.
8 However, as recent cases reaffirm, "California law does not require possession of the note as a
9 precondition to nonjudicial foreclosure under a deed of trust." *Pagtalunan v. Reunion Mortgage*
10 *Inc.*, No. C-09-00162 EDL, 2009 WL 961995, at*2 (N.D. Cal. Apr. 8, 2009). The other
11 arguments raised by Defendants are similarly well-taken. For these reasons, and because it is
12 unopposed, the motion to dismiss will be granted with leave to amend. Any amended pleading
13 shall be filed by July 7, 2008.

14 **ORDER**

15 For good cause shown,

- 16 (1) the motion to dismiss is GRANTED, WITH LEAVE TO AMEND;
17 (2) any amended pleading shall be filed by July 7, 2008;
18 (3) the hearing date of June 24, 2011 is VACATED.

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20 DATED: June 15, 2011

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22 JEREMY FOGEL
23 United States District Judge
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4 **IN THE UNITED STATES DISTRICT COURT**
5 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
6 **SAN JOSE DIVISION**
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8 CAROL G. NELMIDA, an individual,
9 Plaintiff,

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11 FLAGSTAR BANK, FSB; JOAN H. ANDERSON,
12 an individual; CITIMORTGAGE, INC., a New
13 York Corporation; CAL WESTERN
14 RECONVEYANCE CORPORATION, a California
15 Corporation; FANNIE MAE A/K/A FEDERAL
16 NATIONAL MORTGAGE ASSOCIATION;
17 MORTGAGE ELECTRONIC REGISTRATION
18 SYSTEMS, INC., a Delaware Corporation; and
19 Does 1 through 50, inclusive

20 Defendants.

Case Number 5:11-cv-01580 JF/HRL

CERTIFICATE OF SERVICE

21 I, the undersigned, hereby certify that I am an employee of the Office of the Clerk,
22 United States District Court, Northern District of California.

23 On June 15, 2011, I served a true and correct copy of the attached document to each of
24 the persons hereinafter listed by placing said copy in a postage paid envelope and depositing said
25 envelope in the United States mail, or by placing said envelope in the outgoing mail delivery
26 receptacle located in the Clerk's Office:

27 Carol G Nelmida
28 109 Tennant Avenue
San Jose, CA 95138

DATED: June 15, 2011

For the Court
Richard W. Weiking, Clerk

By: _____/s/
Diana Munz
Courtroom Deputy Clerk