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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

<p>FETUAO-SALAITA-TITIE and PIO TITIE,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>FIRST MAGNUS FINANCIAL CORP, INC.; LASALLE BANK NATIONAL ASSOCIATION; CAL-WESTERN RECONVEYANCE CORPORATION,</p> <p style="text-align: right;">Defendants.</p>	<p>CASE NO. 09cv0822 JM(AJB)</p> <p>ORDER GRANTING MOTION TO DISMISS; GRANTING LEAVE TO AMEND</p>
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Defendant LaSalle Bank National Association, as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-04 (“LaSalle”) moves to dismiss the complaint for failure to state a claim or, alternatively, for a more definite statement. Plaintiffs have not filed an opposition nor a statement of non-opposition as required by Local Rule 7.1(e)(2). Pursuant to Local Rule 7.1(d)(1), this matter is appropriate for decision without oral argument. For the reasons set forth below, the court grants the motion to dismiss and grants Plaintiffs 20 days leave to amend from the date of entry of this order.

BACKGROUND

Plaintiffs, proceeding in propria persona, commenced this action on March 9, 2009 in the Superior Court of the State of California, County of San Diego, by filing a complaint alleging seven causes of action for (1) request for promissory note; (2) violation of GAAP; (3) violation of RESPA

1 (12 U.S.C. §2605); (4) violation of TILA (15 U.S.C. §1601); (5) violation of UCC; (6) violation of
2 FDCPA (15 U.S.C. §1692 et seq., and (7) wrongful eviction.

3 Plaintiffs allege that on May 9, 2007 defendant First Magnus Financial Corporation, Inc.
4 provided a trust deed on their Oceanside property in the amount of \$412,250. At some point in time,
5 Plaintiffs received a notice of default. The complaint sets forth a litany of cases, statutes and other
6 authorities purportedly in support of Plaintiffs' claims. The following typifies the complaint's
7 allegations:

8 Because the checks were not cashed on the bank's cash reserves as they might have
9 been, and because the book entry liability debits it sustained when the checks were
10 presented from the various banks were offset by the book entry deposit of my note as
11 a commercial paper asset of the same value I had already provided to the transaction,
12 when all was said and done the bank bore no continuing equitable risk of loss to
13 recover anything of its own book entry assets as loan consideration extended, or loss
14 to its cash reserves of loan consideration extended, purported as basis for the terms of
15 its agreement. This of course changes the equitable cost and risk of the 'loan' to the
16 bank from that purported as a basis for the terms and giving of collateral security I was
17 induced to accept to obtain the loan.

18 (Compl. at p.24:3-10).

19 Based upon the complaints' "rambling dictation of case law, legal authority, constitutional
20 assertions, [and] irrelevant facts," (Motion at p.1:3-4), LaSalle moves to dismiss the complaint for
21 failure to state a claim or, alternatively, for a more definite statement.

22 DISCUSSION

23 Legal Standards

24 Federal Rule of Civil Procedure 12(b)(6) dismissal is proper only in "extraordinary" cases.
25 United States v. Redwood City, 640 F.2d 963, 966 (9th Cir. 1981). Courts should grant 12(b)(6) relief
26 only where a plaintiff's complaint lacks a "cognizable legal theory" or sufficient facts to support a
27 cognizable legal theory. Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990). Courts
28 should dismiss a complaint for failure to state a claim when the factual allegations are insufficient "to
raise a right to relief above the speculative level." Bell Atlantic Corp v. Twombly, __550 U.S. __, 127
S.Ct. 1555 (2007) (the complaint's allegations must "plausibly suggest[]" that the pleader is entitled
to relief); Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009) (under Rule 8(a), well-pleaded facts must do more
than permit the court to infer the mere possibility of misconduct). The defect must appear on the face
of the complaint itself. Thus, courts may not consider extraneous material in testing its legal

1 adequacy. Levine v. Diamantheset, Inc., 950 F.2d 1478, 1482 (9th Cir. 1991). The courts may,
2 however, consider material properly submitted as part of the complaint. Hal Roach Studios, Inc. v.
3 Richard Feiner and Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1989).

4 Finally, courts must construe the complaint in the light most favorable to the plaintiff. Concha
5 v. London, 62 F.3d 1493, 1500 (9th Cir. 1995), cert. dismissed, 116 S. Ct. 1710 (1996). Accordingly,
6 courts must accept as true all material allegations in the complaint, as well as reasonable inferences
7 to be drawn from them. Holden v. Hagopian, 978 F.2d 1115, 1118 (9th Cir. 1992). However,
8 conclusory allegations of law and unwarranted inferences are insufficient to defeat a Rule 12(b)(6)
9 motion. In Re Syntex Corp. Sec. Litig., 95 F.3d 922, 926 (9th Cir. 1996).

10 **The Motion to Dismiss**

11 Upon review of the complaint, the court concludes that it fails to set forth a short and plain
12 statement of Plaintiffs' claims as required by Fed.R.Civ.P. 8. Rule 8 requires a party's pleading to
13 contain "a short and plain statement of the claim showing that the pleader is entitled to relief."
14 Fed.R.Civ.P. 8(a)(2). "Rule 8's liberal notice pleading standard . . . requires that the allegations in the
15 complaint 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which
16 it rests.'" Pickern v. Pier 1 Imps. (U.S.), Inc., 457 F.3d 963, 968 (9th Cir. 2006).


17 Here, the complaint fails to provide Defendants with adequate notice of the claims asserted
18 against them. The 35 page complaint is primarily a collection of various statutes and legal authorities.
19 For example, Plaintiffs allege that they "object to alleged Lender's 'Bad-Check-Loan-Of-Bank-Credit'
20 imposed by 'Constructive Fraud without Scierter' (437 SW2d 20, 28) and further contrary to Court
21 Decisions: 'Banks cannot loan *Credit*' (181 Wis. 172; 144 SW 501, 69 SE 1123)." (Compl. at p.
22 6:25-27). This and similar allegations fail to adequately apprise Defendants of the nature of the claims
23 asserted against them such that they can prepare an adequate response to the complaint.

24 In sum, given the rambling and unintelligible nature of the complaint, the court grants the
25 motion to dismiss. The court also grants Plaintiffs 20 days leave to amend the complaint from the date
26 of entry of this order. Should Plaintiffs pursue the filing of a First Amended Complaint ("FAC") they
27 are instructed to limit its length to no more than 10 pages. Plaintiffs need not include a citation to case
28 authorities nor provide within the FAC a memorandum of points and authorities. Plaintiffs need only

1 set forth a short and plain statement showing that they are entitled to relief.

2 **IT IS SO ORDERED.**

3 DATED: June 15, 2009

4 
5 Hon. Jeffrey T. Miller
United States District Judge

6 cc: All parties

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