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

GALEN LEFTON,  
  
vs.  
  
GMAC MORTGAGE, et al.,  
  
Plaintiff,  
  
Defendants.

CASE NO. 10cv1781-LAB (NLS)  
**ORDER GRANTING MOTION TO  
PROCEED *IN FORMA PAUPERIS*;  
ORDER OF DISMISSAL; AND  
ORDER TO SHOW CAUSE RE:  
SANCTIONS**

**I. IFP Application**

Plaintiff Lefton, proceeding *pro se*, filed his complaint on August 25, 2010 along with a motion to proceed *in forma pauperis* (IFP). While Lefton has some assets and recently had an income of just over \$500 per week, the Court finds he meets the standard to proceed IFP. The motion is therefore **GRANTED**. Lefton is, however, **ORDERED** to notify the Court promptly if his financial situation changes for the better while this action is pending—for example, if he gets a job or receives income, or his assets increase above the level his application lists.

**II. Mandatory Screening**

Under 28 U.S.C. § 1915(e)(2), the Court is obligated to dismiss this case at any time if it determines that

(A) the allegation of poverty is untrue; or

1 (B) the action or appeal—

2 (I) is frivolous or malicious;

3 (ii) fails to state a claim on which relief may be granted; or

4 (iii) seeks monetary relief against a defendant who is immune from such relief.

5 As required under § 1915(e)(2)(B), the Court has reviewed the complaint in order to  
6 determine whether dismissal is required. See *Barren v. Harrington*, 152 F.3d 1193, 1194  
7 (9th Cir. 1998) (requiring, pursuant to 28 U.S.C. § 1915(e), preliminary screening of  
8 complaints brought *in forma pauperis*).

9 Lefton seeks actual damages of \$233,100, plus \$699,300 in punitive damages. Lefton  
10 styles himself “Petitioner” but uses undefined terms such as “Lender” and “Agent” to refer to  
11 people or entities who were somehow involved in events.

12 **A. The Complaint**

13 The 29-page complaint is styled “ORIGINAL PETITION.” It begins by identifying  
14 parties. This is followed by a “Statement of Cause” section, in which he alleges he “entered  
15 into a consumer contract for the purchase of a primary residence.” He claims the  
16 Defendants, “acting in concert and collusion with others, induced Petitioner to enter into a  
17 predatory loan agreement with Defendant.” (Compl. 2:6–8) (*sic*). He also alleges “numerous  
18 acts of fraud,” saying Defendants failed to give him proper notices, and “charged false fees  
19 to Petitioner at settlement.” (*Id.*, 2:8–13.)

20 This is followed by a section headed “IN BRIEF” with the subheading “(*Non-factual*  
21 *Statement of Posture and Position*),” beginning “It is not the intent of Petitioner to indict the  
22 entire industry” and going on to make non-specific accusations of fraud and conspiracy.

23 After this is a section headed “CAREFULLY CRAFTED CRIMINAL CONNIVANCE,”  
24 subheaded “(*General State of the Real Estate Industry*)” and “*THE BEST OF INTENTIONS.*”  
25 This section begins “Prior to the 1980's and 1990's ample government protections were in  
26 place to protect consumers and the lending industry from precisely the disaster we now

27 ///

28 experience.” (Compl, 3:11–13.) A second subsection is subheaded “*HOW IT WORKS.*”

1 This whole section purports to give a background of problems in the mortgage industry.

2 Following this is a section headed "PETITIONER WILL PROVE THE FOLLOWING,"  
3 naming eleven factual or legal propositions; a section headed "PETITIONER SEEKS  
4 REMEDY," discussing remedies (most of which are not requested in the prayer for relief) and  
5 including a subsection headed "PETITIONER HAS BEEN HARMED."

6 After this, the complaint embarks on a section headed "STATEMENT OF CLAIM."  
7 (Compl., 10:11.) Within this are subsections as follows:

8 *Defendants Lack Standing*

9 No evidence [sic] of Contractual Obligation

10 No Proper Evidence of Agency

11 Special Purpose Vehicle

12 *Criminal Conspiracy and Theft*

13 *Agent Practiced Up-Selling*

14 *Fraudulent Inducement*

15 *Extra Profit on Sale of Predatory Loan Product*

16 Extra Commission for Late Payments

17 Extra Income for Handling Foreclosure

18 Credit Default Swap Gambling

19 *Lender Attempting to Fraudulently Collect on Void Lien*

20 *Lender Profit by Credit Default Swap Derivatives*

21 *Lender Conspired with Appraiser*

22 *Lender Conspired with Trustee*

23 *Deceptive Advertising and Other Unfair Business Practices*

24 *Equitable Tolling for TILA and RESPA*

25 *Business Practices Concerning Disregarding of Underwriting Standards*

26 Low-Documentation/No-Documentation Loans

27 Easing of Underwriting Standards

28 Risk Layering



1 (N.D.Cal., filed August 11, 2010).<sup>2</sup>

- 2 • *Edward & Renee Fisher v. Bank of America Home Loans*,  
3 10cv3079-PA (D.Or., filed August 18, 2010).
- 4 • *Thomas Ray v. HSBC Bank, N.A.*, 10cv175-MR (W.D.N.C., filed  
5 August 20, 2010).
- 6 • *Ned & Kelly Carlsen v. One West Bank FSB*, 10cv80986-WPD  
7 (S.D.Fla., filed August 24, 2010).
- 8 • *Sullivan v. Quality Loan Service Corp.*, 10cv436-BLW (D.Id., filed  
9 August 27, 2010.)

10 The complaints (all also styled “ORIGINAL PETITION”)<sup>3</sup> have, in part, been individualized  
11 by filling in different plaintiffs’ and defendants’ names, contact information for the parties, and  
12 amount of damages sought, and adding or omitting some sections.

13 At least four other courts have already addressed the complaints’ adequacy. In *Ray*,  
14 Judge Reidinger denied a motion for a temporary restraining order, noting “In essence, the  
15 complaint is a harangue against the lending industry with no specific allegations against  
16 HSBC.” *Ray v. HSBC Bank*, 2010 WL 3528554, slip op. at \*1 (W.D.N.Y., Sept. 3, 2010).  
17 Judge Reidinger aptly described the complaint as containing “rambling, inarticulate  
18 accusations against the banking industry in general,” *id.*, and making factually inconsistent  
19 allegations. For example, the order points out that the complaint makes accusations against  
20 an “Agent” but doesn’t identify who or what the “Agent” is. *Id.* It inexplicably refers to  
21 “defendants” without identifying who, other than HSBC, was a defendant. *Id.* Judge  
22 Reidinger concluded the complaint was “most likely frivolous,” cautioned the plaintiffs about  
23 sanctions under Fed. R. Civ. P. 11, and concluded “The Plaintiff is heartily encouraged to  
24 consult an attorney before continuing with this litigation.” *Id.* at \*2.

25 Similarly, in *Fisher*, Judge Panner issued a detailed order dismissing the complaint  
26 for failing to meet the standard set forth in Fed. R. Civ. P. 8. *Fisher v. Bank of America*  
27 *Home Loans*, 2010 WL 4296609 (D.Or., Oct. 21, 2009). The order pointed out the complaint

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28 <sup>2</sup> The *Rippere* complaint omits four sections included in other complaints.

<sup>3</sup> The *Moran* complaint adds “AND PETITION FOR RESTRAINING ORDER.” It includes no such petition, however, except that (like the other complaints) it includes a request for an “emergency restraining order” enjoining foreclosure.

1 fell far short of the pleading standard set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
2 544, 555 (2007), and *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). 2010 WL 4296609, slip  
3 op. at \*2 (“The sparse factual allegations, taken as true, simply do not raise any viable  
4 claims.”) Among other things, the order pointed out that the complaint relied almost wholly  
5 on conclusions, and failed to connect the defendant with the harm the plaintiffs claim to have  
6 suffered. *Id.* at \*2–\*4.

7 In *Carlsen*, Judge Dimitrouleas granted the Defendant’s motion to dismiss in a brief  
8 order on the merits. *Carlsen*, 2010 WL 4123573 (S.D.Fla., Oct. 20, 2010).

9 Finally, in *Sullivan*, Judge Winmill, in ruling on another lender’s motion to intervene,  
10 noted the same types of defects, concluding the complaint failed to allege cognizable claims,  
11 and determining the complaint had to be dismissed. *Sullivan*, 2011 WL 124280, slip op. at  
12 \*5–\*6 (D.Id., Jan. 11, 2011).

13 The Court agrees with these four other courts that the complaint here, which makes  
14 the same allegations as the substantially identical complaints before them, fails to state a  
15 claim and must therefore be dismissed. It falls far short of the pleading requirements set  
16 forth in Fed. R. Civ. P. 8.

17 Besides lacking merit, it seems likely the complaint was copied from some outside  
18 source, and that the plaintiffs in the seven cases mentioned above probably also copied their  
19 complaints from the same source. Fed. R. Civ. P. 11(b) provides, in part:

20 By presenting to the court a pleading, written motion, or other  
21 paper—whether by signing, filing, submitting, or later advocating it—an  
22 attorney or unrepresented party certifies that to the best of the person's  
23 knowledge, information, and belief, formed after an inquiry reasonable under  
24 the circumstances:

25 . . .

26 (2) the claims, defenses, and other legal contentions are warranted by  
27 existing law or by a nonfrivolous argument for extending, modifying, or  
28 reversing existing law or for establishing new law; [and]

(3) the factual contentions have evidentiary support or, if specifically so  
identified, will likely have evidentiary support after a reasonable opportunity  
for further investigation or discovery . . . .

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1 Here, Lefton seems to have copied a huge amount of text almost verbatim from other  
2 sources and used it as his complaint. While two complaints could legitimately be similar or  
3 almost identical if the plaintiffs in each case reasonably believe they were harmed in the  
4 same way, that doesn't seem to be the case here. Here, the complaint relies on allegations,  
5 legal theories and arguments Lefton apparently copied from someone else without  
6 understanding what he was copying. Indeed, it is difficult to see how Lefton could even have  
7 believed he understood this vague and rambling complaint. Lefton made almost no changes  
8 to substantial portions of the text, including sections that obviously don't apply to him. In fact,  
9 the seven complaints in these cases even share the same typefaces, unnecessary  
10 underlinings, and typographical errors.

11 Cutting and pasting text wholesale with an uncritical eye and with no regard for  
12 whether the allegations are supported by facts or law is a violation of Rule 11. If that is what  
13 Lefton did, Rule 11(c) allows the Court to sanction him after notice and an opportunity to be  
14 heard.

### 15 **III. Conclusion and Order**

16 For the reasons explained in this order, the complaint is **DISMISSED WITHOUT**  
17 **PREJUDICE** for failure to state a claim. If Lefton wishes to amend his complaint, he may do  
18 so no later than the close of business on **March 17, 2011**.

19 If Lefton amends his complaint, he must at the same time file a memorandum of points  
20 and authorities, not longer than fifteen pages, showing why he should not be sanctioned  
21 under Rule 11(c) for misrepresenting that he had made an inquiry that was reasonable under  
22 the circumstances, and confirmed that his factual contentions and claims met the standard  
23 of Rule 11(b)(1) and (2). The page limit does not include any material attached as an exhibit  
24 to the memorandum or lodged with the court. The memorandum must explain where he got  
25 the text for the complaint, and what inquiries he made to confirm it was appropriate to file.  
26 If Lefton consulted with an attorney or someone he thought was an attorney, he must identify  
27 that person by name and provide the person's business address or other contact information,  
28 but he need not reveal any privileged communications.

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If Lefton fails to file an amended complaint within the time permitted, this action will be dismissed without leave to amend. If he amends but fails to show cause as ordered, the amended complaint will be dismissed with prejudice as a sanction for violation of Rule 11.

**IT IS SO ORDERED.**

DATED: February 23, 2011



**HONORABLE LARRY ALAN BURNS**  
United States District Judge