

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-00030-WYD-MEH

JOHN B. VIROSTEK, and
ROBIN WOOD-VIROSTEK,

Plaintiffs,

v.

INDYMAC MORTGAGE SERVICES,
ONE WEST BANK,
DEUTSCHE BANK NATIONAL TRUST, and
MORTGAGE ELECTRONIC REGISTRATION SYSTEM (MERS),

Defendants.

NOTICE OF CONVERSION TO SUMMARY JUDGMENT

Before the Court is the Defendants IndyMac Mortgage Services, OneWest Bank, FSB, Deutsche Bank National Trust and Mortgage Electronic Registration Systems' Motion to Dismiss Plaintiffs' Second Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) [docket #41], alleging that Plaintiffs fail to state a claim upon which relief may be granted in part because Plaintiffs agreed to release claims in exchange for a money payment. Plaintiffs timely filed a response to the motion and Defendants a reply brief in support of the motion. With the motion, the Defendants attached several documents in support of their position, including a copy of the settlement release.

Because the Defendants wish to support their Motion to Dismiss with evidence (documents) outside of the pleadings, it is proper to inform the parties that the Court will convert the Motion to Dismiss into a Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56. *See David v. City & County of Denver*, 101 F.3d 1344, 1352 (10th Cir. 1996). Consequently, either party may submit any additional briefing on the motion (particularly with respect to the alleged settlement), and in

such additional briefing, the parties may respond to the materials already submitted by the Defendants with any “material that is pertinent to the motion.” Fed. R. Civ. P. 12(d).

Therefore, it is ORDERED that any additional briefing by either party must be submitted on or before **April 20, 2012**.

Dated at Denver, Colorado, this 4th day of April, 2012.

BY THE COURT:

A handwritten signature in black ink that reads "Michael E. Hegarty". The signature is written in a cursive style with a large initial 'M' and 'H'.

Michael E. Hegarty
United States Magistrate Judge