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PLAINTIFF: *IN PRO SE*

2011 SEP -6 A 11: 16

4 **UNITED STATES DISTRICT COURT**  
5 **DISTRICT OF NEVADA**

7 LISA SLEPICOFF REYES , an individual,  
8 Plaintiff

CASE No.: 2:11-cv-01367-KJD -CWH

9 vs.

PLAINTIFF'S RESPONSE  
IN  
OPPOSITION TO DEFENDANTS'  
MOTION TO DISMISS

10 BAC HOME LOANS SERVICING, LP;  
11 RECONTRUST COMPANY, N.A.; MERSCORP,  
INC., a Virginia Corporation, MORTGAGE  
12 ELECTRONIC REGISTRATION SYSTEMS,  
INC. a subsidiary of MERSCORP, Inc., a  
13 Delaware corporation; FEDERAL NATIONAL  
MORTGAGE ASSOCIATION ; AND DOES  
14 individuals 1 to 100, Inclusive; and ROES  
Corporations 1 to 30, Inclusive;

15  
16 Defendants.  
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20 Plaintiff, Lisa Slepicoff Reyes *In Pro Se*, without submitting to the jurisdiction of this Court, as  
21 Plaintiff has also filed a "Motion to Remand" to the matter herein and accordingly hereby also files  
22 response in opposition to the "*Motion to Dismiss*" as filed on August 31, 2011 by the Defendant(s); *Bank*  
23 *of America , N.A. et al.* The Plaintiff herein responding makes a universal objection to each and every  
24 argument of the Defendant's Demurrer, as well as the Demurrer as a whole, on the basis that *the*  
25 *Demurrer is nothing but an improper attempt to argue the merits of the case (the truth of the alleged facts*  
26 *in particular) rather than the sufficiency of the pleadings.* The Plaintiff has provided specific pleading as  
27 required under the rules of the court. This response is supported by the Points and Authorities/ Standard  
28 of Review herein, the complete file and records of this action, and upon the arguments that may be  
presented at the hearing of Defendant's motion.

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**PRELIMINARY STATEMENT**

The defendant's engagement in this matter are in flagrant violation of accepted real estate recordation and due process of Federal and statutory laws, and is the precise reason that has lead to the initial filing of this lawsuit. The Plaintiff has directly suffered injury "but for" the Defendant's named herein, participation of who, what, when, how, and why of what amounts to a conspiracy to commit fraud and conversion upon the subject property of the Plaintiff.

The discoverable "direct (or indirect)" involvement in Plaintiff's mortgage in the variance of degrees by and of the defendant parties is not required to support action for conspiracy, much less, to allege causes to as contained in Plaintiff's " VERIFIED COMPLAINT". Defendants *aver without verification* to all causes of action contained within the Plaintiff's filed complaint. Defendant's arrogance and self-righteous egregious conduct simply knows no bounds *as blatantly evident within the recently filed SAC by the Nevada Attorney General.*

*See STATE OF NEVADA v. B of A et al.*

*in U.S. District Court of Nevada Case number: 3:11-cv-00135 RCJ-(RAM).*

Defendants in this case move the court "*to dismiss*" as if ANY innuendo of a notice pleading does not apply and considered to be absurd. Defendants are also equitably estopped in their efforts to do so as to allow a prejudicial adjudication as they claim the complaint does not allege any wrongdoing by them and that it should be dismissed. Plaintiff asserts that the complaint contains sufficient facts and allegations to put the defendants herein on proper notice of the claims against them. The the intentional efforts by the defendant servicers and their accomplices to force people into defaults and foreclosures under disguise of "*Motions to Dismiss*" are indeed becoming "classic procedure", and as such the Defendants' zealous conduct speaks for itself as validation of the allegations of the Complaint filed to the action herein.

Furthermore, the Plaintiff's pending motions to remand are now before the court and the decision of jurisdictional authority to rule on any action to the matter herein is now before the court as filed and the court should rule on issues of remand and further "*stay*" proceedings pending determination of all such issues concerning Federal court jurisdiction to *protect the both the court and the Plaintiff herein from unnecessary time and expense with respect to defendant's unverified averments in avoiding the true issues and merits of the case at bar.*

The Defendants' argument that this lawsuit is a misguided attempt of the Plaintiff to avoid financial obligations fails to recognize that homeowners have no recourse. By failing to act in good faith, the Defendants left the Plaintiff with no other option than to engage litigation for proper resolve to the controversy between the parties, the subject property and the obligations under the deed of trust.

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3 **STANDARD OF REVIEW**

4 **I. THE MOTION TO DISMISS SHOULD BE DENIED UNTIL**  
5 **DISCOVERY CAN TAKE PLACE**

6 Rule 12(b)(6) motions are viewed with disfavor. *Gilligan v. Jamco Dev. Corp.* 108 F.3d  
7 246, 249 (9th Cir. 1997). Dismissal without leave to amend is proper only in "extraordinary" cases.  
8 *United States v. City of Redwood*, 640 F.2d 963, 966 (9th Cir. 1981). When ruling on a 12(b)(6) motion,  
9 the complaint must be construed in the light most favorable to the plaintiff. *Parks Sch. of Bus. Inc. v.*  
10 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). The court must accept as true all material allegations in  
11 the complaint, as well as any reasonable inferences to be drawn from them. *Pareto v. FDIC*, 139 F.3d  
12 696, 699 (9th Cir. 1998).

13 Plaintiff makes valid claims against these Defendants. Defendants in these types of cases will  
14 do anything to relieve it of its obligations, including, but not limited to, the filing of a "*Motion to*  
15 *Dismiss*" *before any discovery has taken place to ascertain the procedures undertaken by the many*  
16 *defendants in this action to first procure a loan for the Plaintiff, then to foreclose and sell the*  
17 *Plaintiff's home based upon faulty notices, transfers, assignments and standing, without the*  
18 *original note, and before the Plaintiff can show that the alleged claim of interest by defendants*  
19 *was procured by fraud or, in the very least by violations of law.*

20 Until the parties are allowed to proceed through discovery, until the parties have the entire "true"  
21 file (the documents defendant provided may or may not be the entire documents), complete audit of the  
22 violations and the determination of the remedies for each violation are prejudicially unknown. Therefore,  
23 defendants are not differentiated in the Complaint, as of now, before discovery, the court is unaware of  
24 what defendant is responsible for what, and, as it is alleged in Plaintiff's complaint (see general  
25 allegations), that the defendants acted in concert.

26 Therefore Defendant's "*Motion to Dismiss*" will prevent discoverable verification for the benefit  
27 of all parties concerned and accordingly the benefit of Nevada case law precedents and statutory  
28 development concerning these matters and thus should not be allowed to stand with proper remand to the  
State Courts of Nevada.

1 **II. NOTICE PLEADING IS REQUIRED AND PLAINTIFF HAS**  
2 **ADEQUATELY PLED FACTS FOR EACH CAUSE OF ACTION**

3 It is a well set law "[t]he only issue involved in a demurrer hearing is whether the complaint, as it  
4 stands, unconnected with extraneous matters, states a cause of action."

5 *SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905. "Nor is a demurrer the appropriate  
6 procedure for determining the truth of disputed facts or what inferences should be drawn where  
7 competing inferences are possible." *CrossTalk Productions, Inc. v. Jacobson* (1998) 65 Cal.App.4th 631,  
8 635. To overcome a demurrer, a plaintiff need *only* plead facts that show he may be entitled to some  
9 relief. *Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572. Furthermore, if the plaintiff has stated a  
10 cause of action under *any possible legal theory*, it is *error for the trial court to sustain the demurrer*.  
11 *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463. "If a complaint, *liberally construed*, can  
12 state a cause of action, or if it is reasonably possible that the plaintiffs can cure the complaint by  
13 amendment, the trial court *should not sustain a demurrer* without leave to amend." *Dalton v. East Bay*  
14 *Mun. Utility Dist.* (1993) 18 Cal.App.4th 1566, 1570.[Emphasis added.]

15 Moreover, Rule (b)(6) must be read in tandem with Rule 8, which requires:

16 Federal Rule of Civil Procedure Rule 8 states the general rule of pleading that a  
17 Complaint need contain:

- 18 (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court  
19 already has jurisdiction and the claim needs no new jurisdictional support;
- 20 (2) a short and plain statement of the claim showing that the pleader is entitled to relief;  
21 and  
22 (3) a demand for the relief sought, which may include relief in the alternative or different  
23 types of relief.

24 "Notice pleading" is all that is required unless pleading a special matter as delineated in FRCP  
25 Rule 9. *Doe v See* (2009) 557 F.3d 1066, 1073-1074. cited the case relied upon very heavily by defendant  
26 in the case at bar, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d  
27 929 (2007). The Court in *Doe v See* cited *Twombly* for the proposition that nothing more is required other  
28 than a short and plain statement unless a special matter is alleged:

Under notice pleading rules, we require only "a short and plain statement" of the grounds for  
jurisdiction and the claim for relief. Fed.R.Civ.P. 8(a)(1), (2); see also *Bell Atlantic Corp. v.*  
*Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007). We do not impose a  
heightened pleading standard in the absence of "an explicit requirement in a statute or federal  
rule," *Skaffv. MerMien North America Beverly Hills, LLC*, 506 F.3d 832, 841 (9th Cir.2007);

1 In the very recent United States Supreme Court Case of *Ashcroft v. Iqbal*, (May 18,  
2 2009) --- S.Ct. ---, 2009 WL 1361536, the Court held that specific facts must be pled to allow  
3 the trial court to draw a reasonable inference that that the defendant is liable for the misconduct alleged.  
4 In the case at bar, Plaintiff has pled basic and specific facts for causes of action, and pled the specific  
5 matters, where needed, with the requisite particularity.

6 FURTHER;

7 Leave to amend a Complaint can meet the requirements (of) as thus allowed, to cure any  
8 defect as justice requires, *Firestone v. Firestone* (1996) 76 F.3d 1205, 1209.

9 Defendant's "*Motion to Dismiss*" fails as to the pleading requirements and within the  
10 reasonable discretion of the court as recognized by the precedents herein and as such is to  
11 be denied.

12 **III. PLAINTIFFS HAS VESTED INTEREST TO PURSUE CAUSES OF ACTION IDENTIFIED**

13 **IN THE COMPLAINT AGAINST DEFENDANTS**

14 When read as a whole and in context, Plaintiff's complaint states sufficient factual  
15 allegation to defeat Defendant's "*Motion To Dismiss*". Defendants motion incorrectly argues  
16 that Plaintiff " has no interest or claim involving the Subject Property at issue in this matter and  
17 that matters have been adjudicated as the issues of whether or not , and when , Plaintiff was  
18 provided with the proper disclosures, assignment /substitution of trustee, 'true' beneficiary  
19 standing, and notices, and statutory rights of due process is an issue of fact and cannot be  
20 dismissed without allowing Plaintiff to conduct discovery.

21 Defendants' argument fails on its face and is irrelevant in that it is "but for" the actions  
22 taken and as verified by Defendants own exhibits as provided to the court that in fact the  
23 Plaintiff is a principle of and within the material transactions pertaining to the Subject  
24 Property, and accordingly was also subject to the events when and how they have taken place  
25 throughout the dealings, the conduct of, and in association with, the Subject Property and  
26 concerning the Defendant parties that have transpired as they have leading to discoverable and  
27 further verifiable vested interest on behalf of the Plaintiff as filed herein.  
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1 **III. PLAINTIFFS HAS PENDING MOTION BEFORE THE COURT**

2 Now pending before the court is Motion to Remand and Motion to Stay Proceedings  
3 Pending Determination To Motion To Remand the case herein Plaintiff filed concurrently pursuant to 28  
4 USC § 1446 , 28 USC § 1447 pertaining to subject matter jurisdiction; failure of defendants to timely  
5 join in the removal action in writing; and to remand based on abstention grounds set forth within the  
6 Motion to Remand. The court should rule on issues of remand and further "stay" proceedings pending  
7 determination of all such issues concerning Federal court jurisdiction to protect the both the court and  
8 the Plaintiff herein from unnecessary time and expense with respect to defendant's unverified averments  
9 in avoiding the true issues and merits of the case at bar.

10 Therefore, "Motion To Dismiss" is *irrelevant* upon *true and justicible* discovery and adjudication  
11 of the matters pertaining to and of the rights and obligations of the parties as charged by virtue of the  
12 deed of trust pertaining to the subject property herein.

13 **In CONCLUSION**

14 [T]he Plaintiff's Complaint adequately states claims for relief against Defendant parties (all of  
15 them) as alleged. Therefore Defendant's "MOTION TO DISMISS" should be denied so to allow for  
16 proper adjudication on the discovery and the merits of the case at bar. Plaintiff's adequately met the  
17 burden under FRCP 8 of "notice" pleading. Alternatively, should the court find any deficiencies in the  
18 Complaint, Plaintiff requests leave to amended the Complaint pursuant to Federal Rule of Civil  
19 Procedure 15(a)(2).

20 The Plaintiff, respectfully request that this court deny the Defendant's "*Motion to Dismiss Plaintiff's*  
21 *Complaint*".

22  
23 DATED: this 6<sup>th</sup> day of September, 2011

24 BY:



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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that service of the foregoing document described as:

3 " *PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS* "  
4 was made on the 6<sup>th</sup> day of September , 2011 by depositing a copy for mailing, first class mail,  
5 postage prepaid at Las Vegas, Nevada to the following:

6  
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28  
BY   
Uninterested party of the matter herein.