

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 NINA S. GRIFFIN, )  
4 )  
5 Plaintiff, )  
6 vs. )  
7 COUNTRYWIDE HOME LOAN )  
8 SERVICING, LP, et al., )  
9 Defendants. )

Case No.: 2:11-cv-00953-GMN-PAL

ORDER

10 This is a mortgage foreclosure case filed by pro se Plaintiff Nina S. Griffin against  
11 Defendants The First American Corporation, Countrywide Home Loan Servicing, LP  
12 (“Countrywide”), Federal National Mortgage Association (“Fannie Mae”), MERSCORP,  
13 Inc. (“MERSCORP”), Mortgage Electronic Registration Systems, Inc. (“MERS”),  
14 ReconTrust Company, ReconTrust Company, N.A. (“ReconTrust”) (collectively,  
15 “Defendants”). The case was closed and judgment was entered on June 5, 2012. (ECF  
16 No. 60.)

17 Pending before the Court are seven motions filed by Plaintiff and Defendants after  
18 the case was closed: (1) Motion to Reconsider – Plaintiff (ECF No. 61); (2) Counter-  
19 motion for Attorney Fees – Defendant The First American Corporation (ECF No. 63); (3)  
20 Motion to Extend Time – Plaintiff (ECF No. 69); (4) Motion to Strike – Plaintiff (ECF  
21 No. 73); (5) Motion for Order to Show Cause – Plaintiff (ECF No. 76); (6) Motion to  
22 Strike – Defendants Countrywide, Fannie Mae, MERSCORP, MERS, and ReconTrust  
23 (ECF No. 78); and (7) Supplemental Request for Judicial Notice – Plaintiff (ECF No.  
24 82). Each motion is either fully briefed or the response and other briefing deadlines have  
25 all expired.

1                   **I. BACKGROUND**

2                   In 2005, Plaintiff executed a loan Note and Deed of Trust on her property located  
3 at 5222 Rock Cabin Court, North Las Vegas, Nevada 89031 (“the property”). Plaintiff  
4 subsequently defaulted on her mortgage payments.

5                   Plaintiff filed suit relating to the same property and foreclosure proceedings twice  
6 previously. Plaintiff first filed suit against Fannie Mae and Countrywide. See Griffin v.  
7 Countrywide Home Loans, Inc., No. 2:09-cv-01034-PMP-RJJ (D. Nev. 2009). Plaintiff  
8 subsequently filed suit against The First American Corporation, Countrywide, Fannie  
9 Mae, MERSCORP, MERS, ReconTrust Company, ReconTrust, BAC Home Loan  
10 Servicing, LP, Shalom Rubanowitz, Jessica Jassco, and Countrywide Home Loans, Inc.  
11 Homeownership Preservation Division. See Griffin v. Countrywide Home Loans Inc., No.  
12 2:09-cv-02384-PMP-LRL (D. Nev. 2010). The first action was dismissed with prejudice.  
13 In the second action, the federal court dismissed all federal claims that were barred by the  
14 doctrine of res judicata and remanded the remaining claims to state court. The state court  
15 also dismissed the complaint with prejudice, including in its order an admonishment to  
16 Plaintiff that if “she attempts to re-file claims that are barred by Res Judicata, the Court  
17 will consider awarding reasonable attorney’s fees and costs against Plaintiff.” (Ex. F to  
18 Defs.’ Second Mot. to Dismiss, ECF No. 28-6.)

19                   In the instant action, originally filed in state court and removed to this Court on  
20 June 10, 2011, Plaintiff filed suit a third time relating to the same property and  
21 foreclosure proceedings. Plaintiff filed her Amended Complaint (“Complaint”) before  
22 this Court on September 7, 2011, alleging ten causes of action: (1) quiet title; (2)  
23 deceptive trade practices; (3) wrongful foreclosure; (4) conspiracy to commit wrongful  
24 conversion; (5) statutorily defective foreclosure; (6) broken chain of custody; (7)

1 wrongful filing of unlawful detainer; (8) injunctive relief; (9) declaratory relief; and (10)  
2 violations of NRS 205.090. (ECF No. 24.)

3 On June 5, 2012, the Court granted Defendants' motion to dismiss and dismissed  
4 Plaintiff's complaint. (ECF No. 59.) The same day, the Clerk of the Court entered  
5 judgment accordingly. (ECF No. 60.) The following week Plaintiff initiated the instant  
6 series of motions before the Court with her Motion to Reconsider (ECF No. 61).

## 7 II. DISCUSSION

8 Plaintiff requests reconsideration of the Court's Order (ECF No. 59) of June 5,  
9 2012 pursuant to Federal Rules of Civil Procedure 59(e) and 60(b). Rule 59 governs  
10 motions for a new trial, as well as motions to alter or amend a judgment in certain cases  
11 where summary judgment has been granted. Fed. R. Civ. P. 59; see *School Dist. No. 1J v.*  
12 *ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), cert. denied, 512 U.S. 1236 (1994).

13 Here, there has been no trial and no grant of summary judgment, therefore this rule  
14 provides no basis for the Court to reconsider its Order granting the motion to dismiss.

15 Federal Rule of Civil Procedure 60, governing relief from a judgment or order,  
16 does provide a standard by which the Court might reconsider its Order:

### 17 **(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.**

18 On motion and just terms, the court may relieve a party or its legal  
19 representative from a final judgment, order, or proceeding for the following  
20 reasons:

- 21 (1) mistake, inadvertence, surprise, or excusable neglect;
- 22 (2) newly discovered evidence that, with reasonable diligence, could not  
23 have been discovered in time to move for a new trial under Rule 59(b);
- 24 (3) fraud (whether previously called intrinsic or extrinsic),  
25 misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released or discharged; it is based on an  
earlier judgment that has been reversed or vacated; or applying it  
prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

1 Fed. R. Civ. P. 60(b). The Ninth Circuit has distilled the grounds for reconsideration into  
2 three primary categories: (1) newly discovered evidence; (2) the need to correct clear  
3 error or prevent manifest injustice; and (3) an intervening change in controlling law.  
4 School Dist. No. 1J v. ACandS, Inc., 5 F.3d at 1263.

5 Plaintiff argues that this Court should reconsider its Order, first alleging that the  
6 Court erroneously stated that the case Griffin v. Countrywide Home Loans, Inc., No.  
7 2:09-cv-01034-PMP-RJJ (D. Nev. 2009) was dismissed with prejudice. Plaintiff attaches  
8 copies of the docket entries for the September 14, 2009, order and the Clerk's Judgment,  
9 as well as a copy of the Clerk's Judgment itself, as Exhibit A to her motion. Plaintiff  
10 does not attach a copy of the September 14, 2009, order itself. In that order, the motion  
11 to dismiss was granted, and the Clerk of Court was directed to enter judgment "in favor  
12 of Defendants and against Plaintiff." (September 14, 2009 Order at 2, Griffin v.  
13 Countrywide Home Loans, Inc., No. 2:09-cv-01034-PMP-RJJ (D. Nev. 2009), ECF No.  
14 31.) Federal Rule of Civil Procedure 41(b) governs involuntary dismissal of actions and  
15 claims, and states that "[u]nless the dismissal order states otherwise, a dismissal under  
16 this sub-division (b) and any dismissal not under this rule – except one for lack of  
17 jurisdiction, improper venue, or failure to join a party under Rule 19 – operates as an  
18 adjudication on the merits." Fed. R. Civ. P. 41(b). Dismissal was not for lack of  
19 jurisdiction, improper venue, or failure to join a party under Rule 19, and was therefore  
20 an adjudication on the merits. Because "an 'adjudication upon the merits' is the opposite  
21 of a 'dismissal without prejudice,'" Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S.  
22 497, 505 (2001), and the September 14, 2009, order did not state otherwise, that case was  
23 dismissed with prejudice, and the Court finds no error requiring reconsideration of its  
24 Order on this basis.

1 Plaintiff also requests reconsideration based on the Court's dismissal of her  
2 Complaint with prejudice, and without leave to amend. However, as stated in the Order,  
3 because the Court found that Plaintiff's claims are barred by the doctrine of res judicata  
4 and claim preclusion, the Complaint must be dismissed with prejudice. Accordingly, the  
5 Court finds no basis to reconsider on these grounds.

6 Plaintiff further requests reconsideration based on her allegation that the Court did  
7 not consider "the severe change in Nevada State law pursuant to AB 284 and the  
8 language specifically within concerning NRS 107.080, NRS 205.372." (Mot. to  
9 Reconsider, 7:14-15, ECF No. 61.) Nevada Assembly Bill 284 was effective as of  
10 October 1, 2011. A.B. 284, 76th Leg. (Nev. 2011). This legislation, as well as the  
11 remainder of Plaintiff's grounds for reconsideration were all addressed in the briefing and  
12 in Plaintiff's prior related actions. Accordingly, the Court does not find that the  
13 provisions of AB 284 or any other argument already presented to this Court provides any  
14 basis to alter its Order.

15 As to the Motion for Attorney Fees (ECF No. 63), the Court finds that because  
16 Plaintiff's Motion to Reconsider and her initiation of this action was not clearly made in  
17 bad faith, the requested amount of \$10,694.50 in attorney fees will be denied. The Court  
18 will consider sanctions, however, if Plaintiff fails to comply with this Order or any other  
19 order of the Court.

### 20 **III. CONCLUSION**

21 Having read and considered the parties' arguments for the Motion to Reconsider  
22 (ECF No. 61), and the remaining motions, and finding good cause,

23 **IT IS HEREBY ORDERED** that the Motion to Reconsider (ECF No. 61) is  
24 **DENIED.**

1           **IT IS FURTHER ORDERED** that the Motion for Attorney Fees (ECF No. 63) is  
2 **DENIED.**

3           **IT IS FURTHER ORDERED** that the Motion to Extend Time (ECF No. 69) is  
4 **GRANTED.**

5           **IT IS FURTHER ORDERED** that the Motion to Strike (ECF No. 73) is  
6 **DENIED.**


7           **IT IS FURTHER ORDERED** that the Motion for Order to Show Cause (ECF  
8 No. 76) is **DENIED.**

9           **IT IS FURTHER ORDERED** that the Motion to Strike (ECF No. 78) is  
10 **GRANTED.**

11           **IT IS FURTHER ORDERED** that Plaintiff's Supplemental Request for Judicial  
12 Notice (ECF No. 82) is **GRANTED.**

13           **IT IS FURTHER ORDERED** that no further filings shall be accepted in this  
14 closed action without leave of the Court. If any party wishes to request leave to file, the  
15 requested document shall be attached to a motion explaining why good cause exists for  
16 the Court to give leave. Failure to comply with this Order will result in sanctions being  
17 imposed.

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20           DATED this 16 day of January, 2013.

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25           Gloria M. Navarro  
                  United States District Judge