

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 REBECCA NANCE, )
4 )
5 Plaintiff, )
6 vs. )
7 GREEN POINT MORTGAGE; )
8 COUNTRYWIDE MORTGAGE; BAC )
9 HOME LOANS; AURORA LOAN )
10 SERVICES; OLD REPUBLIC; and U.S. )
11 BANK, )
12 Defendants. )

Case No.: 2:12-cv-01999-GMN-PAL

ORDER

12 This action arises out of the foreclosure proceedings initiated against the property of pro
13 se Plaintiff Rebecca Nance. (Compl., ECF No. 1.) Pending before the Court is the Motion to
14 Dismiss (ECF No. 7) filed by Defendants GreenPoint Mortgage Funding, Inc. ("GreenPoint"),
15 Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, L.P. ("Bank of
16 America"), U.S. Bank, N.A. ("U.S. Bank"), Countrywide Mortgage ("Countrywide"), and
17 Aurora Loan Services ("Aurora Loan") (collectively, "Defendants"). Plaintiff filed a Response
18 (ECF No. 11), and Defendants filed a Reply (ECF No. 14).

19 I. BACKGROUND

20 This action is apparently the second filed by Plaintiff and litigated in federal court,
21 relating to the property located at 7275 Childers Avenue, Las Vegas, Nevada, 89178, APN
22 #:176-27-813-020 ("the property"). See Nance v. GreenPoint Mortg., 2:11-cv-00776-KJD-
23 GWF (D. Nev. 2011).

24 In the prior action, Plaintiff filed suit with co-plaintiff Brian Brown, and named
25 Defendants GreenPoint, Countrywide, BAC Home Loan (Bank of America), and Aurora Loan

1 as defendants. Id. Plaintiff also named as defendants Silver State Trustee Services, LLC, and  
2 Mountains Edge Master Association. Id. Plaintiff's causes of action were for: (1) Fraud – All  
3 Named Defendants; (2) Breach of Duty of Good Faith and Fair Dealing – Against All  
4 Defendants; (3) Quiet Title; (4) Breach of Fiduciary Duty; (5) For a Temporary Restraining  
5 Order, Permanent Injunction and for Damages against All Defendants for Wrongful  
6 Foreclosure Wrongful Attempted Foreclosure; (6) Suitability; (7) Negligence; (8) Liability Per  
7 Se; (9) Negligence Misrepresentation; (10) Unfair Lending Practices against All Defendants;  
8 and (11) Intentional Infliction of Emotional Distress and, in the alternative, Negligent Against  
9 All Defendants. Id.

10 In that action, on July 1, 2011, Plaintiff's complaint was dismissed and judgment was  
11 entered in favor of all defendants pursuant to Rule II.7-2(d) of the Local Rules of Civil Practice  
12 for the United States District Court in the District of Nevada and because Plaintiff failed "to  
13 either name parties as Defendants, except in the caption, or to make any specific factual  
14 allegations against the parties upon which relief may be granted." Id.

15 Here, Plaintiff has named two defendants not named in the prior action: Defendant "Old  
16 Republic," who has not yet entered an appearance in this action<sup>1</sup>, and Defendant U.S. Bank.  
17 (Compl., ECF No. 1.) She has named the exact causes of action alleged in the prior action, but  
18 has added one additional cause of action with the heading, "Violation of the AB-284." (Id.)

19 The publicly recorded documents submitted to the Court indicate that the Deed of Trust  
20 on the property secured a loan in March 2007 from Defendant GreenPoint, as beneficiary, to  
21 Plaintiff as her sole and separate property. (Deed of Trust, Ex. B to Mot. to Dismiss, ECF No.  
22 7-2.) Mortgage Electronic Registration Systems, Inc. ("MERS") was named as beneficiary

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24 <sup>1</sup> On November 21, 2012, Plaintiff filed Proof of Service for Defendants, indicating that Defendants were all  
25 served on November 19, 2012, by server "Brian Brown" of 7278 Childers Avenue, Las Vegas, Nevada, 89178.  
(ECF No. 6.) With the exception of Defendant U.S. Bank, Defendants were all served via "Frances Gutierrez" of  
"CSC Services of Nevada." (Id.) Plaintiff's Proof of Service for Defendant U.S. Bank lists an individual named  
"Tiffany" with no surname, title or company identification. (Id.)

1 solely as nominee for the Lender and Lender's successors and assigns, and Marin  
2 Conveyancing Corp. was named as Trustee. (Id.) On June 3, 2008, a Notice of Default was  
3 recorded under the Deed of Trust, by "Old Republic National Title Insurance Company, as  
4 agent for the Beneficiary." (Notice of Default, Ex. C to Mot. to Dismiss, ECF No. 7-3.) On  
5 September 10, 2008, Defendant GreenPoint recorded a Substitution of Trustee that was dated  
6 August 8, 2008, naming Old Republic, Default Management Services, as Trustee under the  
7 Deed of Trust. (Substitution of Trustee, Ex. D to Mot. to Dismiss, ECF No. 7-4.)

8 After the judgment was entered and a lis pendens expunged for the prior action in July  
9 2011, MERS recorded an Assignment on June 13, 2012, transferring the beneficial interest  
10 under the Deed of Trust to Defendant U.S. Bank. (Assignment, Ex. N to Mot. to Dismiss, ECF  
11 No. 7-14.) On October 11, 2012, a Notice of Trustee's Sale was recorded by "Old Republic  
12 Default Management Services, a Division of Old Republic National Title Insurance Company  
13 as the duly appointed Trustee under and pursuant to the Deed of Trust." (Notice of Trustee's  
14 Sale, October 2012, Ex. O to Mot. to Dismiss, ECF No. 7-15.) This Notice of Trustee's Sale  
15 set a date of November 2, 2012, for a foreclosure sale under the Deed of Trust. (Id.)

16 Plaintiff filed the instant action on November 19, 2012. (Compl., ECF No. 1.) Plaintiff  
17 also recorded a Notice of Lis Pendens on November 21, 2012. (Notice of Lis Pendens,  
18 November 2012, Ex. Q to Mot. to Dismiss, ECF No. 7-17.)

## 19 **II. LEGAL STANDARD**

20 Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a  
21 cause of action that fails to state a claim upon which relief can be granted. *See North Star Int'l*  
22 *v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to  
23 dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the  
24 complaint does not give the defendant fair notice of a legally cognizable claim and the grounds  
25 on which it rests. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering

1 whether the complaint is sufficient to state a claim, the Court will take all material allegations  
2 as true and construe them in the light most favorable to the plaintiff. See *NL Indus., Inc. v.*  
3 *Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

4 The Court, however, is not required to accept as true allegations that are merely  
5 conclusory, unwarranted deductions of fact, or unreasonable inferences. See *Sprewell v. Golden*  
6 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action  
7 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a  
8 violation is plausible, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing  
9 *Twombly*, 550 U.S. at 555) (emphasis added).

10 In order to survive a motion to dismiss, a complaint must allege “sufficient factual  
11 matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,  
12 556 U.S. 662, 678 (2009) (internal quotation marks omitted). “A claim has facial plausibility  
13 when the plaintiff pleads factual content that allows the court to draw the reasonable inference  
14 that the defendant is liable for the misconduct alleged.” *Id.*

15 A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b)  
16 for failure to comply with Federal Rule of Civil Procedure 8(a). *Hearns v. San Bernardino*  
17 *Police Dept.*, 530 F.3d 1124, 1129 (9th Cir.2008). Rule 8(a)(2) requires that a plaintiff’s  
18 complaint contain “a short and plain statement of the claim showing that the pleader is entitled  
19 to relief.” Fed. R. Civ. P. 8(a)(2). “Prolix, confusing complaints” should be dismissed because  
20 “they impose unfair burdens on litigants and judges.” *McHenry v. Renne*, 84 F.3d 1172, 1179  
21 (9th Cir.1996). Mindful of the fact that the Supreme Court has “instructed the federal courts to  
22 liberally construe the ‘inartful pleading’ of pro se litigants,” *Eldridge v. Block*, 832 F.2d 1132,  
23 1137 (9th Cir. 1987), the Court will view Plaintiff’s pleadings with the appropriate degree of  
24 leniency.

25 “Generally, a district court may not consider any material beyond the pleadings in ruling

1 on a Rule 12(b)(6) motion . . . . However, material which is properly submitted as part of the  
2 complaint may be considered on a motion to dismiss.” Hal Roach Studios, Inc. v. Richard  
3 Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly,  
4 “documents whose contents are alleged in a complaint and whose authenticity no party  
5 questions, but which are not physically attached to the pleading, may be considered in ruling on  
6 a Rule 12(b)(6) motion to dismiss” without converting the motion to dismiss into a motion for  
7 summary judgment. Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule  
8 of Evidence 201, a court may take judicial notice of “matters of public record.” Mack v. S. Bay  
9 Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers  
10 materials outside of the pleadings, the motion to dismiss is converted into a motion for  
11 summary judgment. See Fed. R. Civ. P. 12(d); Arpin v. Santa Clara Valley Transp. Agency, 261  
12 F.3d 912, 925 (9th Cir. 2001).

13 If the court grants a motion to dismiss, it must then decide whether to grant leave to  
14 amend. Pursuant to Rule 15(a), the court should “freely” give leave to amend “when justice so  
15 requires,” and in the absence of a reason such as “undue delay, bad faith or dilatory motive on  
16 the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,  
17 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the  
18 amendment, etc.” Foman v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to amend is  
19 only denied when it is clear that the deficiencies of the complaint cannot be cured by  
20 amendment. See DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

### 21 **III. DISCUSSION**

22 As noted by Defendants in their motion, the claims alleged by Plaintiff here are barred  
23 by the doctrine of res judicata or claim preclusion.

24 Notwithstanding this procedural obstacle, Plaintiff has not alleged any causes of action  
25 that satisfy the pleading requirements discussed above. The Court construes Plaintiff’s

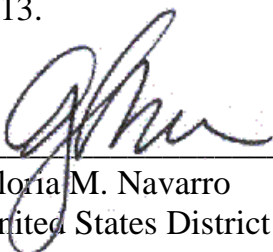
1 references to “AB 284” as an allegation of violations under Nevada statute, particularly to the  
2 amendments that became effective in July 2009 as codified in Chapter 107 of Nevada Revised  
3 Statutes. See Nev. Rev. Stat. §§ 107.080, .086, .087. The publicly recorded documents  
4 submitted to the Court by Defendants show no statutory violations relating to the foreclosure  
5 proceedings under the Deed of Trust, particularly where governed by the statutes in effect at the  
6 time, as discussed by Defendants in their motion. The majority of the publicly recorded  
7 documents and foreclosure proceedings took place prior to the enactment of Assembly Bill 284,  
8 governing the Notice of Default, and the effective date of the Nevada legislature’s amendments  
9 on July 1, 2009. Even under the current version of the statute governing the recording of  
10 assignments, Plaintiff cannot show that any violation has occurred with regard to the  
11 Assignment and Notice of Trustee’s Sale discussed above. See Nev. Rev. Stat. § 106.210.

12 For these reasons, the Court finds that Plaintiff’s pleading must be dismissed, for failure  
13 to state a claim upon which relief can be granted. The Court finds further that it is clear the  
14 deficiencies described above, and in Defendants’ Motion to Dismiss (ECF No. 7), cannot be  
15 cured by amendment. Therefore, this action will be dismissed with prejudice.

16 **IV. CONCLUSION**

17 **IT IS HEREBY ORDERED** that the Motion to Dismiss (ECF No. 7) is **GRANTED**.  
18 Plaintiff’s Complaint (ECF No. 1) is **DISMISSED with prejudice**. The Clerk shall enter  
19 judgment accordingly.

20 **DATED** this 20th day of September, 2013.

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24 Gloria M. Navarro  
25 United States District Judge