

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RJRN HOLDINGS, LLC,

Plaintiff(s),

v.

RHONDA DAVIS, et al.,

Defendant(s).

Case No. 2:15-CV-1257 JCM (NJK)

ORDER

Presently before the court is defendant BAC Home Loans Servicing, LP's motion to dismiss. (ECF No. 9). Plaintiff RJRN Holdings LLC filed a response, (ECF No. 13), and defendant filed a reply. (ECF No. 14).

Defendant seeks dismissal on the grounds that Nevada Revised Statute 116.3116 is facially unconstitutional. (ECF No. 9). A party that files a motion calling into question the constitutionality of a state statute must promptly "file a notice of constitutional question stating the question and identifying the paper that raises it, if . . . the parties do not include the state, one of its agencies, or one of its officers or employees in an official capacity" Fed. R. Civ. P. 5.1(a)(1)(B).

The party must serve the notice on the state attorney general "by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose." Fed. R. Civ. P. 5.1(a)(2). Defendant has provided no proof of compliance with this rule.

Rule 5.1 also requires the court to "certify to the appropriate attorney general that a statute has been questioned" under 28 U.S.C. § 2403. Fed. R. Civ. P. 5.1(b). This statute states that the court "shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality." 28 U.S.C. § 2403(b).

1 In light of the foregoing rule and statute, the court will deny defendant's motion to dismiss
2 without prejudice to allow defendant and the court to comply and the attorney general to intervene.
3 Defendant may renew its motion after the attorney general has been afforded time to respond and
4 upon showing compliance with the notice requirement of Rule 5.1(a).

5 Accordingly,

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's motion to
7 dismiss (ECF No. 9), be, and the same hereby is, DENIED without prejudice.

8 IT IS FURTHER ORDERED that defendant shall provide notice to the Nevada attorney
9 general in compliance with Federal Rule of Civil Procedure 5.1, and include proof of such notice
10 upon filing any further motions raising constitutional challenges.

11 IT IS FURTHER ORDERED that this court certifies to the Nevada attorney general that it
12 may rule on the constitutionality of the state statute at issue in this case, NRS 116.3116. The
13 attorney general shall have thirty (30) days within which to intervene on behalf of the state of
14 Nevada for presentation of argument on the question of the constitutionality of the statute.

15 IT IS FURTHER ORDERED that the clerk of court shall send a copy of this order by
16 certified mail to the Nevada attorney general.

17 DATED May 17, 2016.

18 
19 _____
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28