

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 FEDERAL HOUSING FINANCE AGENCY,)
4 in its capacity as Conservator of Federal)
5 National Mortgage Association and Federal)
6 Home Loan Mortgage Corporation; FEDERAL)
7 NATIONAL MORTGAGE ASSOCIATION;)
8 and FEDERAL HOME LOAN MORTGAGE)
9 CORPORATION,)

Case No.: 2:16-cv-1187-GMN-CWH

ORDER

8 Plaintiffs,

9 vs.

10 LAS VEGAS DEVELOPMENT GROUP,)
11 LLC; LVDG, LLC; and LAS VEGAS)
12 DEVELOPMENT, LLC,)

12 Defendants.)
13)

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15 Pending before the Court is the Motion to Dismiss,¹ (ECF No. 29), filed by Defendants
16 LVDG, LLC (“LVDG”), and Las Vegas Development, LLC (“Las Vegas Development”)
17 (collectively “Defendants”). Plaintiffs Federal Home Loan Mortgage Corporation (“Freddie
18 Mac”), Federal Housing Finance Agency (“FHFA”), and Federal National Mortgage
19 Association (“Fannie Mae”) (collectively “Plaintiffs”) filed a Response, (ECF No. 34), and
20 Defendants filed a Reply, (ECF No. 37). For the reasons discussed below, Defendants’ Motion
21 is DENIED.

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25 ¹ Although Defendants framed their Motion as a motion to dismiss, based on the relief for which the Motion is asking, the Motion is in fact a motion to sever. Accordingly, the Court will interpret the Motion as a motion to sever.

1 **I. BACKGROUND**

2 This case arises out of HOA foreclosure sales of nine properties where Plaintiffs' liens
3 continued to encumber the properties during the sales. (First Am. Compl. ("FAC") ¶ 1, ECF
4 No. 16). Plaintiffs allege that "Defendants are the current record owner of at least nine
5 properties that have been the subject of completed HOA [f]oreclosure [s]ales and are
6 encumbered by [Plaintiffs'] [l]iens." (Id. ¶ 5). As such, Plaintiffs assert that 12 U.S.C.
7 § 4617(j)(3), the Federal Foreclosure Bar that permits Plaintiffs to have an interest in the
8 properties, preempts NRS § 116.3116, which extinguishes Plaintiffs' interest. (See, e.g., id.
9 ¶ 56). Plaintiffs therefore allege that the HOA foreclosure sales did not extinguish Plaintiffs'
10 interests in the properties. (Id.).

11 On May 26, 2016, Plaintiffs filed their Complaint, (ECF No. 1), and on July 14, 2016,
12 Plaintiffs filed their First Amended Complaint. In their First Amended Complaint, Plaintiffs
13 allege causes of action for: (1) declaratory relief and (2) quiet title. (FAC ¶¶ 40–59). On
14 October 18, 2016, Defendants filed the instant Motion seeking to sever themselves from the
15 present action. (See generally Mot. to Dismiss ("MTD")).

16 **II. LEGAL STANDARD**

17 Rule 20(a)(2) of the Federal Rules of Civil Procedure provides that, in order for more
18 than one defendant to be joined together in an action, the defendants must meet two specific
19 requirements: (1) the right to relief asserted against each defendant must arise out of or relate to
20 the same transaction or occurrence or series of transactions or occurrences; and (2) a question
21 of law or fact common to all defendants must arise in the action. Fed. R. Civ. P. 20(a)(2). "If
22 the test for permissive joinder is not satisfied, a court, in its discretion, may sever the misjoined
23 parties, so long as no substantial right will be prejudiced by the severance." *Coughlin v. Rogers*,
24 130 F.3d 1348, 1350 (9th Cir. 1997) (citing Fed. R. Civ. P. 21). If the district court chooses to
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1 sever the case, it may do so by dismissing “all but the first named [defendant] without prejudice
2 to the institution of new, separate lawsuits [against] the dropped [defendants].” Id.

3 **III. DISCUSSION**

4 Defendants assert that they should be severed because Plaintiffs’ First Amended
5 Complaint “focus[es] on particularized houses, mortgages, deeds of trust, HOA’s [sic],
6 collection agents, association sales, buyers, sellers, and details surrounding the . . . alleged
7 ‘purchase’ of 9 completely different loans secured by 9 completely different real properties
8 owned by 3 different Defendants.” (MTD 8:23–26) (emphasis in original).

9 Conversely, Plaintiffs contend that this case concerns “a central legal issue: whether 12
10 U.S.C. § 4617(j)(3) (the “Federal Foreclosure Bar”) precludes the extinguishment of Fannie
11 Mae’s and Freddie Mac’s property interests via HOA foreclosure sales.” (Resp. 3:2–5).

12 Plaintiffs continue that the three Defendants “are Nevada limited liability corporations created
13 by the same principals and that share similar names, the same business address, the same
14 counsel, and conduct the same business of purchasing properties that have been the subject of
15 HOA foreclosure proceedings.” (Id. 3:8–11). Plaintiffs therefore assert that joinder is favored
16 here.

17 Rule 20(a)’s rule for joinder of parties “is designed to promote judicial economy and
18 reduce inconvenience, delay, and added expense.” Coughlin, 130 F.3d at 1351. The Ninth
19 Circuit has indicated that Rule 20 must be “construed liberally in order to promote trial
20 convenience and to expedite the final determination of disputes, thereby preventing multiple
21 lawsuits.” See, e.g., *League to Save Lake Tahoe v. Tahoe Reg’l Planning Agency*, 558 F.2d 914,
22 917 (9th Cir. 1977); see also *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966)
23 (noting that the “impulse is toward entertaining the broadest possible scope of action consistent
24 with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged”).
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1 To meet Rule 20(a)'s first requirement, Plaintiffs' claims must arise from "the same
2 transaction, occurrence, or series of transactions or occurrences." Fed. R. Civ. P. 20(a)(2)(A).
3 "By its terms, this provision requires factual similarity in the allegations supporting [p]laintiffs'
4 claims." *Visendi v. Bank of Am., N.A.*, 733 F.3d 863, 870 (9th Cir. 2013). In *Visendi*, the Ninth
5 Circuit held that "[s]uch factual similarity is absent here" because the case involved "over 100
6 distinct loan transactions with many different lenders," the loans "were secured by separate
7 properties scattered across the country," and "some of the properties, but not all, were sold in
8 foreclosure." *Id.*

9 Here, Defendants do not have such disparate factual differences. The nine properties in
10 this case all had their loans purchased by either Fannie Mae or Freddie Mac. (Compl. ¶ 28).
11 The properties were not "scattered across the country," or even scattered across the State of
12 Nevada, but were all located in the greater Las Vegas area, including Henderson and North Las
13 Vegas. (*Id.*). Finally, all of the properties in this case were sold in foreclosure. (*Id.* ¶¶ 29–37).
14 Although Defendants attempt to draw parallels to the facts in *Visendi* to support severance, the
15 Court disagrees and instead holds that there is sufficient factual similarity here to adequately
16 meet Rule 20(a)'s first requirement.

17 To meet Rule 20(a)'s second requirement, Plaintiffs' claims must present "any question
18 of law or fact common to all defendants." Fed. R. Civ. P. 20(a)(2)(B). In *Visendi*, the Ninth
19 Circuit held that the plaintiffs' claims of invalid assignment, mistake, and negligence "each
20 require particularized factual analysis," and that the plaintiffs' merely alleging that the
21 defendants violated these same laws in comparable ways was insufficient under Rule 20(a).
22 *Visendi*, 733 F.3d at 870.

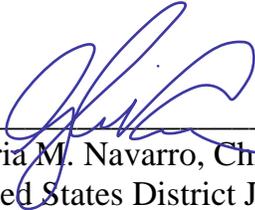
23 Here, Defendants allege that there is no question of law common to all defendants
24 because Plaintiffs' claims include quiet title, which would require a particularized factual
25 analysis. (See MTD 8:9). Conversely, Plaintiffs state that the main common issue is not quiet

1 title, but rather “whether the Federal Foreclosure Bar preempts the State Foreclosure Statute,”
2 which directly affects Defendants’ title. (Resp. 11:8–10). The Court agrees with Plaintiffs.
3 Because Plaintiffs’ claim of quiet title is dependent on whether the Federal Foreclosure Bar
4 applies—a claim that is factually uniform to all properties at issue in this action—the Court
5 finds that Rule (20)(a)’s second requirement is met. Accordingly, Defendants’ Motion seeking
6 to sever Defendants is denied.

7 **IV. CONCLUSION**

8 **IT IS HEREBY ORDERED** that Defendants’ Motion to Dismiss, (ECF No. 29), is
9 **DENIED.**

10 **DATED** this ¹¹ _____ day of September, 2017.

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15 Gloria M. Navarro, Chief Judge
16 United States District Judge
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