

1 NRS 598D.100; (2) conspiracy to commit fraud; (3) permanent injunction; (4) declaratory relief;
2 (5) wrongful foreclosure; (6) fraud through omission; (7) quiet title; (8) contractual breach of good
3 faith and fair dealing; (9) tortious breach of good faith and fair dealing; (10) civil conspiracy; (11)
4 racketeering; (12) unjust enrichment; (13) conspiracy to commit fraud against defendant Mortgage
5 Electronic Registration Systems, Inc. (“MERS”); and (14) fraud in the inducement. Doc. #1,
6 Exhibit 1. Thereafter, moving defendants filed the present motions to dismiss all claims.
7 Doc. ##4, 24.

8 Meanwhile, in late 2009, the United States Judicial Panel on Multi-District Litigation
9 (“panel”) consolidated a series of cases in which plaintiffs alleged that MERS engaged in improper
10 business practices when processing home loans. The panel assigned Judge James A. Teilborg to
11 oversee these cases and preside over all issues (discovery, dispositive motions, settlement) except
12 for trials. *In re: Mortgage Electronic Registration Systems (MERS) Litigation*, MDL No. 2119.

13 On February 18, 2010, the panel issued a transfer order and consolidated the present action
14 with the MDL litigation. Doc. #37. However, as part of the transfer order, the panel transferred only
15 those claims that “relate to the formation and/or operation of MERS” and held that all other claims
16 “unrelated to the formation and/or operation of the MERS system are separately and simultaneously
17 remanded” to the district court in which they were first brought. *Id.*

18 On June 4, 2010, Judge Teilborg issued an initial remand order. Doc. #43. Pursuant to that
19 order Judge Teilborg remanded: (1) claim 1 for unfair lending practices; (2) claim 12 for unjust
20 enrichment; (3) claim 3 for injunctive relief as it relates to the remanded claims; and (4) claim 4 for
21 declaratory relief as it relates to the remanded claims. *Id.*

22 **II. Legal Standard**

23 In considering “a motion to dismiss, all well-pleaded allegations of material fact are taken
24 as true and construed in a light most favorable to the non-moving party.” *Wylar Summit P’ship v.*
25 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). However, a court
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1 does not necessarily assume the truth of legal conclusions merely because they are cast in the form
2 of factual allegations in a plaintiff’s complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752,
3 754-55 (9th Cir. 1994).

4 There is a strong presumption against dismissing an action for failure to state a claim. *See*
5 *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted). “The issue is
6 not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence
7 in support of the claims.” *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other*
8 *grounds by Harlow v. Fitzgerald*, 457 U.S. 800, 807 (1982). However, a plaintiff’s obligation to
9 provide the grounds of his entitlement to relief requires more than labels, conclusions, and a
10 formulaic recitation of the elements of the cause of action. *Bell Atlantic Corp. v. Twombly*, 127 S.
11 Ct. 1955, 1965 (2007). “Factual allegations must be enough to raise a right to relief above the
12 speculative level on the assumption that all the allegations in the complaint are true (even if
13 doubtful in fact).” *Id.* (internal citations omitted).

14 **III. Discussion**

15 **Unfair Lending Practices in Violation of NRS 598D.100**

16 NRS 598D.100 prohibits lenders from making loans “without determining, using
17 commercially reasonable means or mechanisms, that the borrower has the ability to repay the home
18 loan.” NRS 598D.100(1)(b). Defendant QLS is a loan servicer who was not involved in the
19 origination of Freeto’s mortgage loan. *See Doc. #64*. A loan servicer who did not make the loan at
20 issue cannot be subject to an unfair lending practices claim. *See e.g., Velasquez v. HSBC Mortgage*
21 *Services*, No. 2:09-cv-0784-KJD-LRL, 2009 WL 2338852, *3 (D. Nev. 2009). Therefore, the court
22 shall dismiss Freeto’s unfair lending practices claim as to moving defendant QLS.

23 In contrast, defendant Lime did issue the underlying loan to Freeto. However, as to
24 defendant Lime, Freeto’s unfair lending claim is barred by the applicable statute of limitations. An
25 action “upon statute for penalty or forfeiture” has a two-year statute of limitations, unless the
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1 statute provides otherwise. N.R.S. 11.190(4)(b). The plain language of the statute indicates that it is
2 a statute for a penalty and does not contain its own limitations period. *See* N.R.S. 598D.110.

3 Therefore, the court finds that the statute of limitations has run because Lime issued the underlying
4 loan in early 2005 and Freeto did not file his complaint until November 2009. Accordingly, his
5 unfair lending practices claim against Lime is time-barred and shall be dismissed.

6 **Unjust Enrichment**

7 To set forth a claim for unjust enrichment, a plaintiff must allege that a defendant unjustly
8 retained money or property of another against fundamental principles of equity. *See Asphalt Prods.*
9 *Corp. v. All Star Ready Mix*, 898 P.2d 699, 700 (Nev. 1995). However, an action for unjust
10 enrichment cannot stand when there is an express written contract which guides that activities of
11 the parties. *LeasePartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 942 P.2d 182, 187
12 (Nev. 1997).

13 Here, there was a written contract between the parties, namely, the deed of trust and
14 mortgage note. These documents guided the interactions, obligations, and rights of the parties. As
15 such, Freeto cannot make a claim in equity for actions that are guided by a contract to which he is a
16 party. *See LeasePartners Corp.*, 942 P.2d at 187-88.

17 **Declaratory Relief and Permanent Injunction**

18 Freeto's remaining causes of action for declaratory relief and permanent injunction are
19 remedies that may be afforded to a party after he has sufficiently established and proven his claims;
20 they are not separate causes of action. Here, Freeto's remanded claims fail to establish a claim for
21 relief. Accordingly, he is not entitled to his requested remedies.

22 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #4) is
23 GRANTED. Defendant Lime Financial Services, LTD. is DISMISSED as a defendant as to the
24 remanded claims: (1) claim 1 for unfair lending practices; (2) claim 12 for unjust enrichment; (3)
25 claim 3 for injunctive relief; and (4) claim 4 for declaratory relief.

1 IT IS FURTHER ORDERED that defendant's motion to dismiss (Doc. #24) is GRANTED.
2 Defendant Quality Loan Service Corporation is DISMISSED as a defendant as to the remanded
3 claims: (1) claim 1 for unfair lending practices; (2) claim 12 for unjust enrichment; (3) claim 3 for
4 injunctive relief; and (4) claim 4 for declaratory relief.

5 IT IS SO ORDERED.

6 DATED this 6th day of July, 2010.



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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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