



1 fourteen separate causes of action against defendants: (1) unfair lending practices in violation of  
2 NRS 598D.100; (2) conspiracy to commit fraud; (3) permanent injunction; (4) declaratory relief;  
3 (5) wrongful foreclosure; (6) fraud through omission; (7) quiet title; (8) contractual breach of good  
4 faith and fair dealing; (9) tortious breach of good faith and fair dealing; (10) civil conspiracy; (11)  
5 racketeering; (12) unjust enrichment; (13) conspiracy to commit fraud against defendant Mortgage  
6 Electronic Registration Systems, Inc. (“MERS”); and (14) fraud in the inducement. Doc. #1,  
7 Exhibit 1.

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  
15 only those claims that “relate to the formation and/or operation of MERS” and held that all other  
16 claims “unrelated to the formation and/or operation of the MERS system are separately and  
17 simultaneously 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.* Thereafter, moving defendants filed the  
22 present motions to dismiss. Doc. ##45, 49, 50.

## 23 **II. Legal Standard**

24           In considering “a motion to dismiss, all well-pleaded allegations of material fact are taken  
25 as true and construed in a light most favorable to the non-moving party.” *Wylar Summit P’ship v.*  
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1 *Turner Broad. Sys., Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). However, a court  
2 does not necessarily assume the truth of legal conclusions merely because they are cast in the form  
3 of factual allegations in a plaintiff’s complaint. *See Clegg v. Cult Awareness Network*, 18 F.3d 752,  
4 754-55 (9th Cir. 1994).

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

15 **III. Discussion**

16 **A. Lime Financial Services**

17 Prior to the transfer of this action to the District of Arizona, defendant Lime filed an initial  
18 motion to dismiss all claims in Freeto’s complaint. Doc. #4. After Judge Teilborg issued his order  
19 to remand certain claims to this court, the court issued an order granting Lime’s initial motion to  
20 dismiss and dismissing defendant Lime as to the remanded claims. *See* Doc. #60. Accordingly, the  
21 court shall deny defendant Lime’s renewed motion to dismiss filed after the issuance of the remand  
22 order, but prior to issuance of this court’s order of dismissal, as moot. The court will address the  
23 remaining moving defendants, Litton, BNY and JP Morgan below.

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

2           NRS 598D.100 prohibits lenders from making loans “without determining, using  
3 commercially reasonable means or mechanisms, that the borrower has the ability to repay the home  
4 loan.” NRS 598D.100(1)(b). Moving defendants were not involved in the origination of Freeto’s  
5 mortgage loan. A defendant who did not make the loan at issue cannot be subject to an unfair  
6 lending practices claim. *See e.g., Velasquez v. HSBC Mortgage Services*, No. 2:09-cv-0784-KJD-  
7 LRL, 2009 WL 2338852, \*3 (D. Nev. 2009). Therefore, the court shall dismiss Freeto’s unfair  
8 lending practices claim as to moving defendants.

9           **C. Unjust Enrichment**

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

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

20          **D. Declaratory Relief and Permanent Injunction**

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

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1 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #45) is DENIED  
2 as moot.

3 IT IS FURTHER ORDERED that defendant's motion to dismiss (Doc. #49) is GRANTED.  
4 Defendant Litton Loan Servicing LP is DISMISSED as a defendant as to the remanded claims:  
5 (1) claim 1 for unfair lending practices; (2) claim 12 for unjust enrichment; (3) claim 3 for  
6 injunctive relief; and (4) claim 4 for declaratory relief.

7 IT IS FURTHER ORDERED that defendants' motion to dismiss (Doc. #50) is GRANTED.  
8 Defendants Bank of New York Mellon and J.P. Morgan Chase Bank, N.A. are DISMISSED as  
9 defendants as to the remanded claims: (1) claim 1 for unfair lending practices; (2) claim 12 for  
10 unjust enrichment; (3) claim 3 for injunctive relief; and (4) claim 4 for declaratory relief.

11 IT IS SO ORDERED.

12 DATED this 12th day of January, 2011.



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15 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE  
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