



1 lending and an underlying conspiracy to commit fraud that resulted in foreclosures initiated by  
2 Defendants on Plaintiffs' homes. (*Id.* at 3). Defendants did not have the lawful rights to  
3 foreclose because they were not holders in due course of the notes and had unsecured debts.  
4 (*Id.*). Defendants, as co-conspirators, created MERS with specific intent that MERS would be  
5 named the beneficiary or nominee on the deeds of trusts. (*Id.* at 9). However, MERS was not  
6 a nominee for the lenders but was the agent for the servicers. (*Id.*). The MERS conspiracy  
7 consisted of lenders, trustees, securitizers, and servicers. (*Id.* at 26-27).

8 Plaintiffs alleged six causes of action, including: (1) wrongful foreclosure, (2) fraud in  
9 the inducement; (3) conspiracy to commit wrongful foreclosure; (4) unjust enrichment; (5)  
10 slander of title; and (6) reformation, declaratory judgment, and quiet title. (*Id.* at 2, 18-38).

## 11 **II. Pierce Property**

12 Plaintiff Pierce and his then-wife, Laura Pierce, executed a note secured by a deed of  
13 trust on a piece of property located at 2935 La Cresta Circle, Minden, Nevada, 89423, which  
14 was recorded in Douglas County on August 30, 2005. (Pierce Deed of Trust (#1-3) at 62, 64).  
15 The mortgage, dated August 3, 2005, was for \$329,000. (*Id.* at 63). The lender on the deed  
16 of trust was E-Loan, Inc. (*Id.*). The trustee on the deed of trust was Lenders First Choice.  
17 (*Id.*). MERS was named as "a nominee for Lender and Lender's successors and assigns" and  
18 claimed to be the beneficiary under the security instrument. (*Id.*).

19 In 2008, Plaintiff Pierce and his then-wife executed a second deed of trust secured by  
20 the same property for \$18,000. (Pierce Second Deed of Trust (#1-3) at 76, 88). The lender  
21 and beneficiary on the second deed of trust was Bank of America. (*Id.* at 76). The trustee on  
22 the second deed of trust was PRLAP, Inc. (*Id.*).

23 On March 1, 2008, Plaintiff Pierce and his then-wife defaulted on their first mortgage.  
24 (See Pierce Notice of Default (#91-6) at 3). On July 15, 2008, MTC Financial, Inc., dba  
25 Trustee Corps recorded a notice of default and election to sell. (*Id.* at 2). Freddie Mac  
26 purchased the property at a trustee's sale for \$330,692.28. (Trustee's Deed Upon Sale (#109-  
27 2) at 1). Freddie Mac was the foreclosing beneficiary. (*Id.*).

28

1 **III. Remand Order**

2 On June 3, 2010, the multi-district litigation panel conditionally transferred this case to  
3 Judge Teilborg based on the claims relating to the formation/operation of MERS. (Conditional  
4 Transfer Order (#60)). On March 21, 2011, Judge Teilborg issued an order on this case  
5 stating that his court would “not retain claims that, although naming MERS as a defendant,  
6 allege conduct primarily related to loan origination and collection practices, or otherwise stray  
7 from the common factual core of the MDL.” (MDL Order (#79) at 3). With respect to this case,  
8 he remanded part of claims 4 and 6 back to this Court and retained claims 1, 2, 3, and 5 and  
9 part of claims 4 and 6. (*Id.* at 5).

10 On July 15, 2011, the parties stipulated to dismiss MERS from the lawsuit with  
11 prejudice. (Order on Stip. to Dismiss (#105)).

12 On September 8, 2011, this Court dismissed Freddie Mac, CTX Mortgage Company,  
13 LLC, John Matthews, Timothy Bartosh, Bank of America, JP Morgan Chase (as successor-in-  
14 interest to EMC Mortgage LLC), Litton Loan Servicing LP, PNC Mortgage (formerly known as  
15 National City Mortgage), and U.S. Bank from the case. (See Order (#107) at 6-10).

16 In that order, this Court dismissed Freddie Mac for the following reasons:

17 Freddie Mac is correct that Judge Teilborg’s order only remanded the unjust  
18 enrichment claim and requested relief as they related to loan origination and  
19 collection practices. Judge Teilborg retained the claims as they related to the  
20 MERS conspiracy allegations. As such, Freddie Mac is correct that it did not  
21 originate Pierce’s loan or initiate foreclosure proceedings. See 12 U.S.C. §  
22 1454(a)(5) (prohibiting Freddie Mac from originating mortgage loans). Freddie  
23 Mac’s only alleged role was purchasing the property at a trustee’s sale for  
24 \$330,000. (See Compl. (#1-2) at 15-16). Accordingly, the Court grants Freddie  
25 Mac’s motion to dismiss (#85) claims 4 and 6 as they relate to loan origination  
26 and collection practices.

27 (*Id.* at 7).

28 **LEGAL STANDARD**

A motion to reconsider must set forth “some valid reason why the court should  
reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to  
persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F.Supp.2d  
1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court “(1) is presented with

1 newly discovered evidence, (2) committed clear error or the initial decision was manifestly  
2 unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No. 1J v. Acands,*  
3 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is not an avenue to  
4 re-litigate the same issues and arguments upon which the court already has ruled.” *Brown v.*  
5 *Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

## 6 DISCUSSION

### 7 I. Plaintiffs’ Motion for Reconsideration of September Order Granting Motion to 8 Dismiss (#109)

9 Plaintiffs file a motion for reconsideration on this Court’s order granting Freddie Mac’s  
10 motion to dismiss. (Mot. for Reconsideration (#109) at 1-2). Plaintiffs argue that because  
11 Freddie Mac was a foreclosing beneficiary at the trustee’s sale it was involved in collection  
12 practices and was a foreclosing entity at the foreclosure sale. (*Id.* at 4, 6).

13 In response, Freddie Mac argues that Plaintiffs have not raised any new factual or legal  
14 arguments that would warrant reconsideration. (Opp’n to Mot. for Reconsideration (#110) at  
15 3). Freddie Mac also asserts that Plaintiffs have not provided any new information to this  
16 Court indicating that Freddie Mac engaged in collection practices on his loan. (*Id.* at 4).  
17 Freddie Mac contends that Plaintiffs fail to state a claim for unjust enrichment because an  
18 express, written contract existed. (*Id.* at 5).

19 In this case, Plaintiffs have not presented any newly discovered evidence that Freddie  
20 Mac initiated foreclosure proceedings or engaged in collection practices even though it was  
21 a foreclosing beneficiary. Moreover, Plaintiffs have failed to state a claim for unjust  
22 enrichment against Freddie Mac because Plaintiffs fail to allege how Freddie Mac has been  
23 unjustly enriched by paying \$330,692.28 for the property. Accordingly, the Court denies the  
24 motion for reconsideration (#109).

### 25 II. MTC Financial’s Motion to Dismiss Remanded Claims (#116)

26 MTC Financial, dba Trustee Corps filed a motion to dismiss the remanded claims for  
27 failure to state a claim. (Mot. to Dismiss (#116) at 1). In response, Plaintiffs file a non-  
28 opposition to MTC Financial’s motion to dismiss. (Non-Opp’n (#119)).

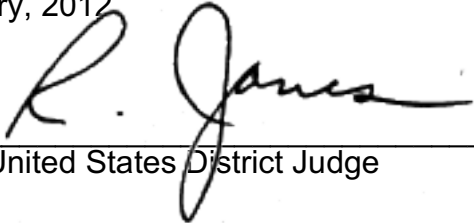
1 As such, the Court grants MTC Financial's motion to dismiss (#116) in its entirety  
2 without leave to amend.

3 **CONCLUSION**

4 For the foregoing reasons, IT IS ORDERED that Plaintiffs' Motion for Reconsideration  
5 (#109) is DENIED.

6 IT IS FURTHER ORDERED that MTC Financial's Motion to Dismiss the Remanded  
7 Claims (#116) is GRANTED in its entirety without leave to amend.

8  
9 DATED: This 15th day of February, 2012

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11 \_\_\_\_\_  
12 United States District Judge