



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). The notice of default  
26 informed Plaintiff Pierce and his then-wife to contact National City Mortgage to find out the  
27 amount they had to pay to stop the foreclosure. (*Id.* at 3). Freddie Mac purchased the  
28 property at a trustee's sale for \$330,692.28. (Trustee's Deed Upon Sale (#109-2) at 1).

1 Freddie Mac was the foreclosing beneficiary. (*Id.*).

2 **III. Remand Order**

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

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

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

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

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

28 (*Id.* at 7).

Plaintiffs filed a motion for reconsideration of the order granting Freddie Mac’s motion  
to dismiss. (Mot. for Reconsideration (#109) at 1-2). On February 15, 2012, this Court denied  
the motion for reconsideration because Plaintiffs did not present any newly discovered  
evidence that Freddie Mac had initiated foreclosure proceedings or had engaged in collection

1 practices even though it was a foreclosing beneficiary. (Order (#126) at 4-5).

2 On June 15, 2012, Plaintiffs filed a notice of appeal on the orders entered on  
3 September 8, 2011, and February 15, 2012. (Notice of Appeal (#132) at 2). On July 19, 2012,  
4 PNC Mortgage filed its Motion to Expunge Lis Pendens. (Mot. to Expunge (#137)).

#### 5 **DISCUSSION**

6 PNC Mortgage moves to expunge the notice of lis pendens filed by Plaintiff Pierce in  
7 this matter on property located at 2935 La Cresta Circle. (Mot. to Expunge (#137) at 2). PNC  
8 Mortgage argues that because the case has been dismissed there is no basis for the lis  
9 pendens to remain on the property. (*Id.* at 3). PNC Mortgage asserts that because the Court  
10 dismissed the action against PNC Mortgage, Plaintiff Pierce cannot satisfy the requirements  
11 set forth in NRS § 14.015. (*Id.* at 4).

12 In response, Plaintiff Pierce responds in one sentence that “Plaintiffs appealed this  
13 matter to the 9th Circuit Court of Appeals on June 15, 2012.” (Resp. to Mot. to Expunge  
14 (#138) at 1).

15 In reply, PNC Mortgage asserts that the appeal does not involve itself, Plaintiff Pierce  
16 failed to address any of its points in his response, and Plaintiff Pierce’s one paragraph  
17 opposition constitutes consent to the motion. (Reply to Mot. to Expunge (#139) at 2-4).

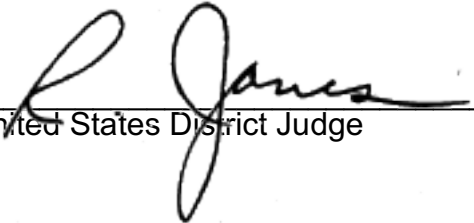
18 “In general, filing of a notice of appeal confers jurisdiction on the court of appeals and  
19 divests the district court of control over those aspects of the case involved in the appeal.”  
20 *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379, 105 S. Ct. 1327, 1331,  
21 84 L. Ed. 2d 274 (1985).

22 In this case, the Court denies PNC Mortgage’s Motion to Expunge Lis Pendens (#137)  
23 for lack of jurisdiction. Although Plaintiff Pierce is not appealing this Court’s dismissal of PNC  
24 Mortgage’s role in the foreclosure process on the La Cresta property, Plaintiff Pierce is  
25 appealing the Court’s dismissal of Freddie Mac’s role on the property. As such, if the Court  
26 were to expunge the lis pendens on the La Cresta property it would be adjudicating matters  
27 that are currently before the court of appeals. Accordingly, the Court denies the motion to  
28 expunge lis pendens on the La Cresta property at this time.

**CONCLUSION**

For the foregoing reasons, IT IS ORDERED that PNC Mortgage's Motion to Expunge Lis Pendens (#137) is DENIED for lack of jurisdiction.

DATED: This 26th day of November, 2012.

  
United States District Judge

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