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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
RENO, NEVADA

JOSE CAMACHO-VILLA and MICHELLE )  
CAMACHO-VILLA, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
GREAT WESTERN HOME LOANS, a )  
California corporation; FIRST )  
AMERICAN TITLE COMPANY; MORTGAGE )  
ELECTRONIC REGISTRATION SYSTEM, )  
INC., a Delaware corporation; )  
MTDS, INC., a California )  
corporation; INDYMAC MORTGAGE )  
SERVICES, a division of ONEWEST )  
BANKS, FBS; and DOES and ROES 1-25 )  
Individuals, Partnerships, or )  
anyone claiming any interest to )  
the property described in the )  
action, )  
 )  
Defendants. )  
 )  
 )

3:10-CV-210-ECR-VPC

Order

Plaintiffs are homeowners who allege that they are the victims of a predatory lending scheme perpetrated by Defendants. Plaintiffs assert causes of action for (i) injunctive relief; (ii) declaratory relief; (iii) violations of the Nevada Fair Debt Collection Law and the Federal Fair Debt Collection Practices Act; (iv) unfair and deceptive trade practices; (v) unfair lending practices; (vi) breach of the covenant of good faith and fair dealing; (vii) violations of Nev. Rev. Stat. § 107.080 et. seq.; (viii) quiet title; (ix) fraud

1 through omission; (x) fraud in the inducement; and (xi) unjust  
2 enrichment.

3 Now pending are Defendant Mortgage Electronic Registration  
4 System, Inc.'s ("MERS") motion (#46) to dismiss the first amended  
5 complaint; Defendant MERS' request (#47) for judicial notice; and  
6 Plaintiffs' motion (#51) to amend the first amended complaint.

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### **I. Factual Background**

9 On or about December 14, 2006, Plaintiffs executed a note in  
10 the amount of \$214,400.00 (the "Mortgage Note) in favor of lender  
11 Great Western Home Loans and a deed of trust with respect to real  
12 property located at 7322 Warhol Drive, Sun Valley, Nevada 89433.  
13 (Am. Compl. ¶ 3 (#26).) Plaintiffs contend that they made several  
14 attempts to modify their loan through IndyMac Mortgage Services, a  
15 division of OneWest Bank FBS ("IndyMac"), the loan servicer, but  
16 were not able to contact the holder of the note directly. (Id. ¶  
17 34.) Defendant Meridian Trust Deed Service recorded a notice of  
18 default with respect to the loan on September 23, 2009. (Id.) On  
19 December 28, 2009, MTDS, Inc. recorded a Notice of Trustee's sale  
20 with respect to the property. (Id.)

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### **II. Procedural Background**

23 Plaintiffs filed their complaint (#1 Ex. 1) in the Second  
24 Judicial District Court of the State of Nevada in and for the County  
25 of Washoe on March 8, 2010. On April 13, 2010, Defendants MERS and  
26 IndyMac removed the action to the United States District Court for  
27 the District of Nevada via Petition for Removal (#1).

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1 Pursuant to a June 3, 2010 Conditional Transfer Order (#20),  
2 the claims in this case related to the formation and/or operation of  
3 MERS were transferred by the United States District Panel on  
4 Multidistrict Litigation to the District of Arizona (the "MDL  
5 Court"). The claims unrelated to MERS were simultaneously remanded  
6 to this Court.

7 By order (#25) on July 12, 2010, the Court granted Plaintiffs  
8 leave to amend their complaint and denied Plaintiffs' motion to  
9 remand (#2), Defendant IndyMac's motion to dismiss (#8), and  
10 Defendant MERS' motion to dismiss (#12) as moot.

11 Plaintiffs filed their amended complaint (#26) on July 19,  
12 2010. By order (#43) on March 23, 2011, the Court granted Defendant  
13 IndyMac's motion (#27) to dismiss, dismissing with prejudice all of  
14 Plaintiffs' claims against Defendant IndyMac in our jurisdiction.  
15 The Court further denied Defendant MERS' motion (#29) to dismiss  
16 without prejudice and Plaintiff Jose Camacho-Villa's second motion  
17 (#31) to remand.

18 On March 29, 2011, Defendant MERS filed a second motion (#46)  
19 to dismiss and a request (#47) for judicial notice in connection  
20 with that motion. On May 15, 2011, Plaintiff Jose Camacho-Villa  
21 filed a motion (#51) to amend the complaint. On May 19, 2011, the  
22 Court dismissed (#52) Defendants Great Western Home Loans and  
23 Meridian Foreclosure Service pursuant to Fed. R. Civ. P. 4(m). By  
24 order (#56) on June 23, 2011, the Court dismissed all claims against  
25 Defendant MERS remaining in our jurisdiction pursuant to the  
26 parties' stipulation (#55).

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1 **III. Legal Standard**

2 Federal Rule of Civil Procedure 15(a)(1) provides that a party  
3 may amend in pleading once as a matter of course. "In all other  
4 cases, a party may amend its pleading only with the opposing party's  
5 written consent or the court's leave. The court should freely give  
6 leave when justice so requires." Fed. R. Civ. P. 15(a)(2). In  
7 general, leave to amend should be granted with "extreme liberality."  
8 Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th  
9 Cir. 2001) (quoting Morongo Band of Mission Indians v. Rose, 893  
10 F.2d 1074, 1079 (9th Cir. 1990). However, it is properly within a  
11 district court's discretion to deny leave to amend if factors such  
12 as undue delay, bad faith, dilatory motive, undue prejudice, or  
13 futility of amendment are present. Foman v. Davis, 371 U.S. 178,  
14 182 (1962). Accordingly, leave to amend should be denied where the  
15 court determines that a complaint's deficiencies cannot be cured by  
16 amendment. DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658  
17 (9th Cir. 1992) (citing Schreiber Distrib. Co. v. Serv-Well  
18 Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)).

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20 **IV. Discussion**

21 In our previous order (#43) whereby we dismissed with prejudice  
22 all eleven of Plaintiffs' claims against Defendant IndyMac, we found  
23 "that Plaintiffs should not be granted another opportunity to amend  
24 their complaint. There is no reason why Plaintiffs could not have  
25 cured the deficiencies we have noted here, in their first amended  
26 complaint." We therefore concluded that leave to further amend  
27 would be futile. Plaintiffs have presented no basis to reconsider  
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1 the previous order (#43). For this reason, further leave to amend  
2 should be denied.

3 Moreover, in their second amended complaint (Pls.' Mot. Leave  
4 File Am. Compl. (the "Motion") Ex. 1 (#51)), Plaintiffs seek to re-  
5 assert most of the claims that were dismissed without prejudice as  
6 to Defendant IndyMac Mortgage Services, a division of OneWest Bank,  
7 FBS directly against OneWest Bank, FBS. (Id.) Plaintiffs have  
8 alleged no new actions that OneWest Bank, FBS took independently of  
9 Plaintiffs' loan servicer, IndyMac. Because all claims against  
10 Defendant IndyMac were dismissed without leave to amend, allowing  
11 Plaintiffs to re-state the same claims against OneWest Bank, FBS  
12 would prove futile and unduly prejudicial toward OneWest Bank, FBS.

13 Furthermore, amendment to include Plaintiffs' additional claims  
14 for slander of title and abuse of process would also prove futile.  
15 A claim for slander of title "involves false and malicious  
16 communications, disparaging to one's title in land, and causing  
17 special damages." Exec. Mgmt., Ltd. v. Ticor Title Co., 963 P.2d  
18 465, 478 (Nev. 1998). Here, Plaintiffs do not dispute that they  
19 were in default on their mortgage. (See Motion Ex. 1 ¶¶ 149-52  
20 (#51); Def.'s Resp. Mot. Leave File Am. Compl. (the "Response") at  
21 11 (#53)). For this reason, Plaintiffs' slander of title action  
22 will not lie. See Ramos v. Mortg. Elec. Registration Sys., Inc.,  
23 No. 2:08-CV-1089, 2009 WL 5651132 at \*4 (D. Nev. Mar. 5, 2009)  
24 (dismissing slander of title action because "Plaintiffs do not  
25 dispute that they were in default on their loan"). Likewise,  
26 amendment to include Plaintiffs' proposed additional claim for abuse  
27 of process would be futile because non-judicial foreclosure is not

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1 the type of "process" addressed by the abuse of process tort, as it  
2 does not involve judicial action. Riley v. Greenpoint Mortg.  
3 Funding, Inc., No. 2:10-cv-1873, 2011 WL 1979831 at \*5 (D. Nev. May  
4 20, 2011); see also Barlow v. BNC Mortg., Inc., No. 3:11-CV-0304,  
5 2011 WL 4402955 at \*4 (D. Nev. Sept. 21, 2011) ("[T]he process at  
6 issue in this action is a non-judicial foreclosure which is not the  
7 characteristic legal action contemplated by an abuse of process  
8 claim . . . Therefore, the court finds that [Plaintiff] has failed  
9 to state a claim for abuse of process.") (citation omitted).  
10 Accordingly, the Court finds that amendment to add claims for  
11 slander of title and abuse of process would be futile.

12 Finally, amendment to allow Plaintiffs to assert claims against  
13 a new defendant, Darien McDonald, would also prove futile. In their  
14 proposed second amended complaint, Plaintiffs allege that Darien  
15 McDonald signed the Notice of Default as agent for Defendant First  
16 American Title Insurance Company. (Motion Ex. 1 ¶ 6 (#51).)  
17 Pursuant to Nevada law, a person signing an instrument as a  
18 representative is not personally liable on the instrument so long as  
19 the "signature shows unambiguously that the signature is made on  
20 behalf of the represented person who is identified in the  
21 instrument." NEV. REV. STAT. § 104.3402(2)(a); see also Seigworth v.  
22 State, 539 P.2d 464, 539 (Nev. 1975) ("Unless otherwise agreed, a  
23 person making or purporting to make a contract with another as agent  
24 for a disclosed principal does not become a party to the  
25 contract."). Because Plaintiffs freely admit that Darien McDonald  
26 signed the document as an agent, Plaintiffs have no claim against  
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1 Darien McDonald. Accordingly, allowing Plaintiffs to state claims  
2 against Darien McDonald would prove futile.

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4 **IV. Conclusion**

5 This Court previously ordered (#43) that Plaintiffs would not  
6 be again granted leave to amend for reasons of futility. Having  
7 presented no basis for reconsidering that order but only new claims  
8 that would prove futile, Plaintiffs must be denied leave to amend.

9 **IT IS, THEREFORE, HEREBY ORDERED** that Plaintiffs' motion (#51)  
10 for leave to file an amended complaint is **DENIED**.

11 **IT IS FURTHER ORDERED** that Defendant MERS' motion (#46) to  
12 dismiss and its request (#47) for judicial notice in support thereof  
13 are **DENIED** as moot due to this Court's order (#56) dismissing  
14 Defendant MERS from this action pursuant to the parties' stipulation  
15 (#55).

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19 DATED: October 4, 2011.

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21 UNITED STATES DISTRICT JUDGE