

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

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U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY  DEPUTY

BEA HUML,
JOEY RODRIGUEZ,
JOHN DOE(S),
and JANE DOE(S),

Plaintiffs,

v.

EP-12-CV-00146-DCG

FEDERAL NATIONAL MORTGAGE
ASSOCIATION;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
BAC HOME LOANS SERVICING, L.P.;
THE BANK OF NEW YORK MELLON;
and MERSCORP, INC.;

Defendants.

ORDER REGARDING DEFENDANTS' MOTION TO DISMISS

On this day, the Court considered "Defendants' Motion to Dismiss or for Judgment on the Pleadings" [ECF No. 32], filed on June 20, 2012¹ in the above-captioned action, which was removed to this Court from a state court. The motion was filed by Defendants Mortgage Electronic Registration Systems, Inc. ("MERS"); MERSCORP Holdings, Inc., formerly known as MERSCORP, Inc. ("MERSCORP"); Federal National Mortgage Association ("Fannie Mae"); The Bank of New York Mellon, formerly known as The Bank of New York CWABS, Inc., Asset Backed Securities Series 2007-09 ("BNYM"); and Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, L.P. ("Bank of America") (collectively "Defendants"). In the instant motion, Defendants move the Court to dismiss the "Fourth Amended Original Petition, Jury Demand, and Requests for Disclosure" filed by Bea Huml ("Huml"), Joey

¹ The motion was originally filed on June 5, 2012.

Rodriguez, and other unnamed plaintiffs (collectively "Plaintiffs"). Specifically, Fannie Mae, MERS, and MERSCORP seek judgment on the pleadings, and BNYM and Bank of America seek dismissal, respectively, pursuant to Rule 12(c) and Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The case originated in the 171th Judicial District Court of El Paso County, Texas, where Huml filed a complaint on December 29, 2011. The complaint was amended five times in the state court, whereby additional plaintiffs and defendants were joined in the action. Mem. in Support of Defs.' Mot. to Dismiss or for J. on Pleadings 2-3 [hereinafter Mem. Mot. to Dismiss], ECF No. 32-1. These amended petitions or complaints were filed on the following dates: February 21, March 5, March 8, April 3, and April 13. Defs.' Mot. to Vacate *Ex Parte* State Ct. TRO 1-3 [hereinafter Mot. to Vacate], ECF No. 5 (citing Ex. B "Declaration of R. Dwayne Danner"). According to Defendants, the fifth amended complaint, filed on April 13 is erroneously titled "Fourth Amended Original Petition, Jury Demand, and Requests for Disclosure." *Id.*, Ex B, at 3 n.4; Mem. Mot. to Dismiss 3. It is this complaint that is the subject of the instant motion to dismiss. Mem. Mot. to Dismiss 3.

The record before this Court, however, does not contain a copy of the fifth amended complaint. According to Defendants, MERS is the only defendant who was served with the citation of the fifth amended complaint. Mot. to Vacate 4. Defendants' notice of removal, filed with this Court on April 20, 2012, however, does not contain the fifth amended complaint, though it contains all of the prior complaints. Under the statutes governing removal, removing defendants are required to file a notice of removal "together with a copy of *all . . . pleadings . . . served* upon such defendant or defendants in such action." 28 U.S.C. § 1446(a) (emphasis added). This Defendants have failed to do. To be sure, the contents of the first, second, third;

and fourth amended complaints appear to be substantially identical. However, the Court cannot be certain that the fifth amended complaint likewise shares the same characteristics.

Consequently, absent a copy of the fifth amended complaint in the record, the Court is unable to determine the merits of the instant motion by Defendants. Accordingly, the Court will deny the motion.

The Court, nevertheless, has concern about Plaintiffs' approach to pleading and will therefore order Plaintiffs to replead by separately filing a complaint complying with Federal Rules of Civil Procedure. To that extent, the Court makes a few (though not exhaustive) observations about the fourth amended complaint (filed on April 3, 2012). That complaint spans fifty-six pages and contains 125 numbered paragraphs. Federal Rule of Civil Procedure 8(a) requires that a plaintiff's complaint contain "short and plain" statements of the plaintiff's legal claim for relief. Likewise, Rule 8(d)(1) states: "Each allegation must be simple, concise, and direct." Further, the Court notes that respecting any of the several causes of action asserted by Plaintiffs, the pleading fails to allege facts with specificity required under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Iqbal*, 556 U.S. at 678 (internal quotation marks and citation omitted).

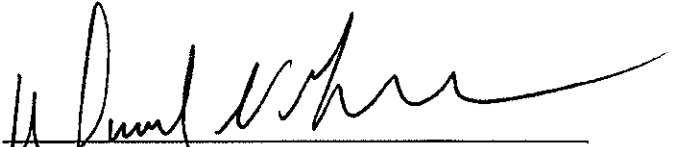
Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss or for Judgment on the Pleadings' [ECF No. 32] is **DENIED**

IT IS FURTHER ORDERED that Plaintiffs shall **FILE** an amended complaint that complies with the Federal Rules of Civil Procedure 8 and 9, and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), **within TWENTY**

~~(20)~~ days of the entry of this order, or this case shall be closed and dismissed for failure to prosecute, and for failure to comply with this Court's orders.

So ORDERED, SIGNED, and ENTERED this 11th day of July, 2012.



DAVID C. GUADERRAMA
UNITED STATES DISTRICT JUDGE

Need to file by 7/27/12 SA.