

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

**IN RE MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS (MERS)
LITIGATION,**

MDL Docket No. 09-2119-JAT
PLAINTIFFS' RESPONSE TO
MOTION FOR STATUS
CONFERENCE

Plaintiffs, through undersigned counsel, respond to Certain Defendants' Motion for Status Conference (Doc. 3). Plaintiffs join in the request for a status conference, particularly in regard to setting forth a discovery schedule related to the MERS system. The MDL order clearly states that the only issues transferred involve the "formation and operation of the MERS system" and the "factual core regarding allegations that the various participants in MERS formed a conspiracy to commit fraud and/or that security instruments are unenforceable or foreclosures are inappropriate due to MERS's presence as a party." (Transfer Order at p. 2.) The MDL order further states that "plaintiffs' claims relating to loan origination and collection practices do not share sufficient questions of fact with claims regarding the formation and operation of the MERS system." Therefore, Plaintiffs dispute the Defendants' characterization of what portions of the various claims were transferred by the MDL panel as set forth in Table A and Table B set forth on pages 16-21 of Defendants' Motion for Status Conference.

1 Plaintiffs dispute that the common law conspiracy claim and the infliction of
2 emotional distress claims in the *Robinson* matter were transferred, and Plaintiffs dispute
3 the common law conspiracy claims in *Lopez*, *Goodwin*, and *Vargas* were transferred to
4 Arizona. Plaintiffs also dispute that the unjust enrichment claims in *Green*, *Dalton*, and
5 *Vargas* were transferred to Arizona. Finally, Plaintiffs dispute that the class actions
6 claims related to foreclosure and bank REO properties (filed in *Lopez* and *Goodwin*,
7 respectively) and any related claims for wrongful foreclosure (pled in *Green* and *Dalton*),
8 injunctive or declaratory relief related to the class actions or related to the individual
9 claims were transferred to Arizona. In particular, based on the MDL order, the class and
10 individual claims related to wrongful foreclosure and the sale of properties obtained
11 through foreclosure are related to the “collection” process and jurisdiction is retained by
12 the transferor courts. In any event, the disputed portions of what was transferred
13 pursuant to the MDL order are not necessary for decision right now (or appropriately
14 before this court pursuant to the transfer order) in light of the primary claims being
15 related to the MERS system itself and each defendant’s role in its creation.
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20 RESPECTFULLY SUBMITTED this 4th day of January, 2010.

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22 **KOELLER NEBEKER**
23 **CARLSON & HALUCK, LLP**

24 By /s/ William A. Nebeker
25 William A. Nebeker
26 Valerie R. Edwards
27 *Attorneys for Plaintiffs*
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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2009, I electronically transmitted the foregoing Response to Motion for Status Conference to the U.S. District Clerk's Office using the CM/ECF System for filing and transmittal to all CM/ECF registered parties.

By: /s/ Karen D. Jones

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