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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
PC

FILED

Charles Edward Lincoln
c/o Peyton Yates Freiman
603 Elmwood Place, Suite #6
Austin, Texas 78705
Telephone: 512-968-2500
Facsimile: 561-691-1423
E-Mail: charles.lincoln@rocketmail.com
Plaintiffs *in propia persona*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA-SOUTHERN DIVISION
(SANTA ANA)

CHARLES EDWARD LINCOLN, III, §
Plaintiff, §
v. §
STEVEN D. SILVERSTEIN, §
RON ELTER, §
GRE DEVELOPMENT, INC., individually §
and as agents, and all other defendants, et al, §
And all JOHN & JANE DOES 1-20, §
Defendants. §

Case No. SACV09-1072 DOC (Ex)

TRIAL-BY-JURY DEMANDED

LINCOLN'S RESPONSE TO
STEVEN D. SILVERSTEIN'S
MOTION TO DISMISS

§§

PLAINTIFF'S RESPONSE TO 12(b)(1) & 12(b)(6)

Plaintiff Charles Edward Lincoln comes before the Court with this response to Steven David Silverstein's Motion to Dismiss pursuant to Rule 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

FIRST AMENDED COMPLAINT, TWO ADDITIONAL PLAINTIFFS

On Monday, December 7, 2009, original plaintiff Charles Edward Lincoln was joined in filing his First Amended Complaint by two additional plaintiffs, Christyna Lynn Gray and Renada Nadine March with parallel complaints against Steven David Silverstein arising from parallel actions for forcible detainer and evictions. The Plaintiffs submit that a class action can and should be certified in this case because of a common nucleus of operative fact and controlling law. Among these common elements of fact and law are (1) that Silverstein and the entities he represents apparently have a much closer relationship to the banks and servicers than described

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3 by the term or phrase “Bona Fide Purchaser” as used in California Civil Code §2924,
4 (2) Silverstein is not merely acting as an attorney for the bona fide purchaser of
5 property sold at auction in each transaction.

6 **SILVERSTEIN NOT ACTING FOR BONA FIDE PURCHASERS**

7 On the contrary, Silverstein appears to be either an interested party or an
8 officer, director, or owner of an interested party, especially in the case of the actions
9 taken in regard to Plaintiff Lincoln’s property at 4 Via Corbina, in that Silverstein
10 shares an office address with GRE Development/4 Via Corbina Trust, so that
11 Silverstein is not entitled to the protections of California Civil Code §1714.10.
12 Accordingly a class action can potentially be stated and should be certified with
13 regard to the applicability of these two separate California Civil Code Sections,
14 which are alleged to be either unconstitutional as a matter of federal law either “on
15 their face” or “as applied.”

16 In the case of Plaintiff Christyna Gray, it appears that Silverstein is a servant
17 or independent contractor working under the direction of either Defendant JP
18 Morgan Chase Bank, N.A., or Quality Loan Servicing, Inc.. Another issue for class
19 certification is that all of the alleged “foreclosure sales” are in fact merely sham
20 transactions to cut off Plaintiff’s right, title, and interest on paper, utilizing the cited
21 provisions of the insulating subsequent bona fide purchaser for value defense
22 originating in §2924 as a cover up to fraud and deceit. It used to be said, at common
23 law, that “a thief takes no title”, but California Civil Code §2924 seems to solve that
24 whole problem very neatly (for the fraudulent buyers and sellers, anyhow....).

25 The relationship between allegedly foreclosing seller JP Morgan Chase and
26 First Newport Properties, LLC, and their attorney Steven David Silverstein appears
27 to be one of “master and servant” rather even than a relationship of
28 client/independent agent or contractor, in that JP Morgan Chase appears to have the

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3 power, or to represent to Christyna Lynn Gray that they have the power, immediately
4 to rescind both the sale of Plaintiff Gray's property and the forcible eviction and
5 detainer action filed by Silverstein on a moment's notice, as of Monday, December
6 7, 2009.

7 In all these cases, the patterns of Silverstein's operation, his "m.o." is one of
8 secrecy, surprise, and deceit. Plaintiffs submit that to the degree that the statutory
9 law of the State of California insulates crooks and thieves by creating certain
10 "conclusive presumptions" those provisions of statutory law constitute
11 unconstitutional impairments of the rights and obligations of contract, operate as
12 state assistance to deprive persons of property by fraud without due process of law.

13 **JURISDICTION and 12(b)(1)**

14 The First Amended Complaint states several civil rights causes of action for
15 declaratory judgment and injunction against Silverstein and the Orange County
16 Sheriff's Department from enforcing forcible detainers obtained by fraud or in
17 violation of constitutional rights. Plaintiff Lincoln has been joined by two long-time
18 California Plaintiffs so there is no longer any question of diversity jurisdiction under
19 28 U.S.C. §1332.

20 **SILVERSTEIN (ROTHMAN) CONFUSES AFFIRMATIVE DEFENSES**
21 **SUCH AS CALIFORNIA CIVIL CODE §§1714.10 & 2924 WITH 12(b)(6)**
22 **FAILURE TO STATE CAUSES OF ACTION**

23 Affirmative Defenses do not preclude the filing of complaints, if properly pled
24 in an answer they merely raise defenses available to a Defendant, on which the
25 Defendant bears the burden of proof. California Civil Code §§1714.10 and 2924 set
26 up affirmative defenses which, if constitutional, must still be pled and proven by the
27 Defendant or Defendants asserting them, in this case Silverstein, Elter, 4 Via Corbina
28 Trust, and GRE Development, Inc.. It is more ambiguous whether the tender rule
offer articulated by Silverstein on pages 9-1- is a 12(b)(6) "failure to state a claim"

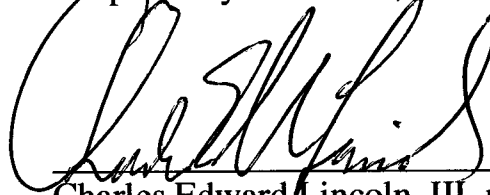
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3 issue or an affirmative defense, but in any case, Lincoln in the First Amended
4 Complaint corrects Defendant's misinformation that no tender was made to Wells
5 Fargo Bank, because tender was in fact made by Lincoln shortly after assuming the
6 obligations, rights, and claims previously belong to Hal Kuder, Jr., in June 2008.

7 **CERTIFICATE OF SERVICE:**

8 Plaintiff Charles Edward Lincoln is the only Plaintiff under the First Amended
9 Complaint with an interest or need to respond to Silverstein's Motion to Dismiss.
10 Plaintiff Lincoln will serve this Motion immediately upon the Defendant's counsel
11 by facsimile transmission to (714) 363-0229 as well as by electronic (e-mail)
12 attachment to Larry Rothman's e-mail address shown as tocollect@aol.com on the
13 cover sheet of Rothman's original filing for Defendant Silverstein.

14
15 Monday, December 7, 2009

Respectfully submitted,



Charles Edward Lincoln, III, pro se
c/o Peyton Yates Freiman
603 Elmwood Place, Suite #6
Austin, Texas 78705
Telephone: 512-968-2500
Facsimile: 561-691-1423

charles.lincoln@rocketmail.com