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STEVEN D. SILVERSTEIN, RON ELTER, and GRE  
DEVELOPMENT, INC. as agents and Trustee of the  
Via Corbina Trust #4

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

CHRISTYNA LYNN GRAY, CHARLES  
EDWARD LINCOLN, III, RENADA  
NADINE MARCH,

Plaintiffs,

vs.

STEVEN D. SILVERSTEIN, RON ELTER,  
GRE DEVELOPMENT, INC., Individually  
and as agents for and Trustee of the Via  
Corbina Trust #4 CHRISTOPHER  
ARCHULETA, MERS(Mortgage Electronic  
Registration Services), other unnamed  
Attorney, Defendants, John and Jane Does  
1-10, MEGLADON FINANCIAL, LLP.  
ATLAS PROPERTIES REAL ESTATE,  
JAMES RADWAN, ROCHELLE MATKIN

CASE NO: SACV09-1072 DOC(Ex)

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS BASED  
UPON RULES 12(b)(1) AND  
12(b)(6) OF THE FEDERAL RULES  
OF CIVIL PROCEDURE  
(F.R. C.P. RULE 12)

DATE: January 25, 2010  
TIME: 8:30 a.m.  
COURTROOM: 9D

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TRUSTEE CORPS, RUSSELL BELL,  
QUALITY LOAN SERVICE Corp. FIRST  
NEWPORT PROPERTIES, LLC., JOHN  
MURK, DIANNE D'AGNOLO, The  
Honorable, SANDRA HUTCHENS, THE  
SHERIFF OF ORANGE COUNTY, JP  
MORGAN CHASE (as successor in Interest  
to WASHINGTON MUTUAL), ONEWEST  
BANK, NA (As successor in Interest and  
Alleged assignee of Indymac, CAL-  
WESTERN RECONVEYANCE, WELLS  
FARGO BANK, N.A., DENNIS STACY,  
COLDWELL BANKER, and JOHN &  
JANE DOES 1-20,

Defendants.

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:  
the Defendants, STEVEN D. SILVERSTEIN, RON ELTER, and GRE  
DEVELOPMENT, INC. as agents and Trustee of the Via Corbina Trust #4  
submit the following Memorandum of Points and Authorities in support of  
their Motion to Dismiss:

Respectfully submitted,

LARRY ROTHMAN & ASSOCIATES

Dated: December 31, 2009

\_\_\_\_\_  
LARRY ROTHMAN,  
Attorney for Defendants:  
STEVEN D. SILVERSTEIN, RON ELTER, and GRE DEVELOPMENT, INC. as  
agents and Trustee of the Via Corbina Trust #4

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1  
2 **1 INTRODUCTION**

3  
4 CHARLES EDWARD LINCOLN, III, (“Lincoln”) has filed another lawsuit  
5 with respect to the property located at 4 Via Cobina, Rancho Santa Margarita,  
6 California 92688 (“the Property”). This time he adds two more Plaintiffs,  
7  
8 CHRISTYNA LYNN GRAY and RENADA NADINE MARCH “Gray”,  
9 to his case who apparently are representing themselves and “claim” the same type  
10 of damages as Lincoln. This Court has been requested to take judicial notice of  
11 Lincoln v Cal-Western Reconveyance Corporation filed in this district as case  
12 SACV08-1334 DOC(Ex). In this case, Lincoln claims to request Class Action  
13 status against the purchasers of this property at a trustee sale and its unlawful  
14 detainer attorney, the foreclosure company, bank, Orange County Sheriff, and  
15 others.  
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19 This Motion has been filed on behalf of Steven D. Silverstein, the unlawful  
20 detainer attorney for the purchaser at the trustee sale (“Silverstein”), the Trustee of  
21 a Trust which was the purchaser at the trustee sale for the property, Gre  
22 Development, Inc. (“Gre”), and its shareholder, Ron Elter, (“Elter”).  
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3 **2 STATEMENT OF FACTS AND PROCEDURAL HISTORY**  
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5 Lincoln and Gray claim subject matter jurisdiction for this case based upon  
6 a "Federal Question" 28 USC Section 1331 and 1343 as well as certain Civil  
7 Rights and Quasi Civil Rights violations to him under 42 USC Sections 1981,  
8 1982, 1983, and 1988 (a) even though Paragraph 19 of the First Amended  
9 Complaint alleges that Plaintiffs are all white Anglo-Saxon and Protestant.  
10 While Lincoln alleged "Diversity" 28 USC Section 1332 in the original complaint,  
11 that jurisdictional issue has mysteriously vanished in the First Amended  
12 Complaint.  
13  
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15

16 The gravamen of the complaint against these Movants is based upon a  
17 *conspiracy* between Silverstein and his client, Gre to evict Plaintiff(s) from  
18 property purchased by Gre at a trustee sale. Lincoln is requesting that the eviction  
19 be stopped and that he regains title to the property.  
20  
21

22 The Complaint in this action was filed September 16, 2009. These Movants  
23 responded with a Motion to Dismiss that was filed on October 13, 2009 and set for  
24 a hearing on November 16, 2009. After several *ex-parte* requesting an extension  
25 to respond, Lincoln filed a First Amended Complaint on December 7, 2009.  
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3 **THE COMPLAINT MUST BE DISMISSED WHEN PLAINTIFF'S**  
4 **ALLEGATIONS FAIL TO STATE A CAUSE OF ACTION**

5 A Complaint (or its causes of action) must be dismissed under the Federal  
6 Rules of Civil Procedure, Rule 12(b)(6), when a plaintiff's allegations fail to state a  
7 claim upon which relief can be granted. The Court must accept as true all factual  
8 allegations in the complaint and must draw all reasonable inference from those  
9 allegations, construing the complaint in the light most favorable to the plaintiff.  
10  
11 See Guerro v Gates (2006) 442 F.2d 697, 703. Dismissal without leave to amend  
12 is appropriate only when the Court is satisfied that the deficiencies in the complaint  
13 could not possibly be cured by amendment. See Jackson v Carey (2003) 353  
14 F.3d 750, 758 and Lopez v Smith (2000) 203 F.3d 1122, 1127.

15  
16  
17 A Complaint must also be dismissed if this Court does not have subject  
18 matter jurisdiction. See Federal Rules of Civil Procedure, Rule 12(b)(1). The  
19 First Amended Complaint is problematic jurisdictionally in that all of the claims  
20 have either been litigated in State Court already, or could be litigated there. In  
21 addition, the First Amended Complaint is basically a mish mash of arguments of  
22 law, anticipated arguments of law and verbose arguments of fact rather than plain  
23 statements of facts supportive of causes of action as required by F.R.C.P. Rule 8a  
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1 and d. In addition the allegation in the Complaint do not comply with the  
2 pleading requirements of Ashcroft v. Iqbal, No. 07-1015 (U.S. 5/18/2009) (2009).

3  
4 **ALL CLAIMS AGAINST MOVANTS SHOULD BE DISMISSED**  
5 **SINCE THEY ARE BASED UPON A CONSPIRACY BETWEEN**  
6 **SILVERSTEIN AND HIS CLIENT AND PLAINTIFF FAILED**  
7 **TO OBTAIN PERMISSION FROM THIS COURT TO FILE**  
8 **THIS LAWSUIT**

9  
10 **According to California Civil Code Section 1714.10, (a) No cause of**  
11 **action against an attorney for a civil conspiracy with his or her client arising**  
12 **from any attempt to contest or compromise a claim or dispute, and which is based**  
13 **upon the attorney's representation of the client, shall be included in a complaint or**  
14 **other pleading unless the court enters an order allowing the pleading that includes**  
15 **the claim for civil conspiracy to be filed after the court determines that the party**  
16 **seeking to file the pleading has established that there is a reasonable probability**  
17 **that the party will prevail in the action. The court may allow the filing of a**  
18 **pleading claiming liability based upon such a civil conspiracy following the filing**  
19 **of a verified petition therefor accompanied by the proposed pleading and**  
20 **supporting affidavits stating the facts upon which the liability is based. The court**  
21 **shall order service of the petition upon the party against whom the action is**  
22 **proposed to be filed and permit that party to submit opposing affidavits prior to**  
23 **making its determination. The filing of the petition, proposed pleading, and**  
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1 accompanying affidavits shall toll the running of any applicable statute of  
2 limitations until the final determination of the matter, which ruling, if favorable to  
3 the petitioning party, shall permit the proposed pleading to be filed.  
4

5 In this case, Lincoln failed to Petition this Court for the right to file his  
6 claim for conspiracy. See Complaint paragraph 2 which is incorporated for all  
7 causes of action against these Movants as well as 5 through 10.  
8

9 (b) Failure to obtain a court order where required by subdivision (a) shall  
10 be a defense to any action for civil conspiracy filed in violation thereof. The  
11 defense shall be raised by the attorney charged with civil conspiracy upon that  
12 attorney's first appearance by demurrer, motion to strike, or such other motion or  
13 application as may be appropriate. Failure to timely raise the defense shall  
14 constitute a waiver thereof.....  
15  
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17 See also Devereaux v Latham & Watkins (1995) 32 Cal. App 4<sup>th</sup> 1571,  
18 1582 which holds that California Civil Code Section 1714.10 "which requires a  
19 judicial determination of reasonable probability of success prior to permitting the  
20 filing of an action against an attorney based on a claim of civil conspiracy with a  
21 client."  
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26 **5 COUNT I FOR "CIVIL RIGHTS DECLARATORY JUDGMENT"**  
27 **DOES NOT STATE A CAUSE OF ACTION**  
28

1           The rambling of words in this "Count" to state that customs, practices,  
2 and policies administrated and enforced in Orange County are wholly  
3 unconstitutional and offensive to due process of law do not provide any facts of  
4 specific wrongful illegal conduct or why the Plaintiffs have standing under 42 USC  
5 Sections 1981-1982. Count 1 should be summarily dismissed.  
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8       **6       COUNT II, V, AND VI DO NOT SEEM TO APPLY TO THE**  
9 **MOVANTS.**

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11       **7.       COUNT III AND IV SEEM TO ATTACK CIVIL CODE 1714.10 AND**  
12 **MOVANT, SILVERSTEIN, BUT DO NOT STATE A CAUSE**  
13 **OF ACTION**

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15       Because Silverstein is an attorney, presumably, this Count applies.  
16 However, the First Amended Complaint fails to indicate any specific facts or  
17 illegal actions attributed to Silverstein. In addition, all facts and actions appear to  
18 already have been litigated in the State Court and not appealed thus far to the  
19 California Supreme Court. See also arguments in Section 4 above.  
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1 § COUNT VIII AND X TO VOID THE SALE DOES NOT STATE A  
2 CAUSE OF ACTION AGAINST THESE MOVANTS  
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4 Lincoln first has to prove that he has standing to bring this action. To set  
5 aside the sale, Lincoln first has to tender the funds owed. Under California law,  
6 Plaintiff cannot properly allege a quiet title claim unless Plaintiff tenders all  
7 amounts due because a Plaintiff may not “quiet title without discharging [the] debt  
8 ... the cloud upon his title persists until the debt is paid.” See Aguilar v. Bocci  
9 (1974) 39 Cal.App.3d 475, 477 citing Burns v. Hiatt (1906) 149 Cal. 617, 620.)  
10  
11 In this instance, Lincoln has not alleged either a proposal to tender or the ability to  
12 tender and therefore fails to state sufficient facts to constitute a cause of action for  
13 quiet title. Before any liability or damages can be imposed upon the Movants,  
14 Lincoln first must support his contention that he is or should be the owner of the  
15 premises. However, a party seeking to set aside a foreclosure sale must plead  
16 and prove the ability to tender the obligation.  
17

18  
19 California courts have expanded the application of the tender rule to “any  
20 cause of action” that is based upon allegations of wrongful foreclosure or that  
21 seeks redress from foreclosure. (Abdallah v. United Sav. Bank, (1996) 43  
22 Cal.App.4th 1101, 1109 [in affirming the sustaining of a demurrer without leave to  
23 amend the court explained that the tender rule applies to “any cause of action for  
24 irregularity in the sale procedure”]; United States Cold Storage v. Great W. Sav. &  
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1 Loan Ass'n, (1985) 165 Cal.App.3d 1214, 1225 [affirming judgment of non-suit];

2 Arnolds Mgmt. Corp. v. Eischen, (1984) 158 Cal.App.3d at 579 [affirming

3  
4 sustaining of demurrer without leave to amend on claims of wrongful foreclosure,  
5 fraud, and negligence relating to defective notice of foreclosure sale.]

6 The tender rule is strictly applied. (Nguyen v. Calhoun, (2003) 105 Cal.App.4th

7  
8 428, 439) Absent an alleged and actual tender, the complaint in its entirety fails to

9 state a cause of action. (Karlsen v. Am. Sav. & Loan Ass'n., (1971) 15 Cal.App.3d

10  
11 112.) "A tender must be one of full performance (California Civil Code § 1486)

12 and must be unconditional to be valid." (Arnolds Mgmt. Corp., supra, 158

13 Cal.App.3d at 580.) Lincoln may not just recite the language, but must actually

14  
15 have the means to make the tender, "if the offeror '... is without the money

16 necessary to make the offer good and knows it ...' the tender is without legal force

17  
18 or effect." (Karlsen, supra, 15 Cal.App.3d at 118.) Lincoln has not tendered, nor

19 has he offered to tender, the full amount owing. Therefore, Lincoln has no

20 standing to challenge the foreclosure sale or any related claims.

21  
22 **9 COUNT IX DOES NOT STATE A CAUSE OF ACTION AGAINST**  
23 **THESE MOVANTS SINCE THESE MOVANTS HAVE NOT**  
24 **FILED AN ANTI-SLAPP MOTION.**

1     **10     COUNT XI FOR “SLANDER OF TITLE” AND “TORTUOUS**  
2                   **INTERFERENCE” DO NOT STATE A CAUSE OF ACTION**

3  
4             The elements of slander of title occur when a person, without a privilege to  
5 do so, publishes a false statement that disparages title to property and causes  
6 pecuniary loss. (Stalberg v. Western Title Ins. Co. (1994) 27 Cal.App.4th 925, 929,  
7 32 Cal.Rptr.2d 750.) "The elements of the tort are (1) publication, (2) absence of  
8 justification, (3) falsity and (4) direct pecuniary loss." (Seeley v. Seymour (1987)  
9 190 Cal.App.3d 844, 858, 237 Cal.Rptr. 282.) What makes conduct actionable is  
10 not whether a defendant succeeds in casting a legal cloud on plaintiff's title, but  
11 whether the defendant could reasonably foresee that the false publication might  
12 determine the conduct of a third person buyer or lessee. (Wilton v. Mountain Wood  
13 Homeowners Assn. (1993) 18 Cal.App.4th 565, 568, 22 Cal.Rptr.2d 471.)

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19             In the case before this Court and as discussed above, Lincoln would have to  
20 have tendered the funds owed prior to the foreclosure sale. Once the trustee sale  
21 occurred, the trustee's deed's recitals validate the sale and the purchaser at the sale  
22 cannot disparage the title of the property nor its unlawful detainer attorney . See  
23 also California Civil Code Section 47.  
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**COUNT XII FOR “FORCIBLE DETAINER” DOES NOT STATE A CAUSE OF ACTION**

The elements of forcible detainer require a person to take possession of real property without permission or right. See California Code of Civil Procedure Section 1160. The only claims made in the complaint that relate to this cause of action refer to Lincoln’s contention that Gre does not have legal title. Based upon the arguments set forth above, Lincoln has to first state a cause of action in Counts I through III in order to prove that he has standing and a right to possession of the property.

**12 COUNT XIII FOR “BREACH OF CONTRACT - RICO” DOES NOT STATE A CAUSE OF ACTION**

There is no allegation of any contract between Lincoln and the Movants so there can be no cause of action for breach of contract. Lincoln alleges that the Movants induced a breach of contract or breached the implied covenant of good faith. Lincoln fails to allege any facts supporting this conduct. There are many statements in this Cause of Action and most are conclusory allegations and citations which do not make any sense. Furthermore, they clearly don’t support this non-existent cause of action. Apparently, there are also RICO allegations

1 relating to e-mails to Lincoln's attorney purportedly during the eviction action  
2 which are also privileged under California Civil Code Section 47.  
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8 **CONCLUSION**

9 Based upon the arguments set forth in this Motion to dismiss, the  
10 Complaint should be dismissed without leave to amend.  
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18 Respectfully submitted,

19 LARRY ROTHMAN & ASSOCIATES

20 Dated: December 31, 2009

21 

22 \_\_\_\_\_  
23 LARRY ROTHMAN,  
24 Attorney for Defendants:

25 STEVEN D. SILVERSTEIN, RON ELTER, and GRE DEVELOPMENT, INC. as  
26 agents and Trustee of the Via Corbina Trust #4  
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**PROOF OF SERVICE**

State of California, County of Orange:

I am employed in the county and state aforesaid. I am over the age of 18 and not a party to the within action; my business address is: City Plaza, 1 City Boulevard West, Suite 850, Orange, California 92868

On December 31, 2009, served the foregoing document described as:

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION TO DISMISS BASED UPON RULES 12(b)(1) AND  
12(b)(6) OF THE FEDERAL RULES

OF CIVIL PROCEDURE on the parties listed below in this action by placing a true copy thereof or the originals in a sealed envelope sent first class mail and addressed as follows:

**SEE ATTACHED PROOF OF SERVICE LIST**

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on December 31, 2009, at Orange, California.

  
\_\_\_\_\_  
MONIQUE PINKS

**Charles Edward Lincoln, III  
c/o Peyton Yates Freiman  
603 Elmwood Place, Suite #6  
Austin, Texas 78705**

**Christyna Lynn Gray  
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Huntington Beach, California 92649**

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