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St. George, UT 84770  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE STATE OF UTAH, CENTRAL DIVISION

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PENI COX, an individual,

Plaintiff,

vs.

RECONTRUST COMPANY, N.A.;  
BANK OF AMERICA HOME LOANS  
SERVICING, LP; BANK OF AMERICA,  
FSB; NEW LINE MORTGAGE, DIVISION  
OF REPUBLIC MORTGAGE HOME  
LOANS, LLC; MORTGAGE  
ELECTRONIC REGISTRATION  
SYSTEMS, INC., and DOES 1 – 5,

Defendants.

MOTION TO REMAND

2:10-cv-00492-CW-SA  
Magistrate Judge Samuel Alba

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Plaintiff moves this Court for an Order of Remand back to State Court based on this Court's lack of jurisdiction.

BACKGROUND

Plaintiff is a resident of Utah and originally filed this suit in a Utah state court. The suit generally challenges the ability of Defendants ReconTrust Company and Bank of America Home Loan Servicing to be involved in real estate foreclosures in Utah. Plaintiff argues Defendants failed to comply with various provisions of Utah law. Plaintiff claims damages in an amount less than \$75,000.

Acting pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants removed the case to federal court. Defendants claim that this court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (a)(I) and 28 U.S.C. § 1331.

## ANALYSIS

At every stage of the proceeding in every case, a federal district court must satisfy itself as to its own jurisdiction, even if doing so requires sua sponte action. *Citizens Concerned for Separation of Church & State v. City & County of Denver*, 628 F.2d 1289 (10th Cir. 1980). Federal courts have limited subject matter jurisdiction and are restricted to exercising it only when specifically authorized. Erwin Chemerinsky, *Federal Jurisdiction* 259 (4th ed. 2003). Consistent with this principle, removal jurisdiction exists only if the “suit initially could have been filed in federal court. Generally, the plaintiff’s complaint must present either a federal question or diversity of citizenship must, exist in order for a case to be removed to federal court.” *Id.* at 344.

### **A. No Federal Question Exists.**

Plaintiff has amended her complaint to remove the action upon which the federal question is based. Therefore the court cannot have jurisdiction under a federal question. Plaintiff continues to assert her claims of violation Utah Code § 16-10a-1501, and § 57-1-21(3). These claims are not based on a federal question.

### **B. Defendants have Failed to Satisfy the Procedural Requirements for Removal.**

Defendants claim that New Line Mortgage has not been properly served in this action and therefore need not be a party to the removal filed by ReconTrust and Bank of America Home Loans Servicing LP.

New Line Mortgage has been properly served (see Exhibit 1) and should have joined in the Motion to Remove to Federal Court.

Furthermore, Defendants ReconTrust Company and Bank of America Home Loan Servicing claim that Defendants Bank of America N.A. and Mortgage Electronic Registration Systems Inc. have not been served in this action. The telephone recording at Mortgage Electronic Systems Inc. states the address for perfection of Service of Process as:

3300 SW 34th Ave #101  
Ocala FL 34474-7448

Mortgage Electronic Systems Inc. was properly served. See Exhibit 2. Additionally, Bank of America N.A. has a service of process address listed with the State of:

c/o CT Corporation System  
150 Fayetteville St., Box 1011  
Taleigh NC 27601

Bank of America N.A. is properly served. See Exhibit 3. Defendants ReconTrust Company and Bank of America Home Loan Servicing have filed to join necessary parties in their motion for removal. For this reason Defendants ReconTrust and Bank of America Home Loans Servicing LP improperly filed a Motion for Removal.

#### CONCLUSION

Rather than dismissing this case, which is precisely what Defendants want to happen, this case should be remanded to the state court from whence in originated.

Dated this 3<sup>RD</sup> day of June, 2010.

A handwritten signature in cursive script that reads "John Christian Barlow". The signature is written in black ink and is positioned above a horizontal line.

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JOHN CHRISTIAN BARLOW  
Attorney for Plaintiff

# EXHIBIT 1

7008 1140 0002 3725 0051

**U.S. Postal Service™**  
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*(Domestic Mail Only; No Insurance Coverage Provided)*

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SALT LAKE CITY UT 84107

Postage	\$	\$4.90
Certified Fee		\$2.80
Return Receipt Fee (Endorsement Required)		\$2.30
Restricted Delivery Fee (Endorsement Required)		\$0.00
<b>Total Postage &amp; Fees</b>	<b>\$</b>	<b>\$10.00</b>

0770  
 16 MAY 13 2010  
 GEORGE UT 84770-9998  
 05/18/2010

Sent To  
 Newline Mortgage, c/o L. Scott Leishman  
 Street, Apt. No.,  
 or PO Box No. 5241 S. State, Suite 2  
 City, State, ZIP+4  
 Murray, UT 84107

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) Gary Nielson</p> <p>C. Date of Delivery 5-20-10</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No                      If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p>NEW LINE MORTGAGE,                      Registered Agent                      L. Scott Leishman                      5241 South State Street, Suite 2                      Murray, UT 84107</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number                      (Transfer from service label)</p>	<p>7008 1140 0002 3725 0051</p>
<p>PS Form 3811, February 2004</p>	<p>Domestic Return Receipt 102595-02-M-1540</p>

# EXHIBIT 2

**U.S. Postal Service™**  
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**OFFICIAL USE**  
 EACH FL 33474

Postage	\$ 5.55	0770
Certified Fee	\$ 2.80	
Return Receipt Fee (Endorsement Required)	\$ 2.30	
Restricted Delivery Fee (Endorsement Required)	\$ 0.00	
<b>Total Postage &amp; Fees</b>	<b>\$ 10.65</b>	

Postmark Here  
 MAY 18 2010  
 GEORGE UT 84770-9998

Sent To  
 Mortgage Electronic Registration Systems, Inc.  
 Street, Apt. No.,  
 or PO Box No. 3300 S W 34th Ave #101  
 City, State, ZIP+4  
 Ocala, FL 34474-7448

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature                  X <i>K. Chislo</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)  <i>Katonya Chislo</i></p> <p>C. Date of Delivery  <i>MAY 20 2010</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                  If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <p>Mortgage Electronic Registration Systems, Inc.                  3300 S W 34<sup>th</sup> Ave, #101                  Ocala, FL 34474-7448</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail  <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise  <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number                  (Transfer from service label)</p> <p>7009 0960 0000 5426 8688</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540



# EXHIBIT 3



Elaine F. Marshall  
Secretary

North Carolina  
**DEPARTMENT OF THE  
SECRETARY OF STATE**  
PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

**CORPORATIONS**

Date: 6/1/2010

- Corporations Home
- Search By Corporate Name
- Search For New & Dissolved
- Search By Registered Agent
- Important Notice
- Resale of Tickets Online
- Corporations FAQ
- Homeowners' Association FAQ
- Tobacco Manufacturers
- Unincorporated Non-Profits
- Dissolution Reports
- Non-Profit Reports
- Verify Certification
- Online Annual Reports

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- [Print apre-populated Annual Report Form](#) | [Annual Report Count](#) | [File an Annual Report](#) |

**Corporation Names**

Name	Name Type
<b>NC</b> BANK OF AMERICA CORPORATION	Legal
<b>NC</b> BANKAMERICA CORPORATION	Prev Legal

**Business Corporation Information**

<b>SOSID:</b>	0472730
<b>Status:</b>	Current-Active
<b>Date Formed:</b>	10/7/1998
<b>Citizenship:</b>	Foreign
<b>State of Inc.:</b>	DE
<b>Duration:</b>	Perpetual

**Registered Agent**

<b>Agent Name:</b>	CT Corporation System
<b>Registered Office Address:</b>	150 Fayetteville St., Box 1011 Raleigh NC 27601
<b>Registered Mailing Address:</b>	150 Fayetteville St., Box 1011 Raleigh NC 27601
<b>Principal Office Address:</b>	100 N Tryon St Charlotte NC 28255
<b>Principal Mailing Address:</b>	401 N Tryon St NC1-021-02-20 Charlotte NC 28255

**LINKS & LEGISLATION**

- KBBE B2B Annual Reports
- SOSID Number Correction
- 2001 Bill Summaries
- 1999 Senate Bills
- Corporations 1997
- Professional Corporations
- NCSOS Authority to Dissolve
- Register for E-Procurement
- Dept. of Revenue

**ONLINE ORDERS**

- Start An Order
- New Payment Procedures

**CONTACT US**

- Corporations Division

**TOOLS**

- Secretary of State Home
- Secretary of State Site Map
- Printable Page

7003 0500 0001 8370 4796

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RALEIGH NC 27601

Postage	\$	\$5.35	
Certified Fee		\$2.80	
Return Receipt Fee (Endorsement Required)		\$2.30	
Restricted Delivery Fee (Endorsement Required)		\$0.00	
<b>Total Postage &amp; Fees</b>	<b>\$</b>	<b>\$10.45</b>	

05/18/2010

Sent To: *BofA /o CT Corporation System*  
 Street, Apt. No., or PO Box No.: *150 Fayetteville St., Box 1011*  
 City, State, ZIP+4: *Raleigh NC 27601*

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> <li>Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</li> <li>Print your name and address on the reverse so that we can return the card to you.</li> <li>Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature <i>[Signature]</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ Date of Delivery <i>5-21-10</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes                      If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to:</p> <div style="border: 1px solid black; padding: 5px; margin: 10px 0;"> <p>BANK OF AMERICA                          c/o CT Corporation System                          150 Fayetteville St., Box 1011                          Taleigh NC 27601</p> </div>	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number (Transfer from service) <b>7003 0500 0001 8370 4796</b></p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540