

Honorable Chief Judge Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

REBECCA ALEXANDER, a single
woman;

Plaintiff,

vs.

KING COUNTY, WASHINGTON, a
county municipality; STATE OF
WASHINGTON, one of the fifty states
of the United States; Bank of America,
N.A., a national banking association;
NORTHWEST TRUSTEE SERVICES,
INC., A Washington Corporation; U.S.
BANK NATIONAL ASSOCIATION, as
Trustee for Harborview Mortgage Loan
Trust 2005-12, Mortgage Loan
Pass-through Certificates, Series
2005-12 Trust; Nationstar Mortgage,
LLC, a foreign entity, JOHN DOE
TRUSTEE; JOHN DOE TRUST;
MERS, a foreign corporation;

Defendant.

Case No.: 2:17-cv-00653

**ALEXANDER'S RESPONSE TO
MOTION TO DISMISS AND
REQUEST FOR SANCTIONS
PURSUANT TO 28 U.S.C.. 1927**

NOTED: June 9, 2017

1
2
3
4
5
6
7
8
9
10

I. RELIEF REQUESTED

Come now Rebecca Alexander, by and through the Stafne Law Firm, and requests this Court remand this case to the Superior Court for Snohomish County before it considers any motion on the merits.

Further, Alexander requests this Court pursuant to 28 U.S.C. 1927 order attorneys for defendants U.S. Bank, Nationstar Mortgage and MERS to pay her attorney fees in having to resist its filing of a motion to dismiss on the “merits” before this Court has demonstrated it has subject matter jurisdiction.

11
12
13
14
15
16
17
18

II. INTRODUCTION

Undeterred from seeking to inappropriately remove cases in violation of the Supreme Court’s warnings to attorneys that federal courts will not look favorably on such shenanigans¹, defendants have improperly attempted to remove this case to federal court. See Authorities set forth in Alexander’s motion to remand, Dkt. 10, and Reply to Defendants’ Response to Motion to Remand. Dkt. 17. Because this Court does not have subject matter jurisdiction over

19
20
21
22
23
24
25
26
27
28

¹ See *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 77–78, 117 S. Ct. 467, 477, 136 L. Ed. 2d 437 (1996) where the Supreme Court in responding to an argument that future defendants will remove in the hope that some subsequent developments, such as the eventual dismissal of non diverse defendants, will permit the case to be kept in federal court remarked they were unconcerned because that fear “rests on an assumption we do not indulge—that district courts generally will not comprehend, or will balk at applying, the rules on removal Congress has prescribed.” The Court went on to observe: “[t]he prediction furthermore assumes defendants’ readiness to gamble that any jurisdictional defect, for example, the absence of complete diversity, will first escape detection, then disappear prior to judgment.” The Court apparently believed that there weren’t defendants like US Bank, Nationstar, and MERS out there, i.e. defendants, like these, who will take great risks to obtain what they view is a more favorable (from Alexander’s view biased) federal forum . Apparently, in 1996 the prevailing thought was “[t]he well-advised defendant, we are satisfied, will foresee the likely outcome of an unwarranted removal—a swift and non reviewable remand order, see 78 28 U.S.C. §§ 1447(c), (d), attended by the displeasure of a district court whose authority has been improperly invoked.” But obviously that is not happening. Indeed, defendants’ motion to dismiss filed in this case while a motion for remand is pending substantiates the Federal District for Western District of Washington encourages suggests defendants feel free to abuse this Court’s subject matter jurisdiction pursuant to Article III, § 2 which limits this Court’s ability to exercise judicial power.

1 this case until the presumption against its lack of jurisdiction has been resolved, this Court
2 has no authority to resolve motions on the merits. *See Steel Co. v. Citizens for a Better*
3 *Environment*, 523 U.S. 83, 94-95, 118 S.Ct. 1003, 1012 (1998)(“ ... a federal district court
4 must ascertain whether it has subject matter jurisdiction before considering a defendant's
5 motion to dismiss”); *See also Robertson v. GMAC Mortgage, LLC*, 640 Fed. Appx. 609 (9th
6 Cir. 2016).

8 III. ISSUES

- 9
- 10 1. Does the United States District Court for the Western District of Washington have
11 authority to require Rebecca Alexander, a Washington citizen, who has properly
12 challenged this Court’s jurisdiction to participate in an adjudicatory process
13 involving the merits of the case prior to the time this Court has determined it has
14 subject matter jurisdiction?
 - 15 2. Should this Court order the attorneys who brought the motion to dismiss be
16 sanctioned pursuant 28 U.S.C. § 1927?

17 IV. EVIDENCE

18
19 Plaintiff Rebecca Alexander relies on the declarations of Scott Stafne in support of this
20 response and request for sanctions.

21 V. ARGUMENT:

22 Removing defendants do not assert there is diversity jurisdiction pursuant to 28 U.S.C.
23 1332 because there is not. Alexander and defendant NWTS are both Washington citizens and
24 NWTS is not a nominal party. *See Riedesel v. Bank of Am.*, C13-1854-JCC, 2013 WL
25 12072691, at *2 (W.D. Wash. Nov. 21, 2013) Similarly, diversity jurisdiction does not exist
26
27
28

1 when a Washington citizen sues Washington State and political subdivisions thereof, i.e. King
 2 County, for violating Washington law. Thus, defendants removal of this Washington dispute
 3 should be seen for what it is; namely a frivolous or reckless use of “federal question”
 4 jurisdiction as an attempt to do an end run around Art. III, § 2 to get into a federal court which
 5 virtually always rules against homeowners on state law issues².
 6

7 ***A. The Separation of Powers Prohibits this Court from Assuming Jurisdiction over a Case***
 8 ***which does not arise under the Constitution or Statutes or Treaties.***

9 U.S. Const. Art. III states in pertinent part:

10 Section 1. The judicial power of the United States shall be vested in one Supreme
 11 Court and in such inferior courts as the Congress may from time to time ordain
 12 and establish. The judges, both of the supreme and inferior courts, shall hold their
 13 offices during good behavior, and shall, at stated times, receive for their services,
 14 a compensation, which shall not be diminished during their continuance in office.

15 Section 2. The judicial power shall extend to all cases, in law and equity, arising
 16 under this Constitution, the laws of the United States, and treaties made, or which
 17 shall be made, under their authority; ...

18 “The Constitution sought to divide the delegated powers of the new Federal Government
 19 into three defined categories, Legislative, Executive, and Judicial.” *INS v. Chadha*, 462 U.S.
 20 919, 951, 103 S.Ct. 2764, 2784, 77 L.Ed.2d 317 (1983). The declared purpose of separating

21 ² Even prior to the Supreme Court’s adoption of Iqbal/ Twombly’s heightened pleading standards, it was
 22 fairly obvious that removing a plaintiff’s state causes of action to a federal court affected defendants win
 23 rate in all types of causes of action. Clermont, Kevin and Eisenberg, Theodore, “Do Case Outcomes Really
 24 Reveal Anything About The Legal System? Win Rates and Removal Jurisdiction”, 83 Cornell L. Rev. 581
 25 (1998). The Clermont/Eisenberg study showed that the odds of winning the case for a state law plaintiff
 26 were reduced by over 50% when their case was removed to federal court under diversity jurisdiction, as
 27 compared to a case originally filed in State court. *Id.* at 582-83. The study concludes, “the advantages to the
 28 defendants of forum-shopping [to get into federal courts] seem to be real.” *Id.*

Indeed, even a report by the Federal Judicial Center demonstrates that after federal courts adopted
 the Iqbal/Twombly factors the likelihood of even represented plaintiffs winning financial instrument cases
 in federal courts was less than 9%. *See e.g.* Cecil, Joe, et al. Motions to Dismiss for Failure to State a
 Claim after Iqbal: Report to the Judicial Conference Advisory Committee on Civil Rules (2011)38 (FJC
 Report). This Report can be downloaded at
<https://www.fjc.gov/content/motions-dismiss-failure-state-claim-after-iqbal-report-judicial-conference-advisory-0>

1 and dividing the powers of government was to “diffus[e] power the better to secure liberty.”
 2
 3 *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635, 72 S.Ct. 863, 870, 96 L.Ed.
 4 1153 (1952) (Jackson, J., concurring). As James Madison stated in *The Federalist* No. 47
 5 “there can be no liberty where the legislative and executive powers are united in the same
 6 person, or body of magistrates....” *The Federalist* No. 47, p. 325 (J. Cooke ed. 1961)³

7 Among the checks and balances the framers imposed on federal lower courts was Article
 8 III, § 2, which states in pertinent part: “The judicial power shall extend to all cases, in law and
 9 equity, arising under this Constitution, the laws of the United States, and treaties made, or
 10 which shall be made, under their authority; -- ...” The Supreme Court has long acknowledged
 11 the control the other branches of government have over those cases the judicial department
 12 decides. *See e.g. Bank Markazi v. Peterson*, 136 S. Ct. 1310, 1322–23, 194 L. Ed. 2d 463
 13 (2016).
 14

15 The jurisdiction of lower federal courts is presumptively limited. *Kokkonen v. Guardian*
 16 *Life Ins. Co. of Am.*, 511 U.S. 375, 377, 114 S.Ct. 1673, 128 L.Ed.2d 391 (1994); *See also*
 17

18 ³ The founders believed personal liberty would have little to fear from the judicial department unless the
 19 separation of powers became corrupted.

20 [T]he judiciary is beyond comparison the weakest of the three departments of power [1] ;
 21 that it can never attack with success either of the other two; and that all possible care is
 22 requisite to enable it to defend itself against their attacks. It equally proves, that though
 23 individual oppression may now and then proceed from the courts of justice, the general
 24 liberty of the people can never be endangered from that quarter; I mean so long as the
 25 judiciary remains truly distinct from both the legislature and the Executive. For I agree,
 26 that "there is no liberty, if the power of judging be not separated from the legislative and
 27 executive powers. ..."

28 Federalist Paper No. 78 (emphasis added)

Indeed, Alexander Hamilton argued that one reason to assure the independence of the Judicial
 Department, as one of the three separate and distinct branches of government, was to promote
 justice against the enactment of unjust laws by the other two branches of government. Federalist
 Paper 78. Here, defendants are unlawfully attempting to remove cases into this Court when they
 know or should know this Court has no jurisdiction to hear them. See Dkt 14 & 17. By seeking to
 unlawfully remove this case which belongs in state court defendants demean the integrity of this
 Court which has a sua sponte duty to protect itself and the people from the improper invocation of
 its judicial power.

1 *Sheldon v. Sill*, 49 U.S. 441, 448, 8 How. 441, 12 L.Ed. 1147 (1850) (“Congress, having the
2 power to establish the courts, must define their respective jurisdictions.”). Federal lower
3 courts “possess only that power authorized by Constitution and statute, which is not to be
4 expanded by judicial decree.” *Kokkonen*, 511 U.S. at 377, 114 S.Ct. 1673. *See also Sheldon*,
5 49 U.S. at 4493 (“Courts created by statute can have no jurisdiction but such as the statute
6 confers.”). The Constitution does not allow litigants to seek out a federal court of limited
7 jurisdiction just because they anticipate more favorable rulings from that court. *See Kokkonen*,
8 511 U.S. at 377, 114 S.Ct. 1673. Nor do any laws allow this. Indeed, Congress has been pretty
9 clear it does not want federal jurisdiction to be manipulated. *See e.g.* 28 USC 1359.

10
11
12 ***B. The Separation of Powers Doctrine Limits This Court’s Authority to Interfere with Ms.
13 Alexander’s Rights to be Free From Federal Court’s Intrusion into her Life and
14 Liberties Unless Such Intrusion is Authorized by the Other Two Branches of
15 Government.***

16 Both the Separation of Powers (the checks and balances the constitution imposes on the
17 exercise of legislative, executive, and judicial power by each of the three branches of the
18 federal government) and Federalism (the division of power between the Federal government
19 and the State governments) are structural components of the federal government intended to,
20 among other things, promote individual personal liberty. *See e.g. Bond v. United States*, 564
21 U.S. 211, 220-224 (2011); *INS v. Chadha*, 462 U.S. 919, 935-6 (1983); *United States v*
22 *McIntosh*, 833 F.3d 1163, 1173-74 (9th Cir. 2016).

23 Under separation of powers principles there is a presumption lower federal courts do not
24 have jurisdiction. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546, 106 S. Ct. 1326,
25 1334, 89 L. Ed. 2d 501 (1986). *See also Stock West, Inc. v. Confederated Tribes*, 873 F.2d
26 1221, 1225 (9th Cir. 1989) (“A federal court is presumed to lack jurisdiction in a particular
27
28

1 case unless the contrary affirmatively appears.”) (citing *California ex rel. Younger v. Andrus*,
 2 608 F.2d 1247, 1249 (9th Cir.1979) at 873 F.2d at 1225).

3
 4 The burden of proving jurisdiction is on the party asserting federal jurisdiction. *Kokkonen*
 5 *v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994); *Yokeno v. Mafnas*, 973 F.2d
 6 803, 806 (9th Cir.1992). Here defendants have not rebutted the presumption (or even
 7 attempted to to do so) because they have not shown this dispute involves a substantial federal
 8 question and/or that removing this dispute from a Washington court to this Court will not
 9 disrupt the federal-state balance approved by Congress as is required in order to invoke
 10 jurisdiction pursuant to 28 U.S.C. § 1331. *See* authorities cited in Dkt 10 (motion to remand);
 11 Dkt. 14 (defendants opposition to motion to remand); Dkt. 17 (Alexanders Reply). *See also*
 12 *Duncan v. Stuetzle*, 76 F.3d 1480, 1490-91 (9th Cir. 1996)⁴; *Cf. Grupo Dataflux v. Atlas Glob.*
 13 *Grp.*, L.P., 541 U.S. 567, 574–75, 124 S. Ct. 1920, 1926, 158 L. Ed. 2d 866 (2004)(Article III
 14 jurisdiction must exist at the time a case is filed.)
 15

16 The Supreme Court has made abundantly clear that no action of the parties can confer
 17 subject matter jurisdiction on a federal court.
 18

19 "[T]he rule, springing from the nature and limits of the judicial power of the
 20 United States is inflexible and without exception, which requires this court [the
 21 Supreme Court], on its own motion, to deny its jurisdiction, and, in the exercise of
 22 its appellate power, that of all other courts of the United States, in all cases where
 23 such jurisdiction does not affirmatively appear in the record."

23 ⁴ In *Duncan* the Ninth Circuit held that:

24 Because each of Duncan's stated claims is supported by at least one state law theory of
 25 [*1491] recovery not dependent upon the Lanham Act, the complaint does not state a
 26 claim "arising under" that Act for the purposes of removal jurisdiction. *Cf. Ultramar*
 27 *[America, Ltd. v. Dwelle]*, 900 F.2d 1412 *Ultramar v.*, 900 F.2d [1412] at 1414 (9th Cir.
 1990) (under *Christianson*, "the fact that an alternative theory of relief exists for each
 28 claim alleged in the complaint, one not dependent upon federal law, is itself grounds to
 defeat federal question jurisdiction"). The district court therefore lacked subject matter
 jurisdiction.

Id., at 1490-91. See also *Id.*, n. 18 at 1491.

1 *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 US 694, 702
 2
 3 (1982) (quoting *Mansfield, C. & L. M. R. Co. v. Swan*, 111 U. S. 379, 382 (1884)).

4 In *Bond* the Supreme Court explained:

5 The recognition of an injured person's standing to object to a violation of a
 6 constitutional principle that allocates power within government is illustrated, in an
 7 analogous context, by cases in which individuals sustain discrete, justiciable
 8 injury from actions that transgress separation-of-powers limitations. Separation
 9 of-powers principles are intended, in part, to protect each branch of government
 from incursion by the others. Yet the dynamic between and among the branches is
 not the only object of the Constitution's concern. The structural principles secured
 by the separation of powers protect the individual as well.

10 In the precedents of this court, the claims of individuals – not of Government
 11 departments – have been the principal source of judicial decisions concerning
 12 separation of powers and checks and balances. For example, the requirement that
 13 a bill enacted by Congress be presented to the President for signature before it can
 14 become law gives the President a check over Congress' exercise of legislative
 15 power. See U.S. Const., Art. I, § 7. Yet individuals, too, are protected by the
 16 operations of separation of powers and checks and balances; and they are not
 17 disabled from relying on those principles in otherwise justiciable cases and
 18 controversies. In *INS v. Chadha*, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317
 19 (1983), it was an individual who successfully challenged the so-called legislative
 20 veto—a procedure that Congress used in an attempt to invalidate an executive
 determination without presenting the measure to the President. The procedure
 diminished the role of the Executive, but the challenger sought to protect not the
 prerogatives of the Presidency as such but rather his own right to avoid
 deportation under an invalid order. Chadha's challenge was sustained. A cardinal
 principle of separation of powers was vindicated at the insistence of an individual,
 indeed one who was not a citizen of the United States but who still was a person
 whose liberty was at risk.

21 Chadha is not unique in this respect. Compare *Clinton v. City of New York*, 524
 22 U.S. 417, 433–436, 118 S.Ct. 2091, 141 L.Ed.2d 393 (1998) (injured parties have
 23 standing to challenge Presidential line-item veto) with *Raines v. Byrd*, 521 U.S.
 24 811, 829–830, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997) (Congress Members do
 25 not); see also, e.g., *Free Enterprise Fund v. Public Company Accounting*
 26 *Oversight Bd.*, 561 U.S. —, 130 S.Ct. 3138, 177 L.Ed.2d 706 (2010); *Plaut v.*
 27 *Spendthrift Farm, Inc.*, 514 U.S. 211, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995);
Bowsher v. Synar, 478 U.S. 714, 106 S.Ct. 3181, 92 L.Ed.2d 583 (1986);
Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 102 S.Ct.
 28 2858, 73 L.Ed.2d 598 (1982); *Youngstown Sheet & Tube Co. v. Sawyer*, 343
 U.S. 579, 72 S.Ct. 863, 96 L.Ed. 1153 (1952); *A.L.A. Schechter Poultry Corp. v.*

1 United States, 295 U.S. 495, 55 S.Ct. 837, 79 L.Ed. 1570 (1935). If the
 2 constitutional structure of our Government that protects individual liberty is
 3 compromised, individuals who suffer otherwise justiciable injury may object.

4 *Bond v. United States*, 564 U.S. at 222–24, 131 S. Ct. at 2365.

5 Accordingly, under the checks and balances established by the Separation of Powers, the
 6 removing defendants can only invoke this Court’s judicial power to resolve the merits of this
 7 dispute after this Court produces a reasoned opinion demonstrating it has subject matter
 8 jurisdiction under Art. III, § 2, i.e. jurisdiction arising under the United States Constitution or
 9 a law or treaty enacted by the other two branches of government.
 10

11 ***C. This Court Will Violate the Separation of Powers Doctrine if it Fails to First***
 12 ***Determine that it has Article III Jurisdiction Before Deciding Merits and other***
 13 ***Procedural Motions***

14 Alexander has invoked her rights under those structural provisions of the
 15 Constitution known as the separation of powers and federalism, as well as pursuant to Section
 16 5 of the Fourteenth Amendment, to protect her liberty interests, which include without
 17 limitation: 1.) Litigating Washington causes of action in a Washington court; 2.) where she
 18 can better access her rights to the justice as a disabled person through GR 33; 3.) which
 19 provides standards to accommodate her disabilities, including those provided pursuant to “the
 20 Americans with Disabilities Act of 1990 (§ 42 U.S.C. 12101 et seq.) RCW 49.60 et. seq., and
 21 other similar local, state, and federal laws”. GR 33 (c)(1)(a).

22 This Court has an independent sua sponte obligation to perform a searching inquiry to
 23 determine whether it has subject matter jurisdiction over a dispute. *See e.g. Spokeo, Inc. v.*
 24 *Robins*, 136 S. Ct. 1540, 1544-1545 (2016); *Williams v. United Airlines, Inc.*, 500 F.3d 1019,
 25

1 1021 (9th Cir. 2007); *Abdulla-El v. Seattle Univ.*, 2014 U.S. Dist. LEXIS 107796, *3, 2014
2 WL 3851102 (W.D. Wash. Aug. 4, 2014). See also FRCP 12(h).
3

4 Defendants filing of merits motions, where this Court has not ruled on Alexander's
5 challenge to its subject matter jurisdiction is clearly improper and constitutionally
6 inappropriate. In *Moore v. Maricopa County Sheriff's Office*, 657 F.3d 890 (9th Cir. 2011) the
7 Ninth Circuit Court of Appeals observed:

8 A federal court cannot assume subject-matter jurisdiction to reach the merits of a
9 case. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94, 118 S.Ct. 1003, 140
10 L.Ed.2d 210 (1998). And the Supreme Court has specifically instructed that a
11 district court must first determine whether it has jurisdiction before it can decide
12 whether a complaint states a claim. See *Bell v. Hood*, 327 U.S. 678, 682, 66 S.Ct.
13 773, 90 L.Ed. 939 (1946) (“[I]t is well settled that the failure to state a proper
14 cause of action calls for a judgment on the merits and not for a dismissal for want
15 of jurisdiction. Whether the complaint states a cause of action on which relief
16 could be granted is a question of law ... [that] must be decided after and not before
17 the court has assumed jurisdiction over the controversy.”).

18 *Id.* at 895 (9th Cir. 2011).

19 In *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94-95, 118 S.Ct. 1003,
20 1012 (1998) the United States Supreme Court stated: “ ... a federal district court must
21 ascertain whether it has subject matter jurisdiction before considering a defendant's motion to
22 dismiss”).

23 In *Robertson v. GMAC Mortgage, LLC*, 640 Fed. Appx. 609 (9th Cir. 2016) the Ninth
24 Circuit recently reiterated that a United States district court cannot exercise judicial power
25 without first assuring itself that it has subject matter jurisdiction.

26 Given defendants-appellees' burden to establish complete diversity, LSI must
27 allege its actual citizenship, not vague assurances that it is not a citizen of
28 Washington or Oregon. See *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857-
58 (9th Cir.2001) (“Since the party asserting diversity jurisdiction bears the
burden of proof, Pfizer's failure to specify Plaintiffs' state citizenship was fatal to
Defendant's assertion of diversity jurisdiction.” (internal citation omitted)).

1 Absent specific allegations, we have no way of knowing whether LSI is a citizen
 2 of Oregon (and therefore non-diverse) or a citizen of Washington (and therefore a
 3 home-forum defendant). Accordingly, on the record before it, the district court
 4 erred in denying Robertson's motions to remand and in granting LSI's motion to
 5 dismiss before assuring itself of its own jurisdiction. See *Hawaii ex rel. Louie v.*
 6 *HSBC Bank Nevada, N.A.*, 761 F.3d 1027, 1034 (9th Cir.2014) (***noting that “any***
 7 ***doubt” about removal “is resolved against removability”*** (quoting *Luther v.*
Countrywide Home Loans Serv. LP, 533 F.3d 1031, 1034 (9th Cir.2008)); *Moore*
v. Maricopa Cty. Sheriff's Office, 657 F.3d 890, 895 (9th Cir.2011) (“***A federal***
court cannot assume subject-matter jurisdiction to reach the merits of a case.”).

8 *Id.*, at 612. (emphasis added.)

9 Because a federal court cannot assume subject matter jurisdiction denied it by Art. III, § 2
 10 this Court should remand the Washington state based controversy back to the Washington
 11 court where it belongs.

12 ***D. This Court should award Alexander her fees for having to prepare this Response***

13 Under 28 U.S.C. § 1927, a district court may sanction an attorney who “multiplies the
 14 proceedings in any case unreasonably and vexatiously,” if the attorney's conduct was reckless
 15 or in bad faith. *Lahiri v. Universal Music And Video Distribution*, 606 F.3d 1216, 1219 (9th
 16 Cir. 2010)(“Recklessness suffices for § 1927 sanctions.”). Before imposing sanctions pursuant
 17 to its inherent powers, a court must find “bad faith or conduct tantamount to bad faith.” *B.K.B.*
 18 *v. Maui Police Dep't*, 276 F.3d 1091, 1108 (9th Cir.2002) (quoting *Fink v. Gomez*, 239 F.3d
 19 989, 994 (9th Cir.2001)).

20
 21
 22 Counsel for defendants knew or should have known that bringing a motion to dismiss on
 23 the the merits was reckless and in bad faith because they litigated this very same issue in front
 24 of Judge Leighton, who ultimately remanded the case to State court. The people of
 25 Washington should not have to be terrorized into believing this Court will decide a “merits”
 26 motion against them while a challenge to this Court’s jurisdiction is outstanding and not
 27
 28

1 resolved. Unfortunately, it appears the only way this point can be made to these “wannabe”
2 federal defendants is through a judicious imposition of monetary sanctions against counsel.
3

4 **VI. CONCLUSION**

5 This Court should perform its duties pursuant to the Separation of Powers Doctrine and
6 issue an Order decreeing defendants cannot file a motion to dismiss based on the merits before
7 this Court has demonstrated the presumption against federal jurisdiction has been rebutted.

8 This Court should award Alexander her fees and costs in having to prepare this response to an
9 inappropriate motion to dismiss. Finally, this Court should remand this case back to the
10 Snohomish County Superior Court.
11

12 Respectfully submitted this 26th day of May 2017 at Arlington, Washington.
13

14 BY: /s Scott E. Stafne
15 Scott E. Stafne WSBA #6964
16 STAFNE LAW FIRM
17 239 N. Olympic Avenue
18 Arlington, WA 98223
19 (360) 403-8700

20 *Attorney for Plaintiff*
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that on this date I electronically filed the foregoing document and the Declaration of Scott Stafne with the Clerk of the Court using the CM/ECF system which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties (if any) shall be served in accordance with the Federal Rules of Civil Procedure.

DATED this 5th day of June, 2017 at Arlington, Washington.

BY: /s/ Pam Miller
Pam Miller, Paralegal

Honorable Chief Judge Ricardo S. Martinez

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

REBECCA ALEXANDER, a single woman;

Plaintiff,

vs.

KING COUNTY, WASHINGTON, a county municipality; STATE OF WASHINGTON, one of the fifty states of the United States; Bank of America, N.A., a national banking association; NORTHWEST TRUSTEE SERVICES, INC., A Washington Corporation; U.S. BANK NATIONAL ASSOCIATION, as Trustee for Harborview Mortgage Loan Trust 2005-12, Mortgage Loan Pass-through Certificates, Series 2005-12 Trust; Nationstar Mortgage, LLC, a foreign entity, JOHN DOE TRUSTEE; JOHN DOE TRUST; MERS, a foreign corporation;

Defendant.

Case No.: 2:17-cv-00653

DECLARATION OF SCOTT E. STAFNE IN SUPPORT OF ALEXANDER’S RESPONSE TO MOTION TO DISMISS AND REQUEST FOR SANCTIONS PURSUANT TO 28 U.S.C. 1927

NOTED: June 9, 2017

DECLARATION

- 1
2 1. My name is Scott E. Stafne. I am the attorney for Rebecca Alexander, the plaintiff, in
3 this dispute.
- 4
5 2. I am over the age of majority and make this declaration based on personal knowledge as
6 appears herein. I also make this declaration on the basis of my experience and expertise
7 in handling foreclosure related matters for homeowners in both state and federal trial and
8 appellate courts since approximately 2010.
- 9
10 3. I was described as the “[people’s lawyer](#)” by Occupy.com in an article published in 2015.
11 This article can be accessed at
12 <http://www.occupy.com/article/peoples-lawyer-fighting-against-foreclosure-fraud-and-co-urts-abuse-power#sthash.YjTI1LNL.dpbs>. A copy of the article is attached hereto as
13 Exhibit 1.
- 14
15 4. As an attorney for homeowners I advise them that I would do everything possible to stay
16 out of federal court because in my judgment the judges of such courts are biased in favor
17 of banks and large law firms and against homeowners, small law firms, and pro se
18 litigants. My judgment in this regard is based on my personal experience as well as a my
19 studies involving unfavorable case outcomes for plaintiffs who have been removed to
20 federal court and the federal judicial department’s own studies, one of which is
21 referenced in the brief.
- 22
23 5. Accordingly, I use my client’s constitutional prerogative pursuant to U.S. Const. Art. III,
24 § 2 to write their complaints in such away as to purposely not invoke federal court
25 jurisdiction.
- 26
27
28

- 1
- 2 6. Regardless of whether this court has subject matter jurisdiction it is inappropriate to file a
- 3 motion to dismiss before the presumption against such jurisdiction has been rebutted.
- 4
- 5 7. I have litigated this same issue (*i.e.* whether defendants can file a motion to dismiss a
- 6 dispute on the merits with a federal district court before the court has determined the
- 7 presumption against subject matter jurisdiction has been rebutted) with defendants'
- 8 counsel in another case.
- 9
- 10 8. In that case Judge Leighton remanded the case back to the state court only after he
- 11 offered an advisory opinion on how he believed the state court judge should rule on the
- 12 merits. I have attached a copy of that ruling as Exhibit 2 hereto.
- 13
- 14 9. I did not seek sanctions against these attorneys in that case, but have decided to do so in
- 15 this case because the law is clear that filing dispositive motions before the presumption
- 16 against such jurisdiction has been rebutted is clear and I believe the imposition of
- 17 sanctions would help to deter this kind of conduct from being repeated over and over
- 18 again in federal court.
- 19
- 20 10. I realize that opposing counsel's conduct may well be the result of this district court's
- 21 routine tolerance of such inappropriate motions, see e.g. *Robertson v. GMAC Mortg.,*
- 22 *LLC*, 640 Fed. Appx. 609, 2016 U.S. App. LEXIS 512 (9th Cir. Wash. Jan. 5, 2016), but
- 23 that should stop if this Court respects the separation of powers and federalism model
- 24 created by our Constitution.
- 25
- 26 11. I like and respect opposing counsel in this case and would not ask for sanctions against
- 27 him, but for the fact I think it is necessary for this particular federal court to clarify
- 28

1
2 whether they are going to continue to tolerate a system which tends to promote judicial
3 tyranny and/or the appearance thereof.
4

5 I declare under the penalty of perjury that the foregoing is true and correct to the best of my
6 information and belief.
7

8 Dated this 5th day of June 2017 at Arlington, Washington.
9

10 BY: s/ Scott E. Stafne
11 Scott E. Stafne WSBA #6964
12 STAFNE LAW FIRM
13 239 N. Olympic Avenue
14 Arlington, WA 98223
15 (360) 403-8700

16 *Attorney for Plaintiff*
17
18
19
20
21
22
23
24
25
26
27
28