

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

GMAC MORTGAGE, LLC,  
Debtor.

Case No. 12-12032-mg

Chapter 11

Adv. Case No. 16-01202-mg

BEVERLIE ROSEBERRY, 3900 OLDFIELD  
CROSSING DRIVE APT 215  
JACKSONVILLE, FL 32223,

Plaintiff,

vs.

GMAC MORTGAGE, LLC; OCWEN LOAN  
SERVICING LLC; ALDRIDGE PITE, LLP  
a/k/a ALDRIDGE CONNORS, LLP, AND  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY

Defendants.

**ALDRIDGE PITE, LLP'S MOTION TO DISMISS COMPLAINT FOR FAILURE TO  
STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED; OR, IN THE  
ALTERNATIVE, MORE DEFINITE STATEMENT**

*Defendant*, Aldridge Pite, LLP ("Aldridge Pite"), hereby submits the following Motion to Dismiss Complaint for Failure to State a Claim Upon Which Relief can be Granted; or in the Alternative, More Definite Statement ("Motion to Dismiss") *plaintiff* Beverlie Roseberry's ("Plaintiff") Complaint to Determine Liens and Non-Dischargeability of Debt and Request for State of Foreclosure Until the Validity of the Note can be Determined and to Determine Nature, Extent and Validity of Lien and Debt as Void Pending Outcome of Litigation ("Complaint"). Aldridge Pite



1 moves this Court for an order dismissing the present adversary proceeding and/or operative causes of  
2 action pursuant to Federal Rules of Civil Procedure 12(b)(6) and (e), made applicable to bankruptcy  
3 cases by Federal Rule of Bankruptcy Procedure 7012, on the grounds that the Plaintiff's fails to state  
4 a claim upon which relief can be granted, is so vague and ambiguous that Aldridge Pite cannot  
5 properly respond, and is otherwise barred as a matter of law.

6 Aldridge Pite's Motion to Dismiss is based upon the points and authorities contained herein  
7 and upon all pleadings, papers, and documents filed herein, as well as any oral argument which may  
8 be presented at the time of the hearing.

9 WHEREFORE, Aldridge Pite, LLP prays for and order as follows:

- 10 1. The Court grant its Motion to Dismiss with prejudice and without leave to  
11 amend;
- 12 2. Alternatively, order Plaintiff to provide a more definite statement;
- 13 3. For reasonable attorneys' fees and costs; and
- 14 4. Such other and further relief as the Court deems just and proper.

15 Respectfully submitted,

16  
17 Dated: October 3, 2016

/s/ Jordan S. Katz

18 Attorneys for *Defendant* Aldridge Pite, LLP  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

GMAC MORTGAGE, LLC,  
  
Debtor.

Case No. 12-12032-mg

Chapter 11

Adv. Case No. 16-01202-mg

BEVERLIE ROSEBERRY, 3900 OLDFIELD  
CROSSING DRIVE APT 215  
JACKSONVILLE, FL 32223,

Plaintiff,

vs.

GMAC MORTGAGE, LLC; OCWEN LOAN  
SERVICING LLC; ALDRIDGE PITE, LLP  
a/k/a ALDRIDGE CONNORS, LLP, AND  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY

Defendants.

**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF MISSOURI     )  
                                  ) ss.:  
COUNTY OF ST. LOUIS    )

Nicole Grebe, being duly sworn, deposes and says:

That I am not a party to this action and maintain an office at 40 Marcus Drive, Suite 200,  
Melville, New York 11747 and 12400 Olive Blvd, Suite 555, St. Louis, Missouri 63141.

On October 3, 2016 I served a true copy of the Motion to Dismiss Complaint by regular mail,  
mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official  
depository of the U.S. Postal Service within the State of Missouri, addressed to the last known address  
of the addressees as indicated below:

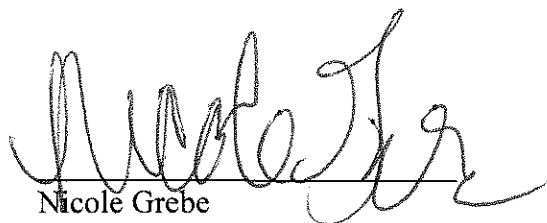
TO:

Beverlie A. Roseberry  
Pro-Se Debtor  
3900 Oldfield Crossing Drive  
Apt 215  
Jacksonville, FL 32223

Ocwen Loan Servicing LLC  
15 Piedmont Center  
3575 Piedmont Road  
N.E. Ste 500  
Atlanta, GA 30305

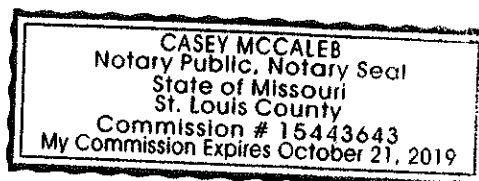
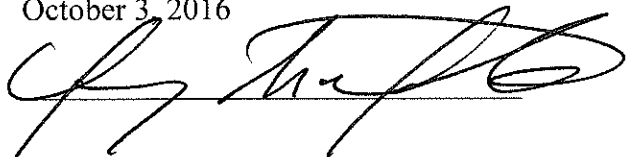
U.S. Trustee  
United States Trustee  
U.S. Federal Office Building  
201 Varick Street, Room 1006  
New York, NY 10014

GMAC Mortgage, LLC  
1100 Virginia Drive  
Fort Washington, PA 19034



Nicole Grebe

Sworn to before me on  
October 3, 2016



**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

GMAC MORTGAGE, LLC,

Debtor.

Case No. 12-12032-mg

Chapter 11

Adv. Case No. 16-01202-mg

BEVERLIE ROSEBERRY, 3900 OLDFIELD  
CROSSING DRIVE APT 215  
JACKSONVILLE, FL 32223,

Plaintiff,

vs.

GMAC MORTGAGE, LLC; OCWEN LOAN  
SERVICING LLC; ALDRIDGE PITE, LLP  
a/k/a ALDRIDGE CONNORS, LLP, AND  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY

Defendants.

**ALDRIDGE PITE, LLP’S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION  
TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH  
RELIEF CAN BE GRANTED; OR, IN THE ALTERNATIVE, MORE DEFINITE  
STATEMENT**

*Defendant*, Aldridge Pite, LLP (“Aldridge Pite”), hereby submits the following memorandum of law in support of its Motion to Dismiss Complaint for Failure to State a Claim Upon Which Relief can be Granted; or in the Alternative, More Definite Statement (“Motion to Dismiss”) *plaintiff* Beverlie Roseberry’s (“Plaintiff”) Complaint to Determine Liens and Non-Dischargeability of Debt and Request for State of Foreclosure Until the Validity of the Note can be Determined and to

Determine Nature, Extent and Validity of Lien and Debt as Void Pending Outcome of Litigation (“Complaint”). Aldridge Pite moves this Court for an order dismissing the present adversary proceeding and/or operative causes of action pursuant to Federal Rules of Civil Procedure 12(b)(6) and (e), made applicable to bankruptcy cases by Federal Rule of Bankruptcy Procedure 7012, on the grounds that the Plaintiff’s fails to state a claim upon which relief can be granted, is so vague and ambiguous that Aldridge Pite cannot properly respond, and is otherwise barred as a matter of law.

### **PRELIMINARY STATEMENT**

Plaintiff’s Complaint must be dismissed at to Aldridge Pite on the grounds that Plaintiff lacks has failed to state a claim against Aldridge Pite upon which relief can be granted. Indeed, the only reference to Aldridge Pite in the Plaintiff’s Complaint is in “The Parties” section where the Plaintiff states Aldridge Pite “...is an [sic] Law Firm based in Atlanta, Georgia 30305” and at paragraph 16 where Plaintiff generally claims Aldridge Pite, along with the other named defendants, “...pursued and continued to pursue foreclosure action using false and fabricated documents particularly mortgage assignments.” As the Plaintiff has failed to assert any claims or even include any specific allegations as to any actions or inaction of Aldridge Pite, Plaintiff has failed to satisfy the pleading requirements of Rule 8 and has otherwise failed to state a claim as to Aldridge Pite. Therefore, as explained more fully herein, Plaintiff’s Complaint must be dismissed with prejudice, or in the alternative, Plaintiff be ordered to provide a more definite statement.

### **BACKGROUND**

1. On July 28, 2016, Aldridge Pite submitted a Notice of Sale Under Power, Walton County (“Notice of Sale”), to be submitted for publication in the Walton County Tribune.

2. The Notice of Sale included Deutsche Bank National Trust Company, solely as Trustee for HarborView Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2004-6 as the last transferee to acquire interest in the real property located at 1641 White Oak Cove, Loganville, GA 30052 (“Property”).

3. The Notice of Sale included Ocwen Loan Servicing, LLC as the entity or individual designated with authority to negotiate, amend and modify all terms of the mortgage.

4. Plaintiff and William G. Ryder were included as the parties in possession of the

1 Property.

2 5. The publication regarding the Notice of Sale was cancelled on August 19, 2016.

3 6. Plaintiff's Complaint does not include any factual allegations as to Aldridge Pite.

4 **ARGUMENT**

5 **A. PLAINTIFF FAILS TO STATE A CLAIM AGAINST ALDRIDGE PITE UPON**  
6 **WHICH RELIEF CAN BE GRANTED**

7 **1. Plaintiff's Complaint Fails to Satisfy the Pleading Requirements of Rule 8.**

8 Rule 8(a) of the Federal Rules of Civil Procedure, which Fed. R. Bankr. P. 7008 makes  
9 applicable to adversary proceedings, requires a "short and plain statement of the claim." Fed. R. Civ.  
10 P. 8(a). Rule 8(d)(1) further provides that "[e]ach allegation must be simple, concise, and direct."  
11 Fed. R. Civ. P. 8(d). The filing of a complaint which violates Rule 8 warrants dismissal because it  
12 creates a significant burden on a defendant to answer and on the court to decipher. *McHenry v.*  
13 *Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996); *Anserv Insurance Services, Inc. v. Albrecht*, 192 Ariz.  
14 48, 50 (1998). While Rule 8 does not require detailed factual allegations, it does demand more than  
15 an unadorned, the-defendant-unlawfully-harmed-me accusation and requires "fair notice of what the  
16 claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
17 (2007). A pleading that merely offers labels and conclusions or a formulaic recitation of the elements  
18 of a cause of action does not suffice, nor does a complaint that tenders "naked assertion[s]" devoid of  
19 "further factual enhancement." *Id.* at 555, 557; *see also Spool v. World Child Int'l Adoption Agency*,  
20 520 F.3d 178, 183 (2d. Cir. 2008).

21 In this case, Plaintiff fails to satisfy even the minimal pleading requirements of Rule 8 as to  
22 Aldridge Pite. First, Plaintiff fails to provide any statement of a claim, much less a short plain  
23 statement of the same. Moreover, Plaintiffs fail to distinguish between actions taken by Aldridge Pite  
24 as opposed to the other listed defendants. In fact, other than in the "Parties" section of the Complaint  
25 and a vague reference in a single paragraph, Plaintiff fails to mention Aldridge Pite at all. As a result,  
26 Aldridge Pite is unable to ascertain what specific unlawful action it is alleged to have engaged in.  
27 Additionally, Plaintiff's claims are dependent on conclusory factual allegations, which, as further  
28 discussed below, are not entitled to a presumption of truth. Finally Plaintiff does not even list a rote

recitation of the required elements of her claims. Instead, Plaintiff's allegations contain vague and ambiguous blanket assertions of wrongdoing with no specific cause of action which create an undue burden on Aldridge Pite to respond. Specifically, Plaintiff's factual allegations and legal theories are so limited and convoluted that Aldridge Pite cannot ascertain exactly what causes of action are being asserted against it in order to properly respond to the allegations and/or or to raise appropriate and pertinent affirmative defenses. As a result, Plaintiff's Complaint falls well short of the pleading requirements of Fed. R. Civ. P. 8. Consequently, Aldridge Pite can do no more than tender mere guesses as to what claims and under what legal theory to which Plaintiff's Complaint indirectly hints. Without more specificity, Plaintiff's claims are deficient as pled and, therefore, the Complaint must be dismissed.

**2. The Fed. R. Civ. P. 12(b)(6) Legal Standard.**

Rule 12(b) of the Federal Rules of Civil Procedure provides, in pertinent part:

Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(6) failure to state a claim upon which relief can be granted.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed.

Fed. R. Civ. P. 12 applies to adversary proceedings, including the instant matter, as provided for and incorporated by Fed. R. Bankr. P. 7012. Under Fed R. Civ. P 12(b)(6), a complaint may be properly dismissed for failure to state a claim upon which relief may be granted when the plaintiff's complaint fails to show an entitlement to relief. Pursuant to Rule 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its fact. *In re Dreier LLP*, 452 B.R. 391, 406 (Bankr. S.D.N.Y. 2011). In determining whether the court must accept all factual allegations as true, it must discount "legal conclusions clothed in the factual garb." *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 124 (2d Cir. 2010).

The Supreme Court in *Ashcroft v. Iqbal*, confirmed the requirement that pleadings must contain more than labels and unsupported conclusions. Noting that "to survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is

1 plausible on its face,” the Court emphasized that conclusory allegations are not entitled to be  
2 assumed true. *Id.* at 1949-52 (quoting *Twombly*, 550 U.S. at 570.). Moreover, the complaint must  
3 provide more than “a formulaic recitation of the elements of a cause of action.” *Twombly*, 550 U.S.  
4 at 555. Instead, in order to survive a motion to dismiss, the factual allegations have to amount to  
5 more than speculation, with the plaintiff obliged to provide “enough facts to state a claim to relief  
6 that is plausible on its face.” *Id.* at 556; *see also Vaughn v. Air Line Pilots Ass’n, Int’l*, 604 F.3d 703,  
7 709 (2d. Cir. 2010). “Courts do not make plausibility determinations in a vacuum; it is a ‘context-  
8 specific task that requires the reviewing court to draw on its judicial experience and common  
9 sense.” *In re Dreier LLP*, at 391 (quoting *Iqbal*, 556 U.S. at 679). The plausibility standard does not  
10 equate to a “probability requirement,” but does ask for more than a sheer possibility that a defendant  
11 may have acted unlawfully. *Twombly*, 550 U.S. at 555.

12 In the instant case, Aldridge Pite is not a party regarding the Property or a claimant of the  
13 Plaintiff. Aldridge Pite does not hold any interest in the Property and is not associated with the  
14 servicing of the loan secured by the Property. Plaintiff fails to allege any facts to support any claim  
15 as to Aldridge Pite or to even justify it as a defendant in this action. As such, Plaintiff fails to  
16 establish how Aldridge Pite has violated any of the “claims” listed in Plaintiff’s Complaint or how  
17 Aldridge Pite can remedy Plaintiff’s alleged harms or provide the Plaintiff any relief whatsoever.  
18 Since there are no claims as to Aldridge Pite and no relief can be granted, dismissal of the Complaint  
19 as to Aldridge Pite, with prejudice and without leave to amend, is appropriate.

20 **B. IF THE COURT DOES NOT DISMISS PLAINTIFF’S COMPLAINT, THE COURT**  
21 **SHOULD ORDER PLAINTIFF TO FILE A MORE DEFINITE STATEMENT**

22 In the alternative, Aldridge Pite requests that the Court order Plaintiff to file a more definite  
23 statement to cure the pleading deficiencies in the Petition. *See Fed. R. Civ. P. 12(e)*. Fed. R. Civ. P.  
24 12(e), made applicable to this proceeding by Fed. R. Bankr. P. 7012, provides that “[a] party may  
25 move for a more definite statement of a pleading to which a responsive pleading is allowed but  
26 which is so vague or ambiguous that the party cannot reasonably prepare a response.” *Fed. R. Civ.*  
27 *P. 12(e)*. Rule 12(e) is designed to remedy unintelligibility. *See Stanton v. Manufacturers Hanover*  
28 *Trust Co.*, 388 F. Supp. 1171 (S.D.N.Y. 1975). Generally, a motion for more definite statement

1 should be granted if a pleading is so vague or ambiguous that an opposing party cannot respond in  
2 good faith or without prejudice to himself. *See e.g., Adelphia Cable Partners, L.P. v. E & A Beepers*  
3 *Corp.*, 188 F.R.D. 662, 665 (S.D. Fla. 1999).

4 Relief under Rule 12(e) is necessary because the vague, indefinite, ambiguous, and  
5 conclusory allegations alleged in the Plaintiff's Complaint, and the failure to properly label the actual  
6 causes of action attributed to specific Defendants, violates the basic pleading requirements of Rule 8,  
7 thereby depriving Aldridge Pite of fair and adequate notice of Plaintiff's claims and effectively  
8 preventing it from being able to mount any kind of defense. As a defendant, Aldridge Pite is  
9 expected to respond to the Complaint in short and plain terms, asserting defenses and admitting or  
10 denying the averments upon which Plaintiff relies. *See Fed. R. Civ. P. 8(b)*. However the Complaint,  
11 in its current form, does not provide allegations sufficiently definite to determine the factual and  
12 legal bases of Plaintiff's purported claims. Aldridge Pite therefore cannot frame a responsive  
13 pleading under Rule 8(b) without making assumptions regarding the Plaintiff's allegations and  
14 causes of action, which it is not required to do. As such, to the extent that the Court does not dismiss  
15 Plaintiff's Complaint, it should enter an order under Rule 12(e) requiring Plaintiff to file an amended  
16 complaint that complies with Rules 8 and 12.

### 17 CONCLUSION

18 For the reasons set forth above, the Plaintiff has failed to state a claim upon which relief can  
19 be granted as to Aldridge Pite. Based upon the foregoing, Aldridge Pite is entitled to an order  
20 dismissing Plaintiff's Complaint with prejudice and without leave to amend.

21 **WHEREFORE**, Aldridge Pite respectfully requests:

- 22 1. The Court grant its Motion to Dismiss with prejudice and without leave to  
23 amend;
- 24 2. Alternatively, order Plaintiff to provide a more definite statement;
- 25 3. For reasonable attorneys' fees and costs; and
- 26 4. Such other and further relief as the Court deems just and proper.

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

Respectfully submitted,

Dated: October 3, 2016

/s/ Jordan S. Katz

Attorneys for *Defendant* Aldridge Pite, LLP