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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DIANE BEALL fka TEMPLIN,)	Case No. EDCV 12-00601 DDP (DTBx)
)	
Plaintiff,)	
)	ORDER GRANTING DEFENDANT'S MOTION
v.)	TO DISMISS
)	
QUALITY LOAN SERVICE CORP;)	
ONEWEST BANK, F.S.B.,)	
)	[Dkt. No. 23]
Defendants.)	
)	
_____)	

Presently before the court is Defendant OneWest Bank, FSB's Motion to Dismiss. Having considered the submissions of the parties, the court grants the motion and adopts the following order.¹

I. Background

In July 2003, Plaintiff executed a Promissory Note and obtained a home loan, secured by a Deed of Trust, for property

¹ The court notes that Plaintiff, an attorney proceeding pro se, failed to timely oppose the instant Motion, and did not seek an extension of time or continuance of the motion. See C.D. Cal. L.R. 7-9. This alone would warrant granting of the motion and dismissal of Plaintiff's claims. C.D. Cal. L.R. 7-12. Nevertheless, in the interest of deciding issues on the merits to the extent possible, the court has reviewed Plaintiff's late-filed opposition.

1 located at 16377 Arnold Avenue, Lake Elsinore, California 92530.
2 (Amended Complaint ¶ 7; Defendant's Request for Judicial Notice Ex.
3 1.) An Assignment of the Deed of Trust to OneWest was recorded on
4 March 10, 2010. (RJN Ex. 2.) In May 2010, OneWest's agent
5 recorded a Notice of Default. (RJN Ex. 3.) In July 2010, OneWest
6 substituted Quality Loan Service Corporation as Trustee. (RJN Ex.
7 4.) Quality subsequently filed a Notice of Trustee's Sale. (RJN
8 Ex. 5.) The sale has not yet occurred.

9 In September, 2010, Plaintiff filed an action in the United
10 States District Court for the Southern District of California. See
11 Beall v. Quality Loan Serv. Corp., No. 10-CV-1900 AJB, 2011 WL
12 2784594 (S.D. Cal. Jul. 15, 2011) (Beall I). Plaintiff alleged
13 twenty causes of action related to the pending foreclosure, . Id.
14 at *1. Ultimately, after extensive motion practice and having
15 allowed Plaintiff to amend her claims twice, the Beall I court
16 dismissed all of Plaintiff's causes of action with prejudice,
17 including claims for violations of the Truth in Lending Act, the
18 Real Estate Settlement Procedures Act, California Business and
19 Professions Code Section 7200, California Civil Code Section
20 2923.5, and wrongful foreclosure, fraud, quiet title, and
21 declaratory relief. (Beall I, Dkt. Nos. 14, 15, 50, 51.)

22 On April 4, 2012, Plaintiff filed another complaint, this time
23 in Riverside County Superior Court. Plaintiff subsequently filed
24 an amended complaint ("FAC"), which OneWest removed to this court.²

25
26 ² It is somewhat unclear how many separate causes of action
27 are included in the FAC. The FAC's caption includes sixteen causes
28 of action, six of which are some variant of wrongful foreclosure.
The body of the complaint lists only ten numbered causes of action,
but includes several that appear to be subsumed in or duplicative
(continued...)

1 OneWest now seeks to dismiss the FAC in its entirety. Aside from
2 introductory comments regarding res judicata, however, Plaintiff's
3 opposition only addresses three causes of action (Truth in Lending
4 Act, Declaratory Relief, and Quiet Title).

5 **II. Legal Standard**

6 A complaint will survive a motion to dismiss when it contains
7 "sufficient factual matter, accepted as true, to state a claim to
8 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
9 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
10 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
11 "accept as true all allegations of material fact and must construe
12 those facts in the light most favorable to the plaintiff." Resnick
13 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
14 need not include "detailed factual allegations," it must offer
15 "more than an unadorned, the-defendant-unlawfully-harmed-me
16 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
17 allegations that are no more than a statement of a legal conclusion
18 "are not entitled to the assumption of truth." Id. at 679. In
19 other words, a pleading that merely offers "labels and
20 conclusions," a "formulaic recitation of the elements," or "naked
21 assertions" will not be sufficient to state a claim upon which
22 relief can be granted. Id. at 678 (citations and internal
23 quotation marks omitted).

24 "When there are well-pleaded factual allegations, a court
25 should assume their veracity and then determine whether they

27 ²(...continued)
28 of others. Defendants appear to believe the FAC asserts at least
eighteen causes of action. (Mot. at 6.)

1 plausibly give rise to an entitlement of relief." Id. at 679.
2 Plaintiffs must allege "plausible grounds to infer" that their
3 claims rise "above the speculative level." Twombly, 550 U.S. at
4 555. "Determining whether a complaint states a plausible claim for
5 relief" is a "context-specific task that requires the reviewing
6 court to draw on its judicial experience and common sense." Iqbal,
7 556 U.S. at 679.

8 **III. Discussion**

9 A. Res Judicata

10 The principle of res judicata "bars litigation in a subsequent
11 action of any claims that were raised or could have been raised in
12 the prior action." Owens v. Kaiser Foundation Health Plan, Inc.,
13 244 F.3d 708, 713 (9th Cir. 2001) (internal quotation and citation
14 omitted). The doctrine applies when there is "(1) an identity of
15 claims, (2) a final judgment on the merits, and (3) identity or
16 privity between parties." Id. (internal quotation omitted).

17 It appears to the court that the majority of Plaintiff's
18 claims, with three exceptions described below, were either raised
19 during prior proceedings in the Southern District or could have
20 been raised then. The bulk of the claims in both the earlier case
21 and this case are premised on Plaintiff's assertion that the Deed
22 of Trust was never properly assigned to OneWest. The body of
23 Plaintiff's Opposition does not address the res judicata issue.
24 The Opposition's preambulatory language does include a numbered
25 list of reasons why Plaintiff believes this case is different from
26 her earlier case. (Opp. at 3-4.) Of these, however the majority
27 are recitations of the FAC's allegations regarding the provenance
28 of the Deed. Plaintiff's additional contention that her prior

1 counsel suffered from a medical condition that compromised his
2 ability to provide adequate representation was raised before, and
3 addressed by, the court in the earlier case. See Beall I, 2011 WL
4 at *1. Thus, it appears to the court that virtually all of the
5 causes of action alleged in the FAC were already addressed and
6 dismissed by the Southern District, with prejudice, or should have
7 been, but were not, raised in the prior action.

8 B. Remaining Claims

9 The FAC does allege certain causes of action that were not
10 brought in the earlier litigation. The FAC lists a Fifth Cause of
11 Action for "W[rongful] F[oreclosure] - Violation of P[enal] C[ode]
12 [§] 115.5" and a Sixteenth Cause of Action for "Violation of 42 USC
13 1983." The court is unable to determine whether these causes of
14 action could have been raised earlier because neither is supported
15 by any factual allegations. There is no mention of a Penal Code
16 violation anywhere beyond the caption of the complaint. California
17 Penal Code Section 115.5 criminalizes false statements to notaries
18 and the filing of false documents related to single family
19 residences. The court presumes that Plaintiff is attempting to
20 suggest that OneWest's allegedly fraudulent recordations constitute
21 criminal behavior. Absent explicit language to the contrary,
22 however, a criminal statute does not give rise to a civil cause of
23 action. See Rodriguez v. U.S. Bank N.A., No. C 12-989 WHA, 2012 WL
24 3062690 at *4 (N.D. Cal. Jul. 26, 2012.)

25 The factual basis for Plaintiff's Section 1983 claim is
26 similarly lacking. Plaintiff makes a single reference to Section
27 1983 within her Business and Professions Code claim. (FAC ¶ 241.)
28 That reference appears to be a cut-and-pasted portion of a treatise

1 or primer discussing an attorney's duty of reasonable inquiry, the
2 relevance of which is unclear to the court. (Id.) Nowhere does
3 the FAC allege that Plaintiff's Constitutional rights have been
4 violated or that any such violation was committed by a person
5 acting under color of state law, as is required to state a claim
6 under 42 U.S.C. § 1983. See Mitchell v. Routh Crabtree Olsen,
7 P.S., No. C 11-03577 JSW, 2012 WL 2792360 at * 2 (N.D. Cal. Jul. 9,
8 2012).

9 The Third Cause of Action also alleges Wrongful Foreclosure,
10 this time on the basis that Plaintiff's Debt was discharged in
11 bankruptcy. The body of the FAC does list some facts regarding
12 this claim. Specifically, the FAC alleges that Plaintiff listed
13 the debt as unsecured and listed Defendants as unsecured creditors,
14 that the debt was therefore discharged in her Chapter 7 bankruptcy,
15 and that Defendants did not file a proof of claim. (FAC ¶¶ 31-35.)
16 The FAC does not, however, indicate when these events took place,
17 again rendering it unclear whether this claim could have been
18 brought earlier. Regardless, OneWest argues that Plaintiff listed
19 Defendants as both unsecured and secured creditors. Furthermore,
20 OneWest argues, the dischargeability of a debt is not affected by
21 the way it is scheduled in a Chapter 7 no-assets, no-bar bankruptcy
22 such as Plaintiff's, and the filing of a proof of claim, or lack
23 thereof, is meaningless in such a case. In re Nielsen, 383 F.3d
24 922, 926-27 (9th Cir. 2004). Plaintiff's opposition does not
25 address Defendant's argument, or the authority cited therein, and
26 is therefore dismissed.³

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28 ³ The court notes that Plaintiff's opposition only
(continued...)

1 **IV. Conclusion**

2 For the reasons stated above, Defendant's Motion to Dismiss is
3 GRANTED. Plaintiff's claims are dismissed with prejudice.

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6 IT IS SO ORDERED.

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9 Dated: March 28, 2013



DEAN D. PREGERSON
United States District Judge

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27 ³(...continued)
28 specifically addresses three causes of action (Truth in Lending Act, Declaratory Relief, and Quiet Title), all of which are res judicata, as described above.