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

MARIA V. RIVERA, et al., <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> v. AURORA LOAN SERVICES LLC, et al., <div style="text-align: right; padding-right: 20px;">Defendant.</div>		Case No. 09cv2686 BTM (RBB) ORDER GRANTING MOTIONS TO DISMISS
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Defendant Aurora Loan Services LLC has filed a Motion to Dismiss for Failure to State a Cause of Action [Doc. 4]. Defendant Cal-Western Reconveyance Corporation has attempted to join in Aurora’s Motion to Dismiss [Doc. 8].¹ For the following reasons, the Court **GRANTS** the Motions.

I. BACKGROUND

The following are allegations in the Complaint and not the Court’s factual findings. In April 2007, Plaintiff Maria V. Rivera executed a note in favor of Uniwest Mortgage

¹ Cal-Western has already filed its Answer [Doc. 2] and therefore it may not join in Aurora’s Motion to Dismiss. See Fed. R. Civ. P. 12(b) (a motion to dismiss for failure to state a claim “must be made before pleading”); *Aetna Life Ins. Co. v. Alla Med. Serv., Inc.*, 855 F.2d 1470, 1474 (9th Cir. 1988). The Court, therefore, construes Cal-Western’s motion as a motion for judgment on the pleadings under Rule 12(c). In a Rule 12(c) motion, a party may seek dismissal based on failure to state a claim. Fed. R. Civ. P. 12(h)(2)(B) (“Failure to state a claim upon which relief can be granted . . . may be raised . . . by a motion under Rule 12(c) . . .”).

1 Corporation (not listed in the caption as a party to this action) in the amount of \$457,000.00.
2 As security for the note, Rivera also executed a deed of trust on her real property located at
3 868 Rosa Court, Escondido, California in favor of Uniwest Mortgage as beneficiary and First
4 American Title as trustee.

5 In December 2008, Rivera received a notice that Defendant Cal-Western
6 Reconveyance Corporation had been substituted as the new trustee. A week later, Cal-
7 Western recorded a notice of default and election to sell in the Official Records of San Diego
8 County, California.

9 In May 2009, Rivera executed a forbearance agreement with Defendant Aurora Loan
10 Services LLC, the servicing agent for the loan in default. The forbearance agreement was
11 in effect for three consecutive months, starting June 1, 2009 and ending August 31, 2009.
12 Under the agreement, Aurora Loan Services agreed to forbear from exercising its right to
13 start or continue foreclosure proceedings, to sell the property, and from otherwise exercising
14 its rights under the default provisions of the note and deed of trust. But Aurora also reserved
15 its ability to exercise its rights under those provisions if Rivera did not make scheduled
16 payments or upon the expiration of the forbearance agreement on August 31, 2009.

17 Rivera has attached the forbearance agreement to the Complaint. The agreement
18 states that Rivera has been “conditionally approved” for the forbearance agreement, and that
19 “[y]our approval for the Special Forbearance Agreement is conditional upon Aurora verifying
20 the information that you provided.” Aurora Loan Services did not sign the copy that Plaintiffs
21 have attached to the Complaint. Nevertheless, Plaintiffs allege in the Complaint that the
22 “Forbearance Agreement was in effect for 3 consecutive months.”

23 Rivera complied with the forbearance agreement and made timely payments
24 according to its terms.

25 Before the forbearance agreement expired, on August 14, 2009 a real-estate agent
26 came to Rivera’s property and told Rivera that he had been assigned as the listing agent to
27 sell Rivera’s house. Alarmed, Rivera called Plaintiff George Beltran and told him what
28 happened. Beltran then called Aurora Loan Services. Beltran spoke to someone named

1 Melissa, who told him that the property had been foreclosed on August 13, 2009, during the
2 term of the forbearance agreement.

3 After several more phone calls, on August 25, 2009 Aurora Loan Services temporarily
4 halted the foreclosure proceedings. A representative at Aurora told Plaintiffs not to send any
5 more payments under the forbearance agreement.

6 The forbearance agreement expired on August 31, 2009.

7 On September 3, 2009, a representative of Aurora told Plaintiffs to resubmit an
8 application for a forbearance agreement, but this time the representative told Rivera she
9 could use only her own income to qualify (Rivera previously used her income and her sister's
10 income to qualify for the first forbearance agreement).

11 As of the filing date of the Complaint, Rivera was still in possession of her home.

12 Plaintiffs have alleged three causes of action. First, Plaintiffs seek a declaration that
13 Aurora "should honor the payments established in the original forbearance agreement and
14 adhere to the original qualifying guidelines for the loan forbearance agreement." Second,
15 Plaintiffs seek to enjoin Defendants from selling Rivera's property. And third, Plaintiffs seek
16 an accounting of the amounts they owe Defendants.

17 Defendants have moved to dismiss all three causes of action for failure to state a
18 claim.

20 II. LEGAL STANDARD

21 Under Federal Rule of Civil Procedure 8(a)(2), the plaintiff is required only to set forth
22 a "short and plain statement of the claim showing that the pleader is entitled to relief," and
23 "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."
24 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When reviewing a motion to
25 dismiss, the allegations of material fact in plaintiff's complaint are taken as true and
26 construed in the light most favorable to the plaintiff. See *Parks Sch. of Bus., Inc. v.*
27 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). But only factual allegations must be
28 accepted as true—not legal conclusions. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009).

1 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
2 statements, do not suffice.” *Id.* Although detailed factual allegations are not required, the
3 factual allegations “must be enough to raise a right to relief above the speculative level.”
4 *Twombly*, 550 U.S. at 555. Furthermore, “only a complaint that states a plausible claim for
5 relief survives a motion to dismiss.” *Iqbal*, 129 S. Ct. at 1949.

6 7 III. DISCUSSION

8 9 1. Diversity Jurisdiction

10 The Court notes at the outset that it has jurisdiction under 28 U.S.C. § 1441(b) to hear
11 this matter. Although Defendant Cal-Western Reconveyance Corporation is, like Plaintiffs,
12 a California citizen, it has non-monetary status and its citizenship is therefore disregarded
13 for purposes of diversity jurisdiction. *See Prudential Real Estate Affiliates, Inc. v. PPR*
14 *Realty, Inc.*, 204 F.3d 867, 873 (9th Cir. 2000) (“We will ignore the citizenship of nominal ...
15 parties who have no interest in the action, and are merely joined to perform the ministerial
16 act of conveying the title if adjudged to the complainant.”) Cal-Western Reconveyance filed
17 a notice of non-monetary status in state court, to which Plaintiffs failed to object. Under
18 these circumstances, the Court properly has jurisdiction. *See Delgado v. Bank of America*
19 *Corp.*, 2009 WL 4163525, at *4 (E.D. Cal. Nov. 23, 2009) (no objections filed to declaration
20 of nonmonetary status and trustee treated as nominal party; motion to remand denied);
21 *Figueiredo v. Aurora Loan*, 2009 WL 5184472, at *1 (N.D. Cal. Dec. 22, 2009) (same).

22 23 2. First Cause of Action for Declaratory Judgment

24 Plaintiffs’ first cause of action seeks a declaration that “Aurora Loan Services should
25 honor the payments established in the original forbearance agreement and adhere to the
26 original qualifying guidelines for the loan forbearance agreement.” Defendants argue that
27 this claim should be dismissed because the forbearance agreement, which Plaintiffs attached
28 to the Complaint, is unsigned by Aurora. Furthermore, the agreement is conditional upon

1 Aurora's confirmation of Rivera's financial information. Thus, they argue, the agreement was
2 never mutually executed and is inoperable.

3 The Court finds that Defendants' arguments are more suitable for a motion for
4 summary judgment. Notwithstanding the unsigned forbearance agreement, Plaintiffs allege
5 that the "Forbearance Agreement was in effect for 3 consecutive months." The Court must
6 accept this allegation as true. *Symington*, 51 F.3d at 1484. Although a forbearance
7 agreement must be in writing, *Secrest v. Sec. Nat'l Mortgage Loan Trust 2002-2*, 167 Cal.
8 App. 4th 544, 553 (2008), for the purposes of this motion the Court infers that such a writing
9 exists, see *Symington*, 51 F.3d at 1484 (court must construe allegations in light most
10 favorable to plaintiff). Thus, Plaintiffs adequately allege the existence of a valid forbearance
11 agreement.

12 But even though Plaintiffs have alleged the existence of a valid forbearance
13 agreement, the Court is without jurisdiction to hear this claim. "The Constitution empowers
14 federal courts to hear actual cases and not render advisory opinions." *United States v.*
15 *Kaczynski*, 551 F.3d 1120, 1124 (9th Cir. 2009) (citing *United Public Workers v. Mitchell*, 330
16 U.S. 75, 89 (1947)). When a party seeks a declaratory judgment, "the question in each case
17 is whether the facts alleged, under all the circumstances, show that there is a substantial
18 controversy, between parties having adverse legal interests, of sufficient immediacy and
19 reality to warrant the issuance of a declaratory judgment." *MedImmune, Inc. v. Genentech,*
20 *Inc.*, 549 U.S. 118, 127 (2007) (quoting *Maryland Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S.
21 270, 273 (1941)). Moreover, a plaintiff must also allege an injury in fact and show some
22 actual or threatened injury traceable to the challenged action. *Bullfrog Films, Inc. v. Wick*,
23 847 F.2d 502, 506 (9th Cir. 1988).

24 Here, Plaintiffs seek a declaration regarding their rights under an expired forbearance
25 agreement. But Plaintiffs fail to allege any injury as a result of Defendants' purported
26 violation of the agreement. Although Plaintiffs allege that Aurora Loan Services initiated
27 foreclosure proceedings during the term of the forbearance agreement, they also allege that
28 Aurora terminated those proceedings shortly thereafter. Aurora Loan Services never sold

1 Rivera's property or evicted her, and it appears that Rivera remains in her home.²

2 Rivera, of course, alleges that she may lose her home. The Court does not deny that
3 losing her home would be an injury to her. But that injury does not arise out a breach of the
4 expired forbearance agreement. This is because the purported breach of the forbearance
5 agreement resulted in no injury to Plaintiffs. See *Bullfrog Films*, 847 F.2d at 506 (injury must
6 be traceable to challenged action). The forbearance agreement, if indeed it was executed,
7 only lasted three months, and Rivera's home was not sold during that time and she was not
8 evicted. Thus, Rivera's injury does not arise from the forbearance agreement.

9 Instead, her injury arises from her failure to perform under the promissory note and
10 deed of trust. In other words, Rivera might lose her home because she did not make her
11 monthly payments—not because of Aurora's alleged breach of the forbearance agreement.
12 Thus, the Court declines to issue a declaratory judgment regarding the rights of the parties
13 under the expired forbearance agreement because Plaintiffs have failed to allege an injury
14 in fact and such a declaration would be advisory.

15 Plaintiffs also seek two specific declarations. First, Plaintiffs seek a declaration that
16 Aurora Loan Services should honor the payment schedule set forth in the forbearance
17 agreement. But the forbearance agreement, by its own terms and as alleged by Plaintiffs,
18 only lasted three months from June 2009 through August 2009. Plaintiffs cite no authority
19 supporting the issuance of an order extending the duration of the agreement beyond the
20 contractual term.

21 Second, Plaintiffs request a declaration that Aurora “adhere to the original qualifying
22 guidelines for the loan forbearance agreement.” Plaintiffs are presumably referring to the
23 original guidelines which permitted Rivera to submit her income and her sister's
24 income—rather than only Rivera's own income—in order to qualify for the forbearance
25 agreement. Plaintiffs again cite no authority supporting the issuance of such an order. The
26 Court is likewise unaware of any case law or statute governing the qualification procedures

27

28 ² The Court takes judicial notice of Plaintiffs' address as listed on the Complaint and
in the Court's electronic filing system. It is the same address as the property at issue here.

1 for a mortgage forbearance agreement.

2 For these reasons, the Court **DISMISSES without prejudice** Plaintiffs' First Cause
3 of Action for a Declaratory Judgment in its entirety.

4
5 3. Second Cause of Action for Injunctive Relief

6 In this cause of action, Plaintiffs seek to enjoin the sale of Rivera's property.
7 "Injunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must
8 exist before injunctive relief may be granted." See *Camp v. Board of Supervisors*, 123 Cal.
9 App. 3d 334, 355–56 (1981) (citing *Shell Oil Co. v. Richter*, 52 Cal. App. 2d 164, 168 (1942)).
10 Here, although Plaintiffs assert that the sale of Rivera's property would be "wrongful and
11 should be enjoined," they do not allege the basis for such relief. Accordingly, the Court
12 **DISMISSES without prejudice** Plaintiffs' Second Cause of Action in its entirety.

13
14 4. Third Cause of Action for an Accounting

15 Plaintiffs also state that the "amount of money defendant Aurora Loan Services LLC
16 owes to plaintiff is unknown to plaintiff and cannot be determined without an accounting."
17 Compl. ¶ 14 (emphasis added). The Court is uncertain whether Plaintiffs have mistakenly
18 alleged that Aurora Services LLC owes Plaintiffs money or intended to allege that they owe
19 Aurora money. The distinction, however, is immaterial. Plaintiffs are not entitled to an
20 accounting under either circumstance.

21 A complaint for an accounting must state facts showing the nature of the relationship
22 that requires an accounting and that some balance is due to the plaintiff. *Stilwell v.*
23 *Trutanich*, 178 Cal. App. 2d 614, 620 (1960). There is no right to an accounting where none
24 is necessary. *St. James Church v. Superior Court*, 135 Cal. App. 2d 352, 359 (1955).

25 Here, Plaintiffs have not stated a cause of action for an accounting. First, Plaintiffs
26 have not alleged the factual basis for any sums due to them from Defendants. And second,
27 if Plaintiffs are alleging that they are uncertain how much they owe to Aurora, then an
28 accounting would still be unnecessary because Plaintiffs have attached to their Complaint

1 as Exhibit F an itemized accounting of the delinquency owed by Rivera. See *St. James*
2 *Church*, 135 Cal. App. 2d at 359.

3 For these reasons, Plaintiffs have not stated a claim for an accounting and the Court
4 further finds that an accounting is unnecessary. The Court therefore **DISMISSES without**
5 **prejudice** Plaintiffs' Third Cause of Action in its entirety.

6
7 5. Plaintiff George Beltran

8 Plaintiff George Beltran has not stated a claim against either Defendant because he
9 lacks standing. A plaintiff lacks standing when the plaintiff is not entitled to an adjudication
10 of the particular rights asserted. See *Allen v. Wright*, 468 U.S. 737, 752 (1984). Moreover,
11 as discussed above, a plaintiff must assert an injury in fact. *Bullfrog Films, Inc.*, 847 F.2d at
12 506.

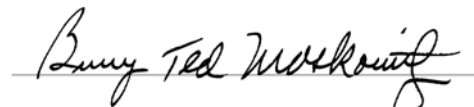
13 Here, George Beltran has not alleged that he was a party to the deed of trust or the
14 promissory note. Nor has he alleged that he would be injured by foreclosure of Rivera's
15 property. Accordingly, as a separate ground for dismissing Beltran's claims, the Court holds
16 that Beltran lacks standing to assert these causes of action and **DISMISSES without**
17 **prejudice** Beltran's claims against all Defendants.

18
19 **IV. CONCLUSION**

20 For the foregoing reasons, the Court **GRANTS** the Motions to Dismiss [Docs. 4, 8] and
21 **DISMISSES without prejudice** the Complaint in its entirety. Plaintiffs may file an amended
22 complaint correcting the deficiencies described above within twenty-one days of the issuance
23 of this order.

24 **IT IS SO ORDERED.**

25
26 DATED: April 26, 2010

27 

28 Honorable Barry Ted Moskowitz
United States District Judge