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NOT FOR PUBLICATION

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Rodney Ray James,

No. CV-17-00826-PHX-JJT

10 Plaintiff,

ORDER

11 v.

12 Wells Fargo Bank NA, *et al.*,13 Defendants.
14

15 At issue are Defendant Wells Fargo Bank, N.A.'s Motion to Dismiss Complaint
16 (Doc. 8, MTD), to which *pro se* Plaintiff Rodney Ray James filed a Response (Doc. 14,
17 Resp.) and Defendant filed a Reply (Doc. 15, Reply); and Defendant's Motion to Quash
18 *Lis Pendens* (Doc. 16), to which Plaintiff did not respond.

19 **I. BACKGROUND**

20 The facts relevant to the pending Motions are as follows: In July 2007, Plaintiff
21 borrowed \$90,800 from Defendant to purchase a home in Casa Grande, Arizona. The
22 loan, and Plaintiff's promise to repay it, were memorialized in a Note secured by a Deed
23 of Trust recorded on June 18, 2008.¹ (MTD Ex. A.) In December 2012, Defendant
24 substituted Quality Loan Service Corporation ("Quality") as the Trustee under the Deed
25 of Trust. (MTD Ex. B.) In 2014, Plaintiff and Defendant entered into a Loan
26 Modification Agreement, recorded on September 2, 2014. (MTD Ex. C.) On

27 _____
28 ¹ The Court takes judicial notice of the publically recorded documents that form
the documentary history of the transactions at issue in this case.

1 November 22, 2016, Plaintiff recorded a document entitled “Notice of Revocation of and
2 Collapse of Deed of Trust,” whereby Plaintiff purported to declare a unilateral revocation
3 of the Deed of Trust. (MTD Ex. D.) Following Plaintiff’s failure to make his loan
4 payments, Defendant and Quality sold the property at a Trustee’s Sale on February 21,
5 2017. (MTD Ex. E.)

6 On February 17, 2017, Plaintiff filed suit in Arizona state court, raising four
7 claims against Defendant: (1) Defendant lacks standing as “Creditor in Fact” under the
8 Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”); (2) Defendant
9 “has not presented lawful, authenticated evidence supporting [Defendant’s] claim of
10 beneficial interest;” (3) Defendant violated the FDCPA; and (4) a request for emergency
11 stay or Temporary Restraining Order to vacate proposed sale for lack of standing.
12 (Doc. 1-1 at 2-7, Compl.) Plaintiff served Defendant with the Summons and Complaint
13 on February 24, 2017. (Doc. 1-1 at 31.)

14 Defendant removed the case to this Court on March 17, 2017. (Doc. 1.) The Court
15 held hearings on March 20, 2017 (Doc. 5), and April 11, 2017 (Doc. 10), and denied as
16 moot Plaintiff’s request for injunctive relief (Count 4), including his request to vacate the
17 Trustee’s Sale, because it already occurred on February 21, 2017, and Plaintiff served the
18 Complaint on Defendant in this matter three days later, on February 24, 2017. *See* A.R.S.
19 § 33-811(C) (providing trustor waives all defenses and objections to trustee’s sale if
20 injunction not obtained prior to sale).

21 Defendant now moves to dismiss Plaintiff’s claims under Federal Rule of Civil
22 Procedure 12(b)(6) and to quash the *lis pendens* on the property.

23 **II. LEGAL STANDARD**

24 Rule 12(b)(6) is designed to “test[] the legal sufficiency of a claim.” *Navarro v.*
25 *Block*, 250 F.3d 729, 732 (9th Cir. 2001). To survive dismissal for failure to state a claim
26 pursuant to Rule 12(b)(6), a complaint must contain more than “labels and conclusions”
27 or a “formulaic recitation of the elements of a cause of action”; it must contain factual
28 allegations sufficient to “raise a right to relief above the speculative level.” *Bell Atl.*

1 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While “a complaint need not contain
2 detailed factual allegations [] it must plead ‘enough facts to state a claim to relief that is
3 plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir.
4 2008) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the
5 plaintiff pleads factual content that allows the court to draw the reasonable inference that
6 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
7 (2009) (citing *Twombly*, 550 U.S. at 556). The plausibility standard “asks for more than a
8 sheer possibility that a defendant has acted unlawfully.” *Id.*

9 When analyzing a complaint for failure to state a claim under Rule 12(b)(6), “[a]ll
10 allegations of material fact are taken as true and construed in the light most favorable to
11 the nonmoving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996). However,
12 legal conclusions couched as factual allegations are not given a presumption of
13 truthfulness, and “conclusory allegations of law and unwarranted inferences are not
14 sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir.
15 1998).

16 In ruling upon a motion to dismiss, the court may consider only the complaint, any
17 exhibits thereto, and matters which may be judicially noticed pursuant to Federal Rule of
18 Evidence 201. *See Mir v. Little Co. of Mary Hospital*, 844 F.2d 646, 649 (9th Cir. 1988);
19 *Isuzu Motors Ltd. v. Consumers Union of United States, Inc.*, 12 F.Supp.2d 1035, 1042
20 (C.D. Cal. 1998). The court may take judicial notice of facts “not subject to reasonable
21 dispute” because they are either: “(1) generally known within the territorial jurisdiction of
22 the trial court or (2) capable of accurate and ready determination by resort to sources
23 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also Lee v. City*
24 *of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (noting that the court may take judicial
25 notice of undisputed “matters of public record”). The court may disregard allegations in a
26 complaint that are contradicted by matters properly subject to judicial notice. *Daniels–*
27 *Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).

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1 **III. ANALYSIS**

2 **A. Counts 1 and 3 – FDCPA**

3 The Court finds it nearly impossible to discern from the Complaint how Plaintiff
4 believes Defendant violated the FDCPA because the allegations contained in Counts 1
5 and 3 are anything but the “plain statement of the claim showing that the pleader is
6 entitled to relief” required by Rule 8.

7 Even if Plaintiff were able to cure this deficiency in an amended complaint,
8 however, the claim cannot stand. “As a threshold matter, the FDCPA applies only to a
9 debt collector who engages in practices prohibited by the Act in an attempt to collect a
10 consumer debt.” *Mansour v. Cal-Western Reconveyance Corp.*, 618 F. Supp. 2d 1178,
11 1182 (D. Ariz. 2009). This Court has held that “mortgagees and their beneficiaries,
12 including mortgage servicing companies, are not debt collectors subject to the FDCPA.”
13 *Id.* Thus, the Court must dismiss Plaintiff’s FDCPA claims (Counts 1 and 3) with
14 prejudice.

15 **B. Count 2 – Show Me the Note**

16 Although Count 2 is as unclear as Counts 1 and 3, Plaintiff appears to base the
17 claim on the allegation that Defendant “has not presented lawful, authenticated evidence
18 supporting [Defendant’s] claim of beneficial interest.” The Supreme Court of Arizona
19 and this Court have rejected the “show me the note” or “holder of the note” argument
20 repeatedly. *See, e.g., Hogan v. Washington Mutual Bank, N.A.*, 277 P.3d 781, 782-83
21 (Ariz. 2012) (holding that “Arizona’s non-judicial foreclosure statutes do not require the
22 beneficiary to prove its authority or ‘show the note’ before the trustee may commence a
23 non-judicial foreclosure.”); *Diessner v. MERS*, 618 F.Supp.2d 1184, 1187 (D. Ariz. 2009)
24 (holding that defendants had no obligation to prove they are the “owner of the Note and
25 Deed of Trust.”). While a creditor seeking to directly enforce the note in the face of
26 default under a Uniform Commercial Code action would be required to prove its
27 authority, Arizona’s non-judicial foreclosure statutory scheme was created specifically to
28 avoid the time and expense of that cumbersome procedure. Under A.R.S. §§ 33-801

1 *et seq.*, when the parties have executed a deed of trust and the debtor thereafter defaults
2 on the promissory note, a beneficiary or trustee need not prove they are entitled to
3 enforce the note or deed before holding a non-judicial foreclosure sale. That party merely
4 must do two things: record the notice of trustee's sale pursuant to Section 33-808; and
5 then send the trustor notice of the default, signed by the beneficiary or his agent, setting
6 forth the unpaid principal balance. A.R.S. § 33-809(C); *Hogan*, 277 P.3d at 783.

7 In any event, the judicially noticed documents demonstrate that Defendant and
8 Quality were entitled to enforce the underlying Note, and Plaintiff's purported unilateral
9 revocation of the Deed of Trust had no legal effect. (MTD Exs. A, B, C.) The Court will
10 therefore dismiss Count 2 with prejudice.

11 **C. *Lis Pendens***

12 Defendant moves to quash the *lis pendens* because Plaintiff has not stated a valid
13 claim and is unable to do so. Plaintiff did not oppose the Motion. Because the Court
14 dismisses this action in its entirety with prejudice, no legal action remains pending and
15 the Court must quash the *lis pendens*. See *Gray v. Fed. Nat'l Mort. Ass'n*, No. CV-12-
16 08220-PCT-JAT, 2013 WL 1149781, at *4 (D. Ariz. Mar. 19, 2013).

17 **IT IS THEREFORE ORDERED** granting Defendant's Motion to Dismiss
18 Complaint (Doc. 8). Plaintiff's claims are dismissed with prejudice.

19 **IT IS FURTHER ORDERED** granting Defendant's Motion to Quash *Lis*
20 *Pendens* (Doc. 16).

21 **IT IS FURTHER ORDERED** quashing, cancelling, and releasing the Notice of
22 *Lis Pendens* recorded with the Pinal County Recorder's Office on February 17, 2017, fee
23 number 2017-011128, regarding the following real property:

24 **Legal Description:**

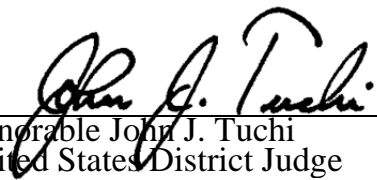
25 EAST 5 FEET OF LOT 21 ALL OF LOT 20 WESTERN MANOR
26 AMENDED, ACCORDING TO BOOK 10 OF MAPS, PAGE 16,
27 RECORDS OF PINAL COUNTY, ARIZONA. EXCEPT THE EAST 7
28 FEET OF LOT 20 SUBJECT TO RESERVATIONS IN PATENTS AND
ALL EASEMENTS, RIGHTS OF WAY, COVENANTS, CONDITIONS,
RESTRICTIONS AS MAY APPEAR OF RECORD

Address: 1379 West Tulip Place, Casa Grande, Arizona 85222

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IT IS FURTHER ORDERED directing the Clerk of Court to enter judgment accordingly and close this case.

Dated this 27th day of March, 2018.



Honorable John J. Tuchi
United States District Judge