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

8
9 Cynthia Gray,

10 Plaintiff,

11 v.

12 Federal National Mortgage Association;
13 Generation Mortgage Company,

14 Defendants.
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No. CV-12-08220-PCT-JAT

ORDER

16 Pending before the Court is Plaintiff's Objections and Motion to Alter/Amend
17 Order granting Motion to Dismiss and Motion to Quash Lis Pendens (Doc. 22).

18 On March 19, 2013, the Court granted Defendants' Motions to Dismiss Plaintiff's
19 Complaint. (Doc. 27). The same day, the Clerk of the Court entered judgment in favor
20 of Defendants. (Doc. 21). Plaintiff filed various objections to the Court's Order and
21 moves to alter and/or amend the Clerk's Judgment. (Doc. 22). Plaintiff does not specify
22 the authority that entitles her to the relief of altering and/or amending the Clerk's
23 Judgment. A motion seeking to alter or amend a judgment may be brought pursuant to
24 Federal Rules of Civil Procedure 59(e). Plaintiff's Motion is timely pursuant to Rule
25 59(e) because it was filed within 28 days of the entry of Judgment.

26 "A Rule 59(e) motion should not be granted 'unless the district court is presented
27 with newly discovered evidence, committed clear error, or if there is an intervening
28 change in the controlling law.'" *McQuillion v. Duncan*, 342 F.3d 1012, 1014 (9th Cir.

1 2003) (quoting *McDowell v. Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999) (en banc)).

2 Plaintiff first argues that the Court erred because it “failed to accept the allegations
3 in the pleadings as true.” (Doc. 22 at 2). Although Plaintiff cites various authorities for
4 this proposition, Plaintiff does not cite to any facts in her Complaint that the Court failed
5 to accept as true. Contrary to Plaintiff’s argument, the Court found that, even if it were to
6 accept the well-pled facts in Plaintiff’s complaint as true, Plaintiff failed to state a claim
7 upon which relief could be granted. (See Doc. 20 at 4-6). Accordingly, Plaintiff has
8 failed to demonstrate that the Court committed clear error and is not entitled to Rule
9 59(e) relief based on her argument that the Court “failed to accept the allegations in the
10 pleadings as true.”

11 Plaintiff next argues that the Court showed bias to Defendants “by offering the
12 defendants [sic] opportunity to amend/add res judicata defense supporting evidence to its
13 motion to dismiss filing, yet, did not offer plaintiff [sic] opportunity to file evidence of
14 heir status.” (Doc. 22 at 2). First, the Court did not deny Plaintiff the opportunity to file
15 evidence of “heir” status. Defendants’ moved to dismiss arguing the Plaintiff lacked
16 standing. Plaintiff failed to refute that argument. Moreover, although the Court
17 concluded that Plaintiff lacked standing, the Court also determined that Plaintiff failed to
18 state a claim upon which relief could be granted and, thus, even assuming Plaintiff could
19 now prove that she has standing to bring this action (which she still has not done),
20 Plaintiff’s complaint failed to state a claim upon which relief could be granted and, thus,
21 would nonetheless have been dismissed.

22 Moreover, Plaintiff appears to object to the Court’s Order allowing Defendants to
23 supplement their Motion to Dismiss. (Doc. 18). In their Motion to Dismiss, Defendants
24 argued that a review of a complaint Plaintiff filed in Yavapai County Superior Court
25 demonstrated that Plaintiff’s case was barred by res judicata. Defendants did not provide
26 that complaint to the Court and the Court allowed Defendants to file the complaint with
27 the Court or, alternatively, waive their res judicata argument. (Doc. 18). Although
28 Defendants ultimately filed the Yavapai County Superior Court complaint into the

1 Record, the Court did not decide whether Plaintiff’s case was barred by res judicata
2 because the Court determined that Plaintiff lacked standing and that Plaintiff failed to
3 state a claim upon which relief could be granted in her Complaint. Accordingly, Plaintiff
4 has failed to demonstrate that the Court committed clear error and is not entitled to Rule
5 59(e) relief based on her argument that the Court showed bias to Defendants by ordering
6 them to file the Yavapai Superior Court complaint into the Record or, alternatively,
7 risking waiver of their res judicata argument.

8 Plaintiff next argues that the Court erred by failing to provide Plaintiff the
9 opportunity to amend her Complaint. Plaintiff never properly sought leave to amend her
10 complaint pursuant to Federal Rule of Civil Procedure 15 or LRCiv 15.1. Moreover, the
11 Court found that granting Plaintiff leave to amend would be futile based upon its findings
12 that Plaintiff lacked standing and failed to state a claim upon which relief could be
13 granted. Plaintiff has not established that she has standing or that she could state a claim
14 upon which relief could be granted. As a result, Plaintiff has failed to demonstrate that
15 the Court committed clear error and is not entitled to Rule 59(e) relief based on her
16 argument that the Court improperly determined that allowing her leave to amend her
17 complaint would be futile.

18 Plaintiff next argues that the Court showed bias by “accepting the second-hand
19 hearsay speculative testimony of counsel in the Motion to dismiss [sic] as true, but failing
20 to accept the first-hand testimony of Plaintiff as true.” (Doc. 22 at 4). Plaintiff fails to
21 cite to any portion of the Court’s Order where it discussed and/or accepted the
22 “testimony” of defense counsel as true or where the Court failed to accept Plaintiff’s
23 allegations as true. Accordingly, Plaintiff has failed to demonstrate that the Court
24 committed clear error and is not entitled to Rule 59(e) relief based on this argument.

25 Finally, Plaintiff argues that the Court’s Order granting the Motion to Dismiss and
26 Motion to Quash Lis Pendens “is manifest injustice because the Defendant(s) never
27 produced the original note to prove real party in interest status to foreclose, nor brought
28 forth a competent fact witness in support of dismissal.” (Doc. 22 at 4). This argument

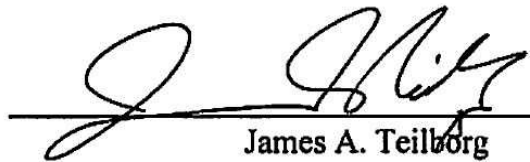
1 repeats allegations in Plaintiff's complaint. In its Order, the Court found that Plaintiff
2 failed to state a claim upon which relief could be granted based on such allegations.
3 (Doc. 20 at 4-5). Plaintiff's disagreement with this Court's reasoning is not a basis for
4 Rule 59(e) relief. Accordingly, Plaintiff has failed to demonstrate that the Court
5 committed clear error and is not entitled to Rule 59(e) relief based on this argument.

6 Based on the foregoing,

7 **IT IS ORDERED** that Plaintiff's Objections and Motion to Alter/Amend Order
8 granting Motion to Dismiss and Motion to Quash Lis Pendens (Doc. 22) is denied.

9 Dated this 4th day of September, 2013.

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James A. Teilborg
Senior United States District Judge