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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

VICTORIA URENIA, an	)	Case No. CV 13-01934 DDP (AJWx)
individual; SOLEDAD CORONA,	)	
an individual,	)	ORDER GRANTING IN PART AND
	)	DENYING IN PART DEFENDANT'S
Plaintiffs,	)	MOTION TO EXPUNGE LIS PENDENS
	)	
v.	)	[Docket No. 9]
	)	
PUBLIC STORAGE, a real	)	
estate investment trust;	)	
CITY OF LOS ANGELES, a	)	
governmental entity;	)	
	)	
Defendants.	)	
_____	)	

**I. Background**

Plaintiffs Victoria Urenia and Soledad Corona ("Ms. Corona") (collectively "Plaintiffs") have sued Public Storage, City of Los Angeles, Bank of America ("BOA"), and Michael Anz on several grounds. (See generally Compl., Docket No. 1.) On June 1, 2013, Ms. Corona filed a lis pendens against real property located at 2200 Daly Street, Los Angeles, California 90031 (the "Property"). Presently before the Court is BOA's Motion to Expunge Lis Pendens and Request for Attorney Fees and Costs ("Motion"). (Docket No. 9).

1 Ms. Corona is the former Trustor of a Deed of Trust dated  
2 September 4, 2008, that encumbered the Property and included a  
3 power of sale clause that provided for the nonjudicial foreclosure  
4 of the Property. (Compl., ¶¶ 23-24; Request for Judicial Notice  
5 ("RJN") at Exh. A (Deed of Trust), Docket No. 10.) BOA asserted  
6 that Ms. Corona defaulted on her mortgage, and a Notice of Default  
7 was recorded against the Property on July 14, 2009. (Compl. ¶ 24,  
8 RJN, Ex. B.) A Notice of Sale of the Property was recorded on  
9 October 29, 2009, and the Property was sold on December 14, 2009.  
10 (RJN Ex. A.) Trustee's Deed Upon Sale was recorded on December 21,  
11 2009. Id.

12 Ms. Corona sued in Los Angeles Superior Court for wrongful  
13 foreclosure and, after an appeal, BOA prevailed, eventually  
14 obtaining legal title and possession of the Property. (RJN, Exhs.  
15 E ("Trial Court Judgment"); F ("Appellate Decision"); G (Unlawful  
16 Detainer "UD" Judgment). On February 8, 2013, the Superior Court  
17 rejected Ms. Corona's post-judgment applications to quash that  
18 court's writ of possession in the UD action. Id. at Ex. H ("UD  
19 Court Order Affirming UD Judgment").

## 20 **II. Legal Standard**

21 "A lis pendens is a recorded document giving constructive  
22 notice that an action has been filed affecting title to or right to  
23 possession of the real property described in the notice." Kirkeby  
24 v. Superior Court of Orange Cnty., 33 Cal. 4th 642, 647 (2004).  
25 California law governs lis pendens matters. Schmidt v. Coldwell  
26 Banker Residential Brokerage, 5:13-CV-00986 EJD, 2013 WL 2085161,  
27 at \*3 (N.D. Cal. May 14, 2013). "[A]ny party may apply to the  
28 court in which the action is pending to expunge a lis pendens."

1 Id. (citing Cal. Civ. Proc. Code § 405.30.) "The court must grant  
2 a motion to expunge if it determines either (1) that the pleading  
3 on which the notice is based does not contain a real property  
4 claim, or (2) that the claimant has not established by a  
5 preponderance of the evidence the probable validity of the real  
6 property claim." Id. (citing Cal. Civ. Proc. Code §§ 405.31,  
7 405.32). "[T]he burden is on the party opposing the motion to show  
8 the existence of a real property claim." Kirkeby, 33 Cal. 4th at  
9 647.

### 10 **III. Analysis**

11 As a threshold issue, Plaintiffs state BOA lacks standing.  
12 However, "any party may apply to the court in which the action is  
13 pending to expunge a lis pendens." Schmidt, 2013 WL 2085161, at \*3  
14 (citing Cal. Civ. Proc. Code § 405.30). Although non-parties must  
15 show they have an "interest in the real property," BOA is a party,  
16 and that status is sufficient to confer standing. Cal. Civ. Proc.  
17 Code § 405.30 ("[A]ny party, or any nonparty with an interest in  
18 the real property affected thereby, may apply to the court in which  
19 the action is pending to expunge the notice.").

20 BOA states that the Complaint does not contain a real property  
21 claim, which is a requirement under Cal. Civ. Proc. Code § 405.31.  
22 Specifically, BOA states that Ms. Corona's Complaint is about  
23 personal property, not real property, because the Prayer for Relief  
24 in the Complaint does not seek "any relief that would affect title  
25 or possession of the property." (Docket No. 9-1 at 3:10-11.)

26 "The majority of [California] courts have concluded that a  
27 claim that seeks an interest in real property merely for the  
28 purpose of securing a money damage judgment does not support the

1 recording of a lis pendens." Campbell v. Superior Court, 132 Cal.  
2 App. 4th 904, 912 (2005). However, the Complaint's final cause of  
3 action is to "set aside foreclosure sale," and it specifically  
4 requests that the "sale should be set aside." (Compl. ¶¶ 237-42.)  
5 Thus, even if this Court were to side with the majority of  
6 California courts, Plaintiffs do not seek only money damages; they  
7 seek to affect title. BOA's reply brief faults Ms. Corona for not  
8 specifically including setting aside the foreclosure in the Prayer  
9 for Relief section of the Complaint. (Docket No. 16 at 1:2-5.)  
10 Because "public policy favor[s] the resolution of disputes on their  
11 merits," BOA makes too much of too little. In re Eisen, 31 F.3d  
12 1447, 1454 (9th Cir. 1994).

13 BOA also states that even if Plaintiffs seek a remedy that  
14 affects title, she cannot succeed on any of her claims. The Court  
15 agrees. Plaintiffs state that the claim for "foreclosure to be set  
16 aside" should succeed because BOA never "followed the HUD  
17 guidelines outlined in the Deed of Trust." Docket No. At 5:26-28.  
18 Ms. Corona's Deed of Trust contained the following language:

19 Regulations of HUD Secretary. In many circumstances  
20 regulations issued by the Secretary will limit Lender's  
21 rights, in the case of payment defaults, to require  
22 immediate payment in full and foreclosure if not paid.  
23 This Security Instrument does not authorize acceleration  
24 or foreclosure if not permitted by regulations of the  
25 Secretary.

26 (Compl. ¶ 24.) Plaintiffs' reliance on HUD guidelines is  
27 unavailing.

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1           While HUD regulations may prevent a foreclosure before it  
2 occurs, after a foreclosure happens a plaintiff may not use those  
3 regulations to "bring a private right of action against the  
4 lenders." Pfeifer v. Countrywide Home Loans, Inc., 211 Cal. App.  
5 4th 1250, 1269 (2012), review denied (Feb. 20, 2013) (analyzing a  
6 Deed of Trust containing the same language block quoted above);  
7 Weatherford v. Nevada Rural Hous. Auth., 3:10-CV-729-RCJ-RAM, 2013  
8 WL 2179292 (D. Nev. May 17, 2013) (citing to "several circuits that  
9 have . . . have found that there is no private right of action to  
10 enforce HUD regulations"). The distinction between offense and  
11 defense is paramount for HUD violations: "HUD regulations . . . may  
12 be used defensively as an affirmative defense to a judicial  
13 foreclosure action," but they "may not be invoked by the mortgagor  
14 as a sword in an offensive cause of action against the mortgagee."  
15 Pfeifer, 211 Cal. App. 4th at 1268-70.

16           Additionally, "[a] full tender must be made to set aside a  
17 foreclosure sale, based on equitable principles." Stebley v.  
18 Litton Loan Servicing, LLP, 202 Cal. App. 4th 522, 526 (2011).  
19 Although under Pfeiffer, the full tender requirement does not apply  
20 to certain pre-foreclosure contexts involving Civil Code § 2923.5,  
21 § 2923.5 "does not provide for . . . setting aside a foreclosure  
22 sale." Id. Courts are reluctant to apply Pfeiffer outside the §  
23 2923.5 context. See Talaie v. Wells Fargo Bank, N.A., No. CV  
24 12-04959 DMG AGRX, 2013 WL 3316157, at \*3 (C.D. Cal. June 27,  
25 2013).<sup>1</sup>

26 \_\_\_\_\_  
27           <sup>1</sup>There are a few other narrow exceptions to the tender  
28 requirement, but Plaintiffs have not stated that any of these  
exceptions apply in this case. See Lona v. Citibank, N.A., 202  
(continued...)

1 BOA also states that the claimant cannot prove the probable  
2 validity of her real property claim, because any such claim is  
3 precluded on res judicata grounds. Because "the Full Faith and  
4 Credit Act, 28 U.S.C. § 1738, requires us to give the same  
5 preclusive effect to a state-court judgment as another court of  
6 that State would give," this Court must "look to California law to  
7 determine the effect of the judgment against International Church  
8 entered by the Superior Court of Los Angeles County." Int'l  
9 Evangelical Church of Soldiers of the Cross of Christ v. Church of  
10 Soldiers of the Cross of Christ of State of Cal., 54 F.3d 587, 590  
11 (9th Cir. 1995).

12 Plaintiffs state that under the California Supreme Court's  
13 decision in Keidatz v. Albany, 39 Cal. 2d 826 (1952) res judicata  
14 is inapplicable: "If ... new or additional facts are alleged that  
15 cure the defects in the original pleading, it is settled that the  
16 former judgment is not a bar to the subsequent action whether or  
17 not plaintiff had an opportunity to amend his complaint" (emphasis  
18 added). However, Plaintiffs' new allegations are related to BOA's  
19 "failure to follow HUD regulations." (Docket No. 13 at 8: 14-15.)  
20 For the reasons discussed, these allegations will not cure any  
21 defect, because Plaintiffs cannot use HUD regulations offensively.<sup>2</sup>

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23 <sup>1</sup>(...continued)  
Cal. App. 4th 89, 112-14 (2011) (listing the exceptions).

24 <sup>2</sup>BOA's other arguments that Keidatz is inapposite are  
25 unconvincing. Noting that BOA's demurrer was sustained without  
26 giving Ms. Corona leave to amend, BOA distinguishes this case from  
27 Keidatz, where leave to amend was given but judgment was entered  
28 because plaintiff's never amended. But, Keidatz's holding applies  
regardless of whether or not leave to amend was given because "less  
prejudice is suffered by a defendant who has had only to attack the  
pleadings, than by one who has been forced to go to trial until a  
(continued...)"

1           Additionally, Plaintiff's request for an undertaking is  
2 unwarranted. Because Plaintiffs have not "established by a  
3 preponderance of the evidence the probable validity of the real  
4 property claim," this Court is not permitted to "order an  
5 undertaking to be given as a condition of expunging." Cal. Civ.  
6 Proc. Code § 405.30

7           Finally, BOA requests an award of attorney fees. The Court  
8 DENIES the request.

9 **IV. Conclusion**

10           For the reasons stated herein, the Motion is GRANTED, except  
11 that the Court DENIES attorney fees.

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13 IT IS SO ORDERED.

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16 Dated: August 27, 2013

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DEAN D. PREGERSON

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United States District Judge

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<sup>2</sup>(...continued)  
nonsuit is granted. Id. at 830. BOA also states that Keidatz's  
"new or additional facts" language only applies to facts that occur  
after final judgment is entered in a prior case. However, Keidatz  
only requires "new or additional" allegations, regardless of when  
the relevant facts occurred. Indeed, in Keidatz there was no  
discussion as to when the facts that gave rise to the added  
allegation occurred, only that the allegation was "absent from  
[plaintiffs] former complaint." Id. at 829.