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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JON W. WARWICK, et al.,
Plaintiffs,
v.
BANK OF NEW YORK MELLON, et
al.,
Defendants.

Case No. CV 15-3343 SS

MEMORANDUM AND ORDER:

- (1) DENYING PLAINTIFFS' MOTION TO REMAND (Dkt. No. 19);
- (2) GRANTING IN PART BANK OF AMERICA, N.A.'S MOTION TO DISMISS (Dkt. No. 10);
- (3) GRANTING IN PART GREEN TREE SERVICING, LLC'S MOTION TO DISMISS (Dkt. No. 7); AND
- (4) DISMISSING FIRST AMENDED COMPLAINT WITH LEAVE TO AMEND

I.

INTRODUCTION

Plaintiffs Jon W. Warwick and Jeanette Warwick, California residents proceeding pro se, filed this quiet title action in the Ventura County Superior Court on December 17, 2013. (See Superior Court of California, County of Ventura, Case Information

1 Website, <http://www.ventura.courts.ca.gov/via.html>, Case No. 56-
2 2013-00445950).¹ On February 11, 2014, Plaintiffs filed the
3 operative First Amended Complaint ("FAC"). (See Notice of
4 Removal, Dkt. No. 1, Exh. B at 12).² The FAC seeks only a
5 declaration that "Plaintiffs own and hold the property free and
6 clear of any interest and adverse claims asserted herein by any
7 Defendant." (Id. at 16). On April 25, 2014, the superior court
8 dismissed all Defendants named in the FAC except the Bank of New
9 York Mellon ("BONYM"). (See id. at 22).

10
11 BONYM filed a Motion for Judgment on the Pleadings on May
12 16, 2014, which the superior court denied in a reasoned opinion
13 on July 10, 2014. (See Dkt. No. 21, Exh. 2). BONYM subsequently
14 filed a Motion for Summary Judgment on October 27, 2014, which
15 the state court denied on April 13, 2015. (See Dkt. No. 7, at 6;
16 see also Superior Court of California, County of Ventura, Case
17 Information Website, <http://www.ventura.courts.ca.gov/via.html>,
18 Case No. 56-2013-00445950, State Ct. Dkt. No. 113). On April 20,
19 2015, the state court scheduled the matter for a jury trial on

20
21 ¹ The Court takes judicial notice of the docket in Plaintiff's
22 state court proceedings. See In re Korean Air Lines Co., Ltd.,
23 642 F.3d 685, 689 n.1 (9th Cir. 2011) (a court may take judicial
24 notice of a court's own records in other cases and the records of
other courts); see also Porter v. Ollison, 620 F.3d 952, 955 n.1
(9th Cir. 2010) (taking judicial notice of court dockets,
including those available on the Internet, from petitioner's
state court proceedings).

25
26 ² The Court will cite to the Notice of Removal and its
27 attachments, with the exception of the declaration of Brendan F.
28 Hug, as though they formed a single, consecutively paginated
document. Similarly, the Court will cite to the Hug declaration
and its exhibits as though they formed another single,
consecutively paginated document. Unless otherwise specified,
references to docket numbers refer to the instant federal matter.

1 May 18, 2015. (Id., State Ct. Dkt. No. 292; see also Dkt. No. 7
2 at 6).

3
4 On April 6, 2015, shortly before the state court denied
5 BONYM's motion for summary judgment and set the case for trial in
6 mid-May, Plaintiffs added two new parties by substituting Green
7 Tree Servicing LLC ("Green Tree") for Doe Defendant No. 1 and
8 Bank of America, N.A. ("BANA") for Doe Defendant No. 2. (See
9 Superior Court of California, County of Ventura, Case Information
10 Website, <http://www.ventura.courts.ca.gov/via.html>, Case No. 56-
11 2013-00445950, State Ct. Dkt. Nos. 270-71 & 282-83). Plaintiffs
12 moved the court to reopen discovery to pursue their claims
13 against BANA and Green Tree. (See Dkt. No. 19 at 5). On May 4,
14 2015, BANA removed this action to federal court on the basis of
15 diversity jurisdiction. (See Dkt. No. 1). Green Tree and BONYM
16 filed a Joinder and Consent to Removal of Action simultaneously
17 with BANA's Notice of Removal. (See Dkt. No. 2).

18
19 On May 11, 2015, Green Tree filed a Motion to Dismiss,
20 ("Green Tree MTD," Dkt. No. 7), including a Request for Judicial
21 Notice. ("Green Tree RJN," Dkt. No. 8). Plaintiff filed an
22 Opposition to the Green Tree MTD on June 26, 2015. ("Opp. Green
23 Tree MTD," Dkt. No. 28). Green Tree filed a Reply on July 2,
24 2015. ("Reply Green Tree MTD," Dkt. No. 32).

25
26 BANA also filed a Motion to Dismiss on May 11, 2015, ("BANA
27 MTD"), including a Request for Judicial Notice. ("BANA RJN,"
28 Dkt. No. 10). Plaintiffs filed an Opposition to the BANA MTD on

1 June 26, 2015. ("Opp. BANA MTD," Dkt. No. 29). BANA filed a
2 Reply on July 2, 2015. ("Reply BANA MTD," Dkt. No. 31).

3
4 On June 3, 2015, Plaintiffs filed a Motion to Remand
5 ("Remand Motion," Dkt. No. 19), including the Joint Declaration
6 of Jon W. Warwick and Jeannette Warwick ("Warwick Decl.," Dkt.
7 No. 20), and a Request for Judicial Notice. ("Warwick RJN," Dkt.
8 No. 21). BANA filed an Opposition on June 16, 2014, ("Opp.
9 Remand," Dkt. No. 23), which BONYM and Green Tree joined. ("Opp.
10 Remand Joinder," Dkt. No. 24). Plaintiffs filed a Reply on June
11 23, 2015. ("Reply Remand," Dkt. No. 27).

12
13 For the reasons stated below, the Court concludes that
14 diversity jurisdiction exists and on that ground DENIES
15 Plaintiffs' Motion to Remand. The Court GRANTS IN PART the
16 Motion to Dismiss filed by BANA. The Court GRANTS IN PART Green
17 Tree's Motion to Dismiss. The FAC is DISMISSED, but WITH LEAVE
18 TO AMEND.

19
20 **II.**

21 **PLAINTIFFS' MOTION TO REMAND**

22
23 Plaintiffs argue that this Court lacks subject matter
24 jurisdiction because their case does not present a federal
25 question. (Remand Motion at 7-8 & 18-23). Plaintiffs further
26 contend that BANA and Green Tree cannot create diversity because
27 they are "nominal parties." (Id. at 9-15). Defendants
28 acknowledge that the Court does not have federal question

1 jurisdiction, but argue that the Court does have diversity
2 jurisdiction under 28 U.S.C. § 1332. (Opp. Remand at 2-4).
3 Defendants are correct. Plaintiffs' Motion to Remand is DENIED.³
4

5 **A. Remand Standards**
6

7 Removal of a case from state court to federal court is
8 governed by 28 U.S.C. § 1441, which provides in relevant part
9 that "any civil action brought in a State court of which the
10 district courts of the United States have original jurisdiction,
11 may be removed . . . to the district court of the United States
12 for the district and division embracing the place where such
13 action is pending." 28 U.S.C. § 1441(a). Federal courts have
14 original subject matter jurisdiction where an action presents
15 either a federal question under 28 U.S.C. § 1331 or diversity of
16 citizenship under 28 U.S.C. § 1332. Generally, a court has
17 diversity jurisdiction only when there is complete diversity of
18 citizenship among adverse parties and the amount in controversy
19 exceeds \$75,000. 28 U.S.C. § 1332(a). Remand to state court may
20 be ordered for lack of subject matter jurisdiction or any defect
21 in the removal procedure. 28 U.S.C. § 1447(c).

22 \\

23 \\

24 ³ Plaintiffs ask the Court to take judicial notice of certain
25 court orders, a proof of service of the summons on BANA, and
26 BONYM's verified answer to the FAC in the underlying state court
27 proceedings. (Warwick RJN, Exhs. 1-5). As noted above, a court
28 may take judicial notice of the records of other courts. In re
Korean Air Lines Co., Ltd., 642 F.3d 685, 689 n.1 (9th Cir.
2011). Accordingly, Plaintiffs' request for judicial notice is
GRANTED.

1 To protect the jurisdiction of state courts, removal
2 jurisdiction is strictly construed in favor of remand. Harris v.
3 Bankers Life and Cas. Co., 425 F.3d 689, 698 (9th Cir. 2005); see
4 also Abrego Abrego v. Dow Chem. Co., 443 F.3d 676, 684 (9th Cir.
5 2006) (“It is presumed that a cause lies outside the limited
6 jurisdiction of the federal courts”) (quoting Kokkonen
7 v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994)
8 (internal brackets omitted)). If there is any doubt as to
9 whether removal is proper, remand must be ordered. Ethridge v.
10 Harbor House Rest., 861 F.2d 1389, 1393 (9th Cir. 1988). “The
11 party seeking removal bears the burden of establishing federal
12 jurisdiction.” Id.

13
14 **B. Discussion**

15
16 To establish diversity jurisdiction, and thus defeat
17 Plaintiffs’ Motion to Remand, Defendants must show that there is
18 complete diversity of citizenship between Plaintiffs and
19 Defendants, and that the amount in controversy equals or exceeds
20 \$75,000. Id. Plaintiffs are citizens of California. (See FAC
21 ¶ 1); see also Kanter v. Warner-Lambert Co., 265 F.3d 853, 857
22 (9th Cir. 2001) (for purposes of establishing diversity
23 jurisdiction, a “natural person’s state citizenship is . . .
24 determined by her state of domicile, . . . where she resides with
25 the intention to remain or to which she intends to return.”).
26 Therefore, diversity of citizenship will not exist if any of the
27 Defendants is also a citizen of California.

1 Of the three surviving Defendants in this case, two, BANA
2 and BONYM, are national banks. (Notice of Removal at 3; see also
3 Opp. Remand at 2). “[T]he citizenship of nationally chartered
4 banks is governed by 28 U.S.C. § 1348, which provides in
5 pertinent part: ‘All national banking associations shall, for
6 the purposes of all other actions by or against them, be deemed
7 citizens of the States in which they are respectively located.’”
8 Rouse v. Wachovia Mortg., FSB, 747 F.3d 707, 709 (9th Cir. 2014)
9 (quoting 28 U.S.C. § 1348). According to the Ninth Circuit,
10 pursuant to section 1348, a national bank is therefore “only a
11 citizen of the state designated in its articles of association as
12 its main office.” Id. at 711; see also Wachovia Bank v. Schmidt,
13 546 U.S. 303, 307 (2006) (“[A] national bank, for § 1348
14 purposes, is a citizen of the State in which its main office, as
15 set forth in its articles of association, is located.”). BANA
16 states it is a citizen of North Carolina and BONYM is a citizen
17 of New York, and Plaintiffs do not challenge these statements.
18 (Opp. Remand at 2). Accordingly, there is complete diversity of
19 citizenship between Plaintiffs on the one hand, and BANA and
20 BONYM on the other.

21
22 There is also diversity of citizenship between Green Tree,
23 the third surviving Defendant, and Plaintiffs. Green Tree is a
24 limited liability company (“LLC”). (Opp. Remand Joinder,
25 Declaration of Wanda J. Lamb-Lindow ¶ 3). A corporation is a
26 citizen of any state where it is incorporated or has its
27 principal place of business. Hertz Corp. v. Friend, 130 U.S.
28 1181, 1884 (2010). Furthermore, an LLC is a citizen of every

1 state in which its owners or members are citizens. See Johnson
2 v. Columbia Props. Anchorage, LP, 437 F.3d 894, 899 (9th Cir.
3 2006) (“We therefore join our sister circuits and hold that, like
4 a partnership, an LLC is a citizen of every state of which its
5 owners/members are citizens.”). In its joinder to the Remand
6 Opposition, Green Tree included the declaration of one of its
7 officers who testified to the identity and composition of all of
8 Green Tree’s members (as well as their members), and their
9 respective states of citizenship. (Opp. Remand Joinder,
10 Declaration of Wanda J. Lamb-Lindow ¶¶ 5-15). Neither Green Tree
11 nor any of its members (or its members’ members) is a citizen of
12 California. (See id.). Therefore, complete diversity of
13 citizenship exists between Plaintiffs and Green Tree as well.

14
15 Rather than challenge Defendants’ respective states of
16 citizenship, Plaintiffs argue that BANA and Green Tree should not
17 be considered in the diversity analysis because they are
18 “nominal” defendants. (Remand Motion at 9-15). It is correct
19 that the citizenship of “nominal defendants” may be disregarded
20 for purposes of determining diversity under section 1441. As one
21 court explained,

22
23 In assessing diversity, “[a] federal court must
24 disregard nominal or formal parties and rest
25 jurisdiction only upon the citizenship of real parties
26 to the controversy.” Kuntz v. Lamar Corp., 385 F.3d
27 1177, 1183 (9th Cir. 2004). A nominal party is one
28 “who has no interest in the action” and is merely

1 joined to "perform a ministerial act." Prudential
2 Real Estate Affiliates, Inc. v. PPR Realty, Inc., 204
3 F.3d 867, 873 (9th Cir. 2000). "The paradigmatic
4 nominal defendant is a trustee, agent, or depository
5 who is joined merely as a means of facilitating
6 collection." [S.E.C. v. Colello, 139 F.3d 674, 676
7 (9th Cir. 1998)] (internal quotations omitted); see
8 also Hafiz v. Greenpoint Mortg. Funding, Inc., 652 F.
9 Supp. 2d 1050, 1052 (N.D. Cal. 2009) (trustee
10 defendant named in the complaint solely in its
11 capacity as a trustee and not because of any
12 wrongdoing was a nominal defendant, where trustee
13 filed declaration of nonmonetary status pursuant to
14 California Civil Code section 29241).

15
16 Perez v. Wells Fargo Bank, N.A., 929 F. Supp. 2d 988, 1002 (N.D.
17 Cal. 2013) (recognizing nonetheless that trustees may be "more
18 than nominal defendants" where the complaint includes, inter
19 alia, substantive allegations against the trustee and claims for
20 money damages); see also Hewitt v. City of Stanton, 798 F.2d
21 1230, 1232 (9th Cir. 1986) ("All defendants must join in a
22 removal petition with the exception of nominal parties.").

23
24 However, the import of Plaintiffs' argument is unclear.
25 Even if the Court were to ignore BANA's and Green Tree's
26 respective states of citizenship, diversity would still exist
27 because BONYM is a citizen of New York and Plaintiffs are
28 citizens of California. Accordingly, the exclusion of BANA and

1 Green Tree from the Court's consideration would not change the
2 ultimate determination that complete diversity of citizenship
3 exists between Plaintiffs and Defendants.

4
5 To the extent that Plaintiffs' argument can somehow be
6 construed to imply that a "nominal defendant" is precluded from
7 initiating the removal of an action to federal court, the
8 argument also fails. All defendants, except fraudulently named
9 and nominal defendants without an interest in the outcome, must
10 join in or otherwise approve a removal petition. Id. However,
11 nothing precludes a so-called nominal defendant from filing a
12 removal petition in which all other defendants join, as here.
13 See EIE Guam Corp. v. Long Term Credit Bank of Japan, Ltd., 322
14 F.3d 635, 643 (9th Cir. 2003) (citing with approval Citibank,
15 N.A. v. Nyland (CF8) Ltd., 878 F.2d 620, 624 (2d Cir. 1989), in
16 which the Second Circuit expressly rejected a defendant's
17 contention that a "nominal defendant . . . did not have the power
18 to remove the case to federal court . . .").

19
20 Having established that complete diversity of citizenship
21 exists, Defendants need only show that the amount in controversy
22 exceeds \$75,000. In a quiet title action, the amount in
23 controversy is calculated by the value of the property at issue.
24 Chapman v. Deutsche Bank Nat. Trust Co., 651 F.3d 1039, 1045 n.2
25 (9th Cir. 2011); see also Cohn v. Petsmart, Inc., 281 F.3d 837,
26 840 (9th Cir. 2002) (per curiam) ("In actions seeking
27 declaratory or injunctive relief, it is well established that the
28 amount in controversy is measured by the value of the object of

1 the litigation.'") (quoting Hunt v. Wash. State Apple Adver.
2 Comm'n, 432 U.S. 333, 347 (1977)). Defendants have submitted a
3 declaration suggesting that the value of the real property at
4 issue was well over \$300,000 in 2005. (Notice of Removal,
5 Declaration of Brendan F. Hug ¶ 7). Nowhere in their Motion to
6 Remand or Reply do Plaintiffs dispute that the current value of
7 the property at issue exceeds \$75,000. The Court concludes that
8 the amount in controversy requirement is also met and that
9 diversity jurisdiction exists. Accordingly, Plaintiffs' Motion
10 to Remand is DENIED.

11
12 **III.**

13 **DEFENDANTS' MOTIONS TO DISMISS**

14
15 BANA argues in its Motion to Dismiss that Plaintiffs' claims
16 against it should be dismissed because the FAC contains
17 "absolutely no allegations of any kind regarding" BANA "or its
18 purported adverse claim to Plaintiffs' title." (BANA MTD at 1 &
19 4). BANA further states that it simply "serviced [Plaintiffs']
20 loan on behalf of the investor for a period of time" but released
21 its servicing rights to Green Tree over a year ago and "no longer
22 maintains any interest in the subject property, either title-
23 related or otherwise." (Id. at 1).⁴ Additionally, BANA contends

24 ⁴ The following overview of California real estate law provides a
25 context for Defendants' arguments in their respective Motions to
26 Dismiss.

27 "The financing or refinancing of real property in California is
28 generally accomplished by the use of a deed of trust." Jenkins
v. JP Morgan Chase Bank, N.A., 216 Cal. App. 4th 497, 507 (2013).
"A deed of trust . . . conveys title to real property from the

1 that the FAC fails to state a claim because Plaintiffs have not
2 pled tender of the amount allegedly owing on the property. (Id.
3 at 5-7).

4
5 Green Tree also argues in its Motion to Dismiss that
6 Plaintiffs' claims should be dismissed because the claims against
7 the Doe Defendants are uncertain and because Plaintiffs failed to
8 allege that they have paid off the debt allegedly owed on the
9 property. (Green Tree MTD at 4 & 6). Green Tree further argues
10 that Plaintiffs lack standing to challenge the enforceability of
11 a deed of trust due to defects in transfers and assignments of a
12 borrower's debt because "California law does not recognize such a
13 cause of action." (Id. at 4).

14
15 trustor-debtor to a third party trustee to secure the payment of
16 a debt owed to the beneficiary-creditor under a promissory note."
17 Id. at 508. "[T]here is little practical difference between
18 mortgages and deeds of trust; they perform the same basic
19 function . . . [A] deed of trust is practically and substantially
20 only a mortgage with power of sale" should the trustor-debtor
21 fail to pay back the debt owed under the promissory note. Id. at
22 508 n.2 (internal quotation marks and citation omitted).

23 Under the deed of trust model, the debt owner, as the trust's
24 beneficiary, not the "trustee," retains the power to foreclose.
25 See Rossberg v. Bank of America, N.A., 219 Cal. App. 4th 1481,
26 1492 (2013) ("When a trustor-debtor defaults 'on a debt secured
27 by a deed of trust, the beneficiary-creditor may elect to
28 judicially or nonjudicially foreclose on the real property
security.'") (quoting Jenkins, 216 Cal. App. 4th at 508). "The
trustee of a deed of trust is not a true trustee, and owes no
fiduciary obligations; he merely acts as a common agent" for the
debt owner-beneficiary of the deed of trust. Vournas v. Fidelity
Nat. Title Ins. Co., 73 Cal. App. 4th 668, 677 (1999); see also
Jenkins, 216 Cal. App. 4th at 508 ("[A]lthough the deed of trust
technically conveys title to the real property from the trustor-
debtor to the trustee, the extent of the trustee's interest in
the property is limited to what is necessary to enforce the
operative provisions of the deed of trust.").

1 As further explained below, the Court agrees that the FAC's
2 vague allegations fail to put BANA and Green Tree on fair notice
3 of Plaintiffs' claims against them. Accordingly, BANA's and
4 Green Tree's respective Motions to Dismiss are GRANTED IN PART
5 and the FAC is DISMISSED, WITH LEAVE TO AMEND. The Court does
6 not agree, however, that Plaintiffs are required to allege tender
7 of an amount owing on a loan that, based on the allegations of
8 the FAC, they do not claim exists. Similarly, whether California
9 permits a borrower to raise a claim based on the improper
10 transfer of a home loan is not ripe for decision because nowhere
11 in the FAC do Plaintiffs allege that a loan ever existed or that
12 such a loan was improperly transferred.⁵ Accordingly, to the
13 extent that the Parties' Motions are based on these theories, the
14 Motions are also DENIED IN PART.

15
16 **A. Allegations Of The First Amended Complaint**

17
18 Plaintiffs seek to quiet title to the property located at
19 1630 Holly Avenue, Oxnard, California 93036. (FAC ¶ 9).
20 Plaintiffs allege that they "hold free and clear title to the
21 Property" and seek a declaration to that effect over "any and all
22 claims that might be asserted by any Defendant in this case."
23 (Id. ¶ 16). With respect to the individually named Defendants,
24 the FAC alleges that "Defendant BONYM has insinuated without
25 provision of corroborative evidence that it has some interest in
26

27 ⁵ Green Tree concedes in its MTD that Plaintiffs did not
28 "specifically allege[]" this theory of liability in their "'bare
bones' FAC." (Green Tree MTD at 10).

1 the title of the Property that is adverse to Plaintiff's [sic]."
2 (Id. ¶ 11). As to Green Tree and BANA, substituted in the place
3 of Doe Defendants Nos. 1 and 2, respectively, the FAC alleges
4 that "Defendants herein named as all persons unknown ('DOES 1-
5 100') assert interest in the title of the Property that is
6 adverse to the Plaintiff's [sic]." (Id. ¶ 14). Plaintiffs
7 further allege:

8
9 Plaintiffs are informed and believe, and thereon
10 allege, that each of the Defendants designate[d]
11 herein, known and/or unknown[,] claim some right,
12 title, estate, lien, or interest in the hereinafter
13 described property adverse to the Plaintiffs['] title
14 and their claims, and each of them constitute a cloud
15 on Plaintiffs['] title to that property.

16
17 (Id. ¶ 15). Accordingly, Plaintiffs state that "[a] judicial
18 determination of the rights and responsibilities of the parties
19 over, to and about the Property is necessary and appropriate to
20 remove uncertainties that cloud the usefulness and enjoyment of
21 the Property." (Id. ¶ 19).

22
23 **B. Motion To Dismiss Standards**

24
25 "[F]ederal courts sitting in diversity jurisdiction apply
26 state substantive law and federal procedural law." Gasperini v.
27 Ctr. for Humanities, Inc., 518 U.S. 415, 427 (1996).
28 Accordingly, California law applies to Plaintiffs' substantive

1 state law claims and federal law governs the procedural aspects
2 of Defendants' motions to dismiss.

3
4 A Rule 12(b)(6) motion to dismiss for failure to state a
5 claim should be granted if the plaintiff fails to proffer "enough
6 facts to state a claim to relief that is plausible on its face."
7 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim
8 has facial plausibility when the plaintiff pleads factual content
9 that allows the court to draw the reasonable inference that the
10 defendant is liable for the misconduct alleged." Ashcroft v.
11 Iqbal, 556 U.S. 662, 678 (2009). Although the plaintiff must
12 provide "more than labels and conclusions, and a formulaic
13 recitation of the elements of a cause of action will not do[,]"
14 Twombly, 550 U.S. at 555, "[s]pecific facts are not necessary;
15 the [complaint] need only give the defendant[s] fair notice of
16 what the . . . claim is and the grounds upon which it rests."
17 Erickson v. Pardus, 551 U.S. 89, 93 (2007) (per curiam)
18 (citations and internal quotation marks omitted).

19
20 "When ruling on a motion to dismiss, [the Court] may
21 generally consider only allegations contained in the pleadings,
22 exhibits attached to the complaint, and matters properly subject
23 to judicial notice." Colony Cove Props., LLC v. City of Carson,
24 640 F.3d 948, 955 (9th Cir. 2011) (citations, footnote, and
25 internal quotation marks omitted). The court must accept the
26 complaint's allegations as true, Twombly, 550 U.S. at 555-56,
27 construe the pleading in the light most favorable to the pleading
28 party, and resolve all doubts in the pleader's favor. Berg v.

1 Popham, 412 F.3d 1122, 1125 (9th Cir. 2005). Pro se pleadings
2 are "to be liberally construed" and are held to a less stringent
3 standard than those drafted by a lawyer. Erickson, 551 U.S. at
4 94; see also Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
5 ("Iqbal incorporated the Twombly pleading standard and Twombly
6 did not alter courts' treatment of pro se filings; accordingly,
7 we continue to construe pro se filings liberally when evaluating
8 them under Iqbal"). However, the court "need not accept as true
9 allegations contradicting documents that are referenced in the
10 complaint or that are properly subject to judicial notice." Lazy
11 Y Ranch Ltd. v. Behrens, 546 F.3d 580, 588 (9th Cir. 2006).
12 Likewise, "the tenet that a court must accept as true all of the
13 allegations contained in a complaint is inapplicable to legal
14 conclusions." Iqbal, 556 U.S. at 678.

15
16 Dismissal for failure to state a claim can be warranted on
17 either a lack of a cognizable legal theory or the absence of
18 factual support for a cognizable legal theory. See Mendiondo v.
19 Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).
20 A complaint may also be dismissed for failure to state a claim if
21 it discloses some fact or complete defense that will necessarily
22 defeat the claim. Franklin v. Murphy, 745 F.2d 1221, 1228-29
23 (9th Cir. 1984).

24
25 If the court finds that a complaint fails to state a claim,
26 it must also decide whether to grant the plaintiff leave to
27 amend. Even when a request to amend is not made, "[l]eave to
28 amend should be granted unless the pleading could not possibly be

1 cured by the allegation of other facts, and should be granted
2 more liberally to pro se plaintiffs." Lira v. Herrera, 427 F.3d
3 1164, 1176 (9th Cir. 2005) (internal quotation marks omitted).
4 However, if amendment of the pleading would be futile, leave to
5 amend is properly denied. See Ventress v. Japan Airlines, 603
6 F.3d 676, 680 (9th Cir. 2010).

7
8 **C. Defendants' Requests For Judicial Notice**

9
10 The FAC affirmatively repudiates that there is any
11 legitimate encumbrance on the property and does not make any
12 reference to money owed. However, both BANA and Green Tree ask
13 the Court to take judicial notice of a Deed of Trust recorded on
14 October 28, 2005, (BANA RJN Exh. A; Green Tree RJN Exh. 1); an
15 Assignment of Deed of Trust recorded on May 16, 2011, (BANA RJN
16 Exh. B; Green Tree RJN Exh. 4); and a Notice of Trustee's Sale
17 recorded on November 26, 2013, all of which were recorded in the
18 Ventura County Recorder's Office. (BANA RJN Exh. C; Green Tree
19 RJN Exh. 6). In addition, Green Tree seeks judicial notice of
20 various Substitution of Trustee forms, a Notice of Default, and a
21 Notice of Pendency of Action that were recorded in the Ventura
22 County Recorder's Office, and a Limited Power of Attorney form
23 that was recorded in the Maricopa County Recorder's Office.
24 (Id., Exhs. 2-3, 5, 7-9).

25
26 Judicial notice is appropriate for "materials incorporated
27 into the complaint or matters of public record." Coto Settlement
28 v. Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010); see also Fed.

1 R. Evid. 201. Because the fact that these public documents were
2 recorded is not subject to reasonable dispute, BANA's and Green
3 Tree's respective RJNs are GRANTED to the extent that they seek
4 notice of the existence and recording of the aforementioned
5 documents. "The Court does not, however, accept them for the
6 truth of the matters asserted therein." Waldrup v. Countrywide
7 Financial Corp., 2014 WL 4978437, at *1 n.1 (C.D. Cal. Oct. 6,
8 2014); see also Edwards v. Wells Fargo Bank, N.A., 2013 WL
9 3467215, at *2 n.4 (C.D. Cal. July 9, 2013) (taking judicial
10 notice of Grant Deed and Deed of Trust as public records filed
11 with the County Recorder, but declining to "take judicial notice
12 of reasonably disputed facts contained within the judicially-
13 noticed documents"); Salcido v. Aurora Loan Services, 2012 WL
14 123280, at *2 (C.D. Cal. Jan. 17, 2012) ("Defendants have
15 submitted a request for judicial notice of various public records
16 (e.g., Deed of Trust, Notice of Default, and Trustee's Deed Upon
17 Sale) related to Plaintiff's mortgage. The Court may take
18 judicial notice of such documents without converting this motion
19 to dismiss into a motion for summary judgment, but it cannot take
20 judicial notice of facts within such documents that are
21 reasonably subject to dispute.").

22
23 Defendants are advised that in any future motion, to the
24 extent they seek to establish that they are entitled to judgment
25 as a matter of law and wish to rely on matters outside the
26 pleadings, Defendants must comply with the requirements set forth
27 in Federal Rule of Civil Procedure 56 and this Court's Local
28 Rules for a Motion for Summary Judgment.

1 **D. Discussion**

2

3 The FAC, as amended by the substitution of BANA and Green
4 Tree for Doe Defendants Nos. 1 and 2, merely alleges that BANA
5 and Green Tree have asserted an "adverse interest" in the
6 property, without clarifying what relationship those two
7 Defendants have or had to the property or what kind of "adverse
8 interest" they are allegedly attempting to assert. More is
9 required to put these Defendants on notice of Plaintiffs' claims
10 against them. (Id. at 15). Furthermore, to the extent that
11 Plaintiffs may contend in any amended complaint that BANA and
12 Green Tree are merely former or current trustees that serviced a
13 Deed of Trust on behalf of a creditor beneficiary, Plaintiffs are
14 cautioned that a plaintiff generally "cannot bring a quiet title
15 claim against [a trustee] because [the trustee] does not claim
16 any interest in the Property." Vasquez v. Bank of America, N.A.,
17 2015 WL 794545, at *3 (C.D. Cal. Feb. 23, 2015). However, while
18 the allegations in the FAC are not presently sufficient to state
19 a claim against BANA and Green Tree, Defendants have not shown
20 that Plaintiffs could not amend their claims to state a claim
21 against them by alleging, for example, that Defendants somehow
22 acted beyond the scope of their duties as trustees to Plaintiffs'
23 harm. See Perez, 929 F. Supp. 2d at 1002 (trustees may be "more
24 than nominal defendants" where the complaint includes, inter
25 alia, substantive allegations against the trustee and claims for
26 money damages). Accordingly, the Court GRANTS BANA's and Green
27 Tree's Motions to Dismiss IN PART, and DISMISSES the FAC WITH
28 LEAVE TO AMEND.

1 The Court disagrees with BANA and Green Tree, however, to
2 the extent that they contend that the FAC fails to state a claim
3 because Plaintiffs have not alleged that Plaintiffs tendered the
4 amount owing on a loan secured by the property at issue. Under
5 California law, "a mortgagor of real property cannot, without
6 paying his debt, quiet his title against the mortgagee." Miller
7 v. Provost, 26 Cal. App. 4th 1703, 1707 (1994). However,
8 Plaintiffs allege that they "hold free and clear title to the
9 Property." (FAC ¶16). Based solely on the allegations in the
10 FAC, there is no loan at issue, and even if there had been,
11 Plaintiffs' contention that they hold "free and clear title" at
12 the very least implies the satisfaction of any debt on the
13 property. As the superior court held in rejecting the identical
14 tender argument raised by BONYM in BONYM's motion for judgment on
15 the pleadings, "[T]here is nothing on the face of the [FAC] that
16 allows the court to determine that a mortgage is in play in this
17 case, a default has occurred by Plaintiffs or that any money is
18 owed at all on the property. The facts Defendant needs to make
19 the tender rule come into play are simply not before the court at
20 this time." (Warwick RJN, Exh. 2 at 4). Defendants' tender
21 argument depends on the existence and non-payment of a loan, as
22 reflected in the contents of the recorded documents submitted for
23 judicial notice by BANA and RJN. However, those facts are
24 contested and are therefore not properly subject to judicial
25 notice on a motion to dismiss. Accordingly, the Motions to
26 Dismiss filed by BANA and Green Tree are DENIED IN PART to the
27 extent that they are based on Plaintiffs' failure to plead tender
28 of a debt.

