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**United States District Court
Central District of California**

GAIL WILLIS,

Plaintiff,

v.

AFFINIA DEFAULT SERVICES, LLC
et al.,

Defendants.

Case No 2:19-cv-02440-ODW (SKx)

**ORDER GRANTING
MOTION TO DISMISS [9]**

I. INTRODUCTION & BACKGROUND

Plaintiff Gail Willis, proceeding pro se, brings this action against various Defendants for multiple claims based on an alleged unlawful non-judicial foreclosure sale of Willis’s real property located at 2015 Buckingham Road, Los Angeles, California 90016 (the “Subject Property”). (Notice of Removal Ex. A (“Compl.”), at ¶ 11, ECF No. 1-1.) Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) moves to dismiss Willis’s Complaint. (Mot. to Dismiss (“Mot.”), ECF No. 9.) For the reasons that follow, the Court **GRANTS** Wells Fargo’s Motion.¹

¹ After carefully considering the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. LEGAL STANDARD**

2 A court may dismiss a complaint under Rule 12(b)(6) for lack of a cognizable
3 legal theory or insufficient facts pleaded to support an otherwise cognizable legal
4 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). To
5 survive a dismissal motion, a complaint need only satisfy the minimal notice pleading
6 requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v.*
7 *Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual “allegations must be enough to
8 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550
9 U.S. 544, 555 (2007). That is, the complaint must “contain sufficient factual matter,
10 accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v.*
11 *Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

12 The determination of whether a complaint satisfies the plausibility standard is a
13 “context-specific task that requires the reviewing court to draw on its judicial
14 experience and common sense.” *Id.* at 679. A court must construe all “factual
15 allegations set forth in the complaint . . . as true and . . . in the light most favorable” to
16 the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). However,
17 a court need not blindly accept conclusory allegations, unwarranted deductions of fact,
18 and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988
19 (9th Cir. 2001). Pro se pleadings are to be construed liberally, but a plaintiff must still
20 present factual allegations sufficient to state a plausible claim for relief. *See Hebbe v.*
21 *Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). A court may not “supply essential elements
22 of the claim that were not initially pled.” *Pena v. Gardner*, 976 F.2d 469, 471 (9th
23 Cir. 1992). A liberal reading cannot cure the absence of such facts. *Ivey v. Bd. of*
24 *Regents of Univ. Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

25 **III. DISCUSSION**

26 Wells Fargo moves to dismiss Willis’s Complaint on the grounds that she lacks
27 standing and fails to state a claim as to each cause of action. One week before the
28 hearing set for the Motion, Willis submitted a late-filed Opposition to the Motion.

1 (*See generally* Opp’n to Mot. (“Opp’n), ECF No. 13.) Notwithstanding the timeliness
2 issue, Willis’s Opposition makes several improper requests such as requesting a
3 remand and the addition of another party, among other requests. (*See* Opp’n 2, 27.)
4 As these requests are not properly before the Court, the Court declines to address
5 them. Willis’s Opposition does not substantively oppose the Motion; instead, she
6 asserts the same conclusory allegations that plague her Complaint. (*See generally*
7 Opp’n.) The Court finds that Willis lacks standing to bring the claims asserted, and
8 therefore does not reach Wells Fargo’s remaining arguments.

9 **A. Request for Judicial Notice**

10 Wells Fargo requests judicial notice of ten documents: Exhibit A: Adjustable
11 Rate Mortgage Note; Exhibit B: Deed of Trust; Exhibit C: Home Affordable
12 Modification Agreement; Exhibit D: Certificate of Corporate Existence; Exhibit E:
13 Letter from Office of Thrift Supervision; Exhibit F: Official Certification of the
14 Comptroller of Currency; Exhibit G: Notice of Default and Election to Sell Under
15 Deed of Trust; Exhibit H: Substitution of Trustee; Exhibit I: Notice of Trustee’s Sale;
16 and Exhibit J: Trustee’s Deed Upon Sale. (Req. for Judicial Notice 2–3, ECF No. 10.)
17 Willis does not oppose Wells Fargo’s request.

18 A court is generally limited to the pleadings in ruling on a Rule 12(b)(6) motion
19 but may consider documents incorporated by reference in the complaint or properly
20 subject to judicial notice without converting a motion to dismiss into one for summary
21 judgment. *See Lee*, 250 F.3d at 688–89. “[A] court may judicially notice a fact that is
22 not subject to reasonable dispute because it: (1) is generally known within the trial
23 court’s territorial jurisdiction; or (2) can be accurately and readily determined from
24 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A
25 document may be incorporated by reference where neither party disputes its
26 authenticity and the pleading necessarily relies on the document. *See Marder v.*
27 *Lopez*, 450 F.3d 445, 448 (9th Cir. 2006).

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1 The Deed of Trust, Notice of Default and Election to Sell Under Deed of Trust,
2 Substitution of Trustee, Notice of Trustee’s Sale, and Trustee’s Deed Upon Sale are
3 properly subject to judicial notice because they are undisputed public documents
4 recorded by the Los Angeles County Recorder’s Office. *See, e.g., Grant v. Aurora*
5 *Loan Servs., Inc.*, 736 F. Supp. 2d 1257, 1264 (C.D. Cal. 2010) (collecting cases
6 granting judicial notice of documents recorded by the County Recorder’s Office).
7 Accordingly, the Court takes judicial notice of the Deed of Trust, Notice of Default
8 and Election to Sell Under Deed of Trust, Substitution of Trustee, Notice of Trustee’s
9 Sale, and Trustee’s Deed Upon Sale. As neither party disputes the authenticity of the
10 records, and as Willis includes these documents in her Complaint (with the exception
11 of the Trustee’s Deed Upon Sale), they may also be considered under the
12 incorporation by reference doctrine. *See Marder*, 450 F.3d at 448 (internal quotation
13 marks omitted) (“The court may treat such a document as part of the complaint, and
14 thus may assume that its contents are true for the purposes of a motion to dismiss.”).

15 **B. Standing**

16 Wells Fargo contends that Willis is not a real party-in-interest with respect to
17 the Subject Property because she was neither a party to the loan nor a record owner of
18 the Subject Property. (Mot. 3–4.) Willis does not adequately address the issue of
19 standing. Instead, Willis states that she “is the daughter and intended third party
20 beneficiary of the [loan agreement]” and “the executor [of] Henrietta Willis’ Estate.”
21 (Opp’n 6.)

22 Standing requires that: (1) the plaintiff has suffered an injury in fact, i.e., “an
23 invasion of a legally protected interest that is concrete and particularized and actual or
24 imminent, not conjectural or hypothetical”; (2) the injury is “fairly traceable to the
25 challenged conduct of the defendant”; and (3) the injury is “likely to be redressed by a
26 favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016)
27 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)) (internal quotation
28 marks omitted). A plaintiff “cannot rest his claim to relief on the legal rights or

1 interests of third parties.” *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Accordingly, “a
2 plaintiff who is not a party to a mortgage loan cannot assert a claim . . . for statutory
3 violations, wrongful foreclosure . . . or related foreclosure proceedings.” *Bianchi v.*
4 *Bank of Am., N.A.*, No. 12-CV-750-MMA (MDD), 2012 WL 11946982, at *1 (S.D.
5 Cal. May 17, 2012) (citing *Kruso v. Int’l Tel. & Tel. Corp.*, 872 F.2d 1416, 1427 (9th
6 Cir. 1989) (holding that the plaintiffs lacked standing for claims that arose out of the
7 transactions at issue because the plaintiffs were not parties to those transactions)).

8 Only a borrower or her assignee may bring a claim based on the underlying
9 mortgage. See *Pena v. Ocwen Loan Servicing, LLC*, No. CV 17-2437 FMO (GJSx),
10 2018 WL 5857983, at *4 (C.D. Cal. Apr. 23, 2018) (finding that the plaintiff lacked
11 standing to bring claims regarding the loan handling and property foreclosure because
12 he was neither the borrower nor the owner of the property); *Shetty v. ARLP*
13 *Securitization Tr. Series 2014-2*, No. CV-16-05467-BRO (GJSx), 2016 WL 10999324,
14 at *6 (C.D. Cal. Oct. 28, 2016) (dismissing claims including quiet title because the
15 plaintiff was not the borrower or assignee). Plaintiffs may seek to quiet title “only if
16 they currently possess an interest in the property at issue.” *Jacobsen v. Aurora Loan*
17 *Servs., LLC*, 661 F. App’x 474, 476 (9th Cir. 2016) (citing *Gerhard v. Stephens*, 68
18 Cal. 2d 864, 918 (1968)).

19 Here, the documents incorporated by reference and judicially noticed contradict
20 Willis’s conclusory claim of ownership. Willis does not identify how she obtained
21 title to the Subject Property or is the real party-in-interest. The recorded Deed of Trust
22 lists “Henrietta E Willis, Trustee of the Henrietta E Willis Revocable Living Trust” as
23 the sole borrower and signatory. (Req. for Judicial Notice Ex. B.) The initials
24 “H.E.W.” appear at the bottom of each page of the Deed of Trust. Additionally, the
25 Deed of Trust was executed by “Henrietta E Willis, Trustee.” (*Id.*) The Deed of Trust
26 and related documents demonstrate conclusively that Willis is not the borrower on the
27 loan and has no interest in the loan or the Subject Property.

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1 As each of Willis's claims arise from the non-judicial foreclosure and loan
2 transaction involving Henrietta E. Willis, Willis lacks standing to pursue her claims.

3 **C. Leave to Amend**

4 Where a district court grants a motion to dismiss, it should generally provide
5 leave to amend unless it is clear the complaint could not be saved by any amendment.
6 See Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d
7 1025, 1031 (9th Cir. 2008). Leave to amend may be denied when "the court
8 determines that the allegation of other facts consistent with the challenged pleading
9 could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture*
10 *Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). Thus, leave to amend "is properly
11 denied . . . if amendment would be futile." *Carrico v. City and Cty. of San Francisco*,
12 656 F.3d 1002, 1008 (9th Cir. 2011).

13 Willis requests leave to amend but does not identify what facts she can allege to
14 cure her deficiencies. However, considering Willis's pro se status, the Court finds
15 leave to amend proper. Among other issues, Willis's amended complaint should
16 address the issue of standing as discussed in this Order.

17 **IV. CONCLUSION**

18 For the reasons discussed above, the Court **GRANTS** Wells Fargo's Motion to
19 Dismiss Willis's Complaint (ECF No. 10). Willis shall have up to and including
20 **September 5, 2019**, to file her amended complaint.

21 **IT IS SO ORDERED.**

22
23 August 15, 2019

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26 **OTIS D. WRIGHT, II**
27 **UNITED STATES DISTRICT JUDGE**