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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 [17]****I. INTRODUCTION**

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 real property located at 2015 Buckingham Road, Los Angeles, California 90016 (the “Subject Property”). (*See* First Am. Compl. (“FAC”), ECF No. 16.) Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) moves to dismiss Willis’s Complaint. (Mot. to Dismiss (“Mot.”), ECF No. 17.) 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.

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II. BACKGROUND

In 2007, Willis’s mother, Henrietta E. Willis, executed a loan agreement with World Savings Bank, FSB (“World Savings”) and obtained a \$677,500.00 loan. (FAC ¶ 13.) After several mergers and conversions, World Savings became Wells Fargo. (Mot. 2.) In 2014 and again in 2015, a notice of default was filed against Willis. (FAC ¶ 17.) In 2017, Wells Fargo recorded a Substitution of Trustee naming Affinia Default Services, LLC (“Affinia”) as the trustee. (FAC ¶ 23.) Subsequently, a Notice of Trustee’s Sale was recorded on September 7, 2018. (FAC ¶ 25.) On January 17, 2019, Affinia sold the Subject Property. Willis asserts that the sale was an unlawful non-judicial foreclosure. (*See* FAC.)

Willis asserts that she is the “assignee of her late mother’s interests in the real property.” (FAC ¶ 13.) She brings eleven causes of action against Defendants: (1) Wrongful Foreclosure; (2) Intentional Misrepresentation; (3) Violation of California Civil Code Section 2924.14 and 2924.17; (4) Violation of California Civil Code Section 3294; (5) Negligent Misrepresentation; (6) Slander of Title; (7) Quiet Title; (8) Declaratory Relief; (9) Intentional Infliction of Emotional Distress; (10) Violation of California Business and Professions Code Sections 17200 *et seq.*; (11) Injunctive Relief. (*See* FAC.)

On April 5, 2019, Wells Fargo moved to dismiss Willis’s Complaint for lack of standing. (Mot. to Dismiss Compl., ECF No. 9.) In light of Willis’s pro se status, the Court granted the motion with leave to amend instructing that “among other issues, Willis’s amended complaint should address the issue of standing as discussed in this Order.” (Order 6, ECF No. 15.) On September 5, 2019, Willis filed a First Amended Complaint. (*See* FAC.) Wells Fargo filed a motion to dismiss the case. (*See* Mot.)

I. REQUEST FOR JUDICIAL NOTICE

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Wells Fargo requests judicial notice of ten documents: Exhibit A: Adjustable Rate Mortgage Note; Exhibit B: Deed of Trust; Exhibit C: Home Affordable Modification Agreement; Exhibit D: Certificate of Corporate Existence; Exhibit E:

1 Letter from Office of Thrift Supervision; Exhibit F: Official Certification of the
2 Comptroller of Currency; Exhibit G: Notice of Default and Election to Sell Under
3 Deed of Trust; Exhibit H: Substitution of Trustee; Exhibit I: Notice of Trustee’s Sale;
4 Exhibit J: Trustee’s Deed Upon Sale; Exhibit K: Court Docket from Bankruptcy
5 Petition No. 19-50026; and Exhibit L: Bankruptcy Court Order. (Req. for Judicial
6 Notice 2–3, ECF No. 18.) Willis does not oppose Wells Fargo’s request.

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

17 The Deed of Trust, Notice of Default and Election to Sell Under Deed of Trust,
18 Substitution of Trustee, Notice of Trustee’s Sale, and Trustee’s Deed Upon Sale are
19 properly subject to judicial notice because they are undisputed public documents
20 recorded by the Los Angeles County Recorder’s Office. *See, e.g., Grant v. Aurora*
21 *Loan Servs., Inc.*, 736 F. Supp. 2d 1257, 1264 (C.D. Cal. 2010) (collecting cases
22 granting judicial notice of documents recorded by the County Recorder’s Office).
23 Accordingly, the Court **GRANTS** judicial notice of the Deed of Trust, Notice of
24 Default and Election to Sell Under Deed of Trust, Substitution of Trustee, Notice of
25 Trustee’s Sale, and Trustee’s Deed Upon Sale. As neither party disputes the
26 authenticity of the records, and as Willis includes these documents in her First
27 Amended Complaint, they may also be considered under the incorporation by
28 reference doctrine. *See Marder*, 450 F.3d at 448 (internal quotation marks omitted)

1 (“The court may treat such a document as part of the complaint, and thus may assume
2 that its contents are true for the purposes of a motion to dismiss.”).

3 The Court Docket from the related Bankruptcy Petition and the Order are also
4 proper subjects of judicial notice. *See U.S. ex rel Robinson Rancheria Citizens*
5 *Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (stating the court “may
6 take notice of proceedings in other courts, both within and without the federal judicial
7 system, if those proceedings have a direct relation to matters at issue”). Accordingly,
8 the Court **GRANTS** judicial notice of Exhibits K and L.

9 The remaining exhibits are not proper subjects of judicial notice and the Court
10 therefore **DENIES** the requests.

11 II. LEGAL STANDARD

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

22 The determination of whether a complaint satisfies the plausibility standard is a
23 “context-specific task that requires the reviewing court to draw on its judicial
24 experience and common sense.” *Id.* at 679. A court must construe all “factual
25 allegations set forth in the complaint . . . as true and . . . in the light most favorable” to
26 the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001). However,
27 a court need not blindly accept conclusory allegations, unwarranted deductions of fact,
28 and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988

1 (9th Cir. 2001). Pro se pleadings are to be construed liberally, but a plaintiff must still
2 present factual allegations sufficient to state a plausible claim for relief. *See Hebbe v.*
3 *Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). A court may not “supply essential elements
4 of the claim that were not initially pled.” *Pena v. Gardner*, 976 F.2d 469, 471 (9th
5 Cir. 1992). A liberal reading cannot cure the absence of such facts. *Ivey v. Bd. of*
6 *Regents of Univ. Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

7 **III. DISCUSSION**

8 Wells Fargo moves to dismiss Willis’s First Amended Complaint on nearly the
9 same grounds as its motion to dismiss the original Complaint—that Willis lacks
10 standing and fails to state a claim as to each cause of action. Again, Willis submitted a
11 late-filed Opposition to the Motion. (*See generally* Opp’n to Mot. (“Opp’n), ECF
12 No. 21.) Notwithstanding the timeliness issue, Willis’s Opposition is nearly identical
13 to its opposition to Wells Fargo’s prior motion to dismiss. She makes several
14 improper requests such as requesting a remand and the addition of another party,
15 among other requests. (*See* Opp’n 3, 26.) As these requests are not properly before
16 the Court, the Court declines to address them. Despite the troubling deficiencies, the
17 Court addresses the merits of party’s arguments.

18 **A. Standing**

19 Wells Fargo moves to dismiss all except the second, fourth, and fifth claims for
20 lack of standing. (Mot. 3–5.) Wells Fargo contends that Willis is not a real party-in-
21 interest with respect to the Subject Property because she was neither a party to the
22 loan nor a record owner of the Subject Property. (Mot. 3–5.) Willis fails to address
23 the issue of standing. (*See* Opp’n.) Instead, Willis states that she “is the daughter and
24 intended third party beneficiary of the [loan agreement],” the “assignee of her late
25 mother’s interests in the real property,” and “the executor [of] Henrietta Willis’
26 Estate.” (FAC ¶¶ 13, 14; Opp’n 7)

27 Standing requires that: (1) the plaintiff has suffered an injury in fact, i.e., “an
28 invasion of a legally protected interest that is concrete and particularized and actual or

1 imminent, not conjectural or hypothetical”; (2) the injury is “fairly traceable to the
2 challenged conduct of the defendant”; and (3) the injury is “likely to be redressed by a
3 favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547–48 (2016)
4 (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)) (internal quotation
5 marks omitted). A plaintiff “cannot rest his claim to relief on the legal rights or
6 interests of third parties.” *Warth v. Seldin*, 422 U.S. 490, 499 (1975). Accordingly, “a
7 plaintiff who is not a party to a mortgage loan cannot assert a claim . . . for statutory
8 violations, wrongful foreclosure . . . or related foreclosure proceedings.” *Bianchi v.*
9 *Bank of Am., N.A.*, No. 12-CV-750-MMA (MDD), 2012 WL 11946982, at *1 (S.D.
10 Cal. May 17, 2012) (citing *Kruso v. Int’l Tel. & Tel. Corp.*, 872 F.2d 1416, 1427 (9th
11 Cir. 1989) (holding that the plaintiffs lacked standing for claims that arose out of the
12 transactions at issue because the plaintiffs were not parties to those transactions)).

13 Only a borrower or her assignee may bring a claim based on the underlying
14 mortgage. *See Pena v. Ocwen Loan Servicing, LLC*, No. CV 17-2437 FMO (GJSx),
15 2018 WL 5857983, at *4 (C.D. Cal. Apr. 23, 2018) (finding that the plaintiff lacked
16 standing to bring claims regarding the loan handling and property foreclosure because
17 he was neither the borrower nor the owner of the property); *Shetty v. ARLP*
18 *Securitization Tr. Series 2014-2*, No. CV-16-05467-BRO (GJSx), 2016 WL 10999324,
19 at *6 (C.D. Cal. Oct. 28, 2016) (dismissing claims including quiet title because the
20 plaintiff was not the borrower or assignee). Plaintiffs may seek to quiet title only if
21 they currently possess an interest in the property at issue. *Shetty*, 2016 WL 10999324,
22 at *7.

23 Here, the documents incorporated by reference and judicially noticed contradict
24 Willis’s conclusory claim of interest. The recorded Deed of Trust lists “Henrietta E
25 Willis, Trustee of the Henrietta E Willis Revocable Living Trust” as the sole borrower
26 and signatory. (Req. for Judicial Notice Ex. B.) The initials “H.E.W.” appear at the
27 bottom of each page of the Deed of Trust. Additionally, the Deed of Trust was
28 executed by “Henrietta E Willis, Trustee.” (Req. for Judicial Notice Ex. B.) The

1 Deed of Trust and related documents demonstrate conclusively that Willis is not the
2 borrower on the loan.

3 Furthermore, Willis alleges that she was assigned her mother's interests in the
4 real property. (FAC ¶ 13.) Yet, she fails to substantiate this claim by alleging any
5 facts of when or how she gained ownership of the property. Thus, Willis failed to
6 establish that she was assigned the title to the Subject Property or the obligation of the
7 mortgage on the Subject Property. *Shetty*, 2016 WL 10999324, at *6.

8 The Court reiterates that as each of Willis's claims arise from the non-judicial
9 foreclosure and loan transaction involving Henrietta E. Willis, Willis lacks standing to
10 pursue her claims. Accordingly, the Court **GRANTS** the motion to dismiss.

11 **B. Failure to State a Claim**

12 Wells Fargo moves to dismiss the claims for negligent and intentional
13 misrepresentation, and the claim pursuant to California Civil Code Section 3294 for
14 failure to state a claim. (Mot. 12.)

15 “The essential elements of a count for intentional misrepresentation are (1) a
16 misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, *231 (4)
17 actual and justifiable reliance, and (5) resulting damage.” *Chapman v. Skype Inc.*, 220
18 Cal. App. 4th 217, 231 (2013). “The essential elements of a count for negligent
19 misrepresentation are the same except that it does not require knowledge of falsity but
20 instead requires a misrepresentation of fact by a person who has no reasonable
21 grounds for believing it to be true.” *Id.*

22 Here, Willis fails to allege more than a mere recitation of the elements. (FAC
23 ¶¶ 71–78; 100–105.) Furthermore, Willis fails to respond to Wells Fargo's arguments
24 in its opposition and instead, outlines the procedural deficiencies in the non-judicial
25 foreclosure. (Opp'n 17–19.) As Willis fails to state a claim, not to mention plead
26 with particularity, the Court **GRANTS** the motion to dismiss the claims.

1 **C. Leave to Amend**

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

11 Willis requests leave to amend but does not identify what facts she can allege to
12 cure her deficiencies. Furthermore, the Court has granted leave to amend once before
13 but Willis failed to identify why she has standing to raise claims regarding the
14 underlying mortgage. As all her claims are premised on the underlying mortgage and
15 Willis can allege no facts to establish standing, the Court dismisses all claims with
16 prejudice.

17 **IV. CONCLUSION**

18 For the reasons discussed above, the Court **GRANTS with prejudice** Wells
19 Fargo’s Motion to Dismiss Willis’s First Amended Complaint (ECF No. 17). The
20 Clerk of the Court shall close the case.

21
22 **IT IS SO ORDERED.**

23
24 December 23, 2019

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