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

PAUL PHAT TRAN et al.,
Plaintiffs,
v.
BAYVIEW LOAN SERVICING, LLC et
al.,
Defendants.

Case No 5:19-cv-00242-ODW (SHKx)

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS [40], [51]**

I. INTRODUCTION

Plaintiffs Paul Phat Tran (“Mr. Tran”) and Tina Tran (“Ms. Tran”) (collectively “Plaintiffs”) bring this action against Defendants Bayview Loan Servicing, LLC (“Bayview”), JPMorgan Chase Bank, N.A. (“Chase”), and Trustee Corp. for various claims based on an alleged attempt of an unlawful non-judicial foreclosure of Plaintiffs’ real property located at 21274 Nisqually Road, Apple Valley, California 92308 (the “Property”). (Second Am. Compl. (“SAC”) ¶¶ 2, 10, ECF No. 33.) Bayview and Chase, separately, move to dismiss Plaintiffs’ Second Amended Complaint. (See Chase’s Mot. to Dismiss (“Chase Mot.”), ECF No. 40; Bayview’s

1 Mot. to Dismiss (“Bayview Mot.”), ECF No. 51.) For the reasons that follow, the
2 Court **GRANTS** Chase’s and Bayview’s Motions to Dismiss.¹

3 **II. FACTUAL BACKGROUND**

4 Around November 19, 2010, Ms. Tran obtained a loan from Home Funding
5 Corp. secured by a deed of trust that encumbered the Property.² (Req. for Judicial
6 Notice Ex. 1, ECF No. 53.) Around March 31, 2017, Ms. Tran transferred the
7 Property to Mr. Tran for no consideration. (SAC ¶ 8.)

8 Bayview is the current loan servicer, while Chase was the previous loan
9 servicer. (SAC ¶¶ 3–4.) Plaintiffs allege that, on August 21, 2018, Defendant Trustee
10 Corp. recorded a notice of default based on Ms. Tran’s failure to make her loan
11 payments. (SAC ¶ 9; Req. for Judicial Notice Ex. 5.)

12 As to Chase, Plaintiffs allege that Mr. Tran sent his payments to the lender
13 using his Chase checking account by way of direct withdrawal and that “Chase
14 wrongfully stopped sending his direct payments to the lender.” (SAC ¶¶ 21–22.)

15 As to Bayview, Plaintiffs allege that Bayview charged Plaintiffs for
16 homeowner’s insurance and unpaid property taxes despite Plaintiffs having
17 homeowner’s insurance and having paid their property taxes. (SAC ¶¶ 10–16.)
18 Purportedly, Bayview continued to “claim money for payments already received.”
19 (SAC ¶ 12.)

20 Plaintiffs identify five causes of action against all defendants: (1) breach of
21 contract; (2) negligent infliction of emotional distress; (3) breach of the covenant of
22

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

25 ² Bayview requested judicial notice of certain public documents recorded with the San Bernardino
26 County Recorder’s Office. (*See* Req. for Judicial Notice, ECF No. 53.) Plaintiffs do not oppose or
27 object. As such, the Court grants Bayview’s Request and takes judicial notice of the items
28 requested. *See, e.g., Grant v. Aurora Loan Servs., Inc.*, 736 F. Supp. 2d 1257, 1264 (C.D. Cal.
2010) (collecting cases granting judicial notice of documents recorded by the County Recorder’s
Office). Although a court is generally limited to the pleadings in ruling on a Rule 12(b)(6) motion, it
may consider documents incorporated by reference in the complaint. *Lee v. City of Los Angeles*, 250
F.3d 668, 688–89 (9th Cir. 2001). The Court does that here.

1 good faith and fair dealing; (4) violation of California Business and Professions Code
2 sections 17200 and 17500; and (5) declaratory relief. (SAC ¶¶ 17–57.)

3 On December 10, 2019, Ms. Tran filed a notice of voluntary dismissal of all her
4 claims without prejudice, which the Court granted. (ECF Nos. 48, 50.) Accordingly,
5 the Court addresses the present motions as to Mr. Tran’s claims.

6 III. LEGAL STANDARD

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

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

1 1992). A liberal reading cannot cure the absence of such facts. *Ivey v. Bd. of Regents*
2 *of Univ. Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

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

12 IV. DISCUSSION

13 As a preliminary matter, the Court notes that Plaintiffs filed the same
14 oppositions to both Bayview and Chase’s motions, with the exception of two
15 additional sections in opposition to Chase’s Motion addressing the breach of contract
16 and negligent infliction of emotional distress. (*Compare* Opp’n to Chase Mot., ECF
17 No. 43, *with* Opp’n to Bayview Mot., ECF No. 57.)

18 A. Standing

19 Bayview moves to dismiss Mr. Tran as a plaintiff in this case because he is not
20 the real party in interest. Mr. Tran does not oppose this position. Only a borrower or
21 her assignee may bring a claim based on the underlying mortgage. See *Pena v. Ocwen*
22 *Loan Servicing, LLC*, No. CV 17-2437 FMO (GJSx), 2018 WL 5857983, at *4 (C.D.
23 Cal. Apr. 23, 2018) (finding that the plaintiff lacked standing to bring claims regarding
24 the loan handling and property foreclosure because he was neither the borrower nor
25 the owner of the property); *Shetty v. ARLP Securitization Tr. Series 2014-2*, No. CV-
26 16-05467-BRO (GJSx), 2016 WL 10999324, at *6 (C.D. Cal. Oct. 28, 2016)
27 (dismissing claims because the plaintiff was not the borrower or assignee).

28

1 Although the SAC states that Mr. Tran is the current owner of the Property
2 (SAC ¶ 8), Plaintiffs failed to sufficiently allege that Mr. Tran is the proper party to
3 bring claims for breach of contract; negligent infliction of emotional distress; breach
4 of covenant of good faith and fair dealing; violation of California Business and
5 Professions Code sections 17200 and 17500; and declaratory relief. *See Green v.*
6 *Central Mortg. Co.*, No. 14-cv-04281-LC, 2015 WL 5157479, at *4 (N.D. Cal. Sept.
7 2, 2015) (“Courts thus have dismissed foreclosure-based claims—like [Plaintiff’s]
8 negligent misrepresentation, fraud, wrongful foreclosure, UCL, cancellation of deed,
9 and declaratory relief claims—by persons who were not parties to mortgage loans.).
10 Mr. Tran is not a party to the loan, and Plaintiffs have not alleged that Mr. Tran
11 assumed the obligations of the loan via the transfer of property. Thus, Mr. Tran lacks
12 standing and his claims are dismissed.

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

14 Chase and Bayview also move to dismiss the Second Amended Complaint
15 (“SAC”) based on Plaintiffs’ failure to sufficiently allege each claim. (*See generally*
16 *Chase Mot.*; *see generally* *Bayview Mot.*) After reviewing the SAC, the Court finds
17 that Mr. Tran failed to cure any of the deficiencies raised in the Court’s previous
18 Order regarding the sufficiency of the allegations.

19 Again, the SAC does not identify the contract that Defendants allegedly
20 breached, as required for a breach of contract and breach of covenant claims. Though
21 Mr. Tran asserts that Chase violated the terms of the promissory note, he was not a
22 party to that agreement. (*Opp’n to Chase Mot.* 5.) Thus, Mr. Tran fails to state a
23 claim for breach of contract or breach of covenant. *See Otworth v. S. Pac. Trans. Co.*,
24 166 Cal. App. 3d 452, 459 (1985) (dismissing claim for breach of contract for
25 plaintiff’s failure to identify the contract or the alleged contract’s terms); *see also*
26 *Fireman’s Fund Ins. Co. v. Maryland Cas. Co.*, 21 Cal. App. 4th 1586, 1599 (1994)
27 (“Without a contractual underpinning, there is no independent claim for breach of the
28 implied covenant.”).

1 Next, Mr. Tran does not refute Chase’s and Bayview’s argument that they do
2 not owe Plaintiffs a duty of care, as required for negligent infliction of emotional
3 distress. (Chase Mot. 6–7; Bayview Mot. 6–7); *see also Aguinaldo v. Ocwen Loan*
4 *Servicing*, No. 5:12-cv-01393-EJD, 2012 WL 3835080, at *8 (N.D. Cal. Sept. 4,
5 2012) (finding that the defendant owed no duty to the plaintiff “against emotional
6 distress when acting in the regular course of business as their loan servicer”). He
7 summarily asserts that Chase and Bayview owe him a duty without expounding on
8 what gives rise to the duty. (Opp’n to Chase Mot. 5.)

9 Finally, Mr. Tran asserts that he “alleged and prove[d] multiple violations of the
10 [Homeowner’s Bill of Rights].” (Opp’n to Chase Mot. 8.) However, the SAC makes
11 no mention of the Homeowner’s Bill of Rights and the one-sentence argument in his
12 opposition fails to provide legal authority or any basis for the violation. (Reply in
13 Supp. of Chase Mot., ECF No. 45; *see* Opp’n to Chase Mot. 8.)

14 Plaintiffs’ failure to provide a single citation to their SAC illustrates its
15 deficient nature. Plaintiffs failed to sufficiently plead any of their claims, again. The
16 Court dismissed Plaintiffs’ first amended complaint with leave to amend; however,
17 Plaintiffs failed to cure any of the defects the Court identified in its prior Order and for
18 the most part realleged identical allegations. Thus, the Court does not believe that the
19 complaint can be saved by any amendment

20 Accordingly, Mr. Tran’s claims are **dismissed without leave to amend.**

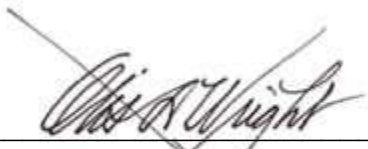
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V. CONCLUSION

For the reasons discussed above, the Court **GRANTS** Chase's Motion to Dismiss (ECF No. 40) and Bayview's Motion to Dismiss (ECF No. 51). The Court will enter Judgment.

IT IS SO ORDERED.

March 2, 2020



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE