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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ARLENE HENSLEY,

CASE NO. 1:10-cv-01316-LJO-SMS

Plaintiff,

v.

ORDER DISMISSING COMPLAINT FOR
FAILURE TO STATE A CLAIM WITH LEAVE
TO AMEND WITHIN THIRTY DAYS

THE BANK OF NEW YORK f/k/a/ THE
BANK OF NEW YORK AS SUCCESSOR
TO J.P. MORGAN CHASE BANK, N.A.,
AS TRUSTEE FOR PASS-THROUGH
CERTIFICATES, SERIES 2006-ARI;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
RECONSTRUCT COMPANY, N.A.;
BANK OF AMERICA HOME LOANS,

(Doc. 1)

Defendants.

On July 22, 2010, Plaintiff Arlene Hensley, proceeding pro se, filed a complaint seeking a permanent injunction and other equitable relief. This matter has been referred to the magistrate judge pursuant to 28 U.S.C. § 636(b) and Local Rules 72-302 and 72-304.

I. Screening Requirement

A court has inherent power to control its docket and the disposition of its cases with economy of time and effort for both the court and the parties. *Landis v. North American Co.*, 299

1 U.S. 248, 254-55 (1936); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir.), *cert. denied*, 506
2 U.S. 915 (1992). Accordingly, this Court screens all complaints filed by plaintiffs *in propria*
3 *persona* to ensure that the action is not frivolous or malicious, that the action states a claim upon
4 which relief may be granted, and that the complaint does not seek monetary relief from a
5 defendant who is immune from such relief.
6

7 **II. Allegations in the Complaint**

8 On November 8, 2005, Plaintiff secured a \$270,000 mortgage loan, secured by property at
9 2404 Buckley Way, Modesto, California, from lender First Bank d/b/a First Bank Mortgage.
10 Although Plaintiff signed a waiver of borrower's rights form, her attorney failed to sign his or her
11 affidavit indicating that the attorney had explained to Plaintiff the rights she was waiving and
12 believed that Plaintiff understood her rights. Because the attorney affidavit was not signed,
13 Plaintiff contends that the waiver is invalid. Accordingly, Plaintiff alleges that she is entitled to
14 jury trial in any foreclosure action.
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16 Plaintiff alleges that an unidentified lender or lenders engaged in a predatory lending
17 scheme, violated the truth in Lending Act, and failed to record appropriate mortgage assignments
18 under California law. She also contends that, in the absence of legal assignments, Defendant
19 Reconstruct Co. lacks standing to sell the property in a foreclosure sale on July 28, 2010.
20

21 **III. Pleading Standards**

22 "Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited
23 exceptions." *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 512 (2002). Pursuant to Rule 8(a), a
24 complaint must contain "a short and plain statement of the claim showing that the pleader is
25 entitled to relief" Fed. R. Civ. P. 8(a). "Such a statement must simply give the defendant fair
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1 notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz*, 534 U.S.
2 at 512. Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of
3 the cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*,
4 ___ U.S. ___, 129 S.Ct. 1937, 1949 (2009), citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
5 555 (2007). “Plaintiff must set forth sufficient factual matter accepted as true, to ‘state a claim that
6 is plausible on its face.’” *Iqbal*, 129 S.Ct. at 1949, quoting *Twombly*, 550 U.S. at 555. While
7 factual allegations are accepted as true, legal conclusions are not. *Iqbal*, 129 S.Ct. at 1949.

8
9 Although accepted as true, “[f]actual allegations must be [sufficient] to raise a right to relief
10 above the speculative level.” *Twombly*, 550 U.S. at 555 (*citations omitted*). A plaintiff must set
11 forth “the grounds of his entitlement to relief,” which “requires more than labels and conclusions,
12 and a formulaic recitation of the elements of a cause of action.” *Id.* at 555-56 (*internal quotation*
13 *marks and citations omitted*). To adequately state a claim against a defendant, a plaintiff must set
14 forth the legal and factual basis for his or her claim.

15
16 “A short and plain statement of the claim showing that the pleader is entitled to relief”
17 contemplates a simple and straightforward, but complete, account of the relevant occurrences,
18 actors, and resulting damages. As presently written, the complaint is incomplete, failing to set
19 forth, in logical, detailed, and numbered paragraphs the identities and roles of the Plaintiff and
20 Defendants, or the elements of Plaintiff’s multiple claims. The complaint is also replete with
21 Plaintiff’s legal conclusions regarding an unidentified “Lender’s” violations of federal and state
22 law.
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1 **IV. Specific Pleading Deficiencies in Complaint**

2 **A. Defendant Without Allegations**

3 Although Plaintiff names Bank of America Home Loans as a Defendant, the complaint
4 includes no allegations of any type against it. Accordingly, if Bank of America Home Loans were
5 served with process in this action, it would be entitled to dismissal as a matter of law. In her
6 amended complaint, should she elect to submit one as permitted by this order, Plaintiff must either
7 omit Bank of America Home Loans as a Defendant, or set forth a cognizable claim against it.
8

9 **B. Closing Attorney**

10 The complaint includes allegations regarding the closing attorney’s failure to execute
11 certain documents in the course of closing Plaintiff’s mortgage loan. No closing attorney is named
12 as a Defendant. If Plaintiff intends to name the closing attorney as a Defendant, she must identify
13 the closing attorney as a Defendant in the caption and include specific factual allegations
14 identifying the attorney and establishing her claims against her or him.
15

16 **C. First Bank d/b/a First Bank Mortgage**

17 Similarly, although the complaint includes allegations against First Bank, it is not named as
18 a Defendant in the caption. If Plaintiff intends to name First Bank as a Defendant, she must identify
19 it as a Defendant in the caption and include specific factual allegations establishing her claims
20 against it.
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22 **D. Unidentified Reference**

23 The complaint alleges “that the *Lender* engage[d] in a predatory lending scheme,”
24 but never identifies which Defendant was the lender. As presently written, the complaint ties no
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1 named Defendant to Plaintiff’s various claims under the Home Ownership and Equity Protection
2 Act of 1994, the Truth in Lending Act, or California state law.

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4 **E. Injunctive Relief**

5 An injunction is an extraordinary remedy. *Weinberger v. Romero-Barcelo*, 456 U.S. 305,
6 312 (1982). It should issue only when court intervention “is essential in order effectually to protect
7 property rights against injuries otherwise irreparable.” *Cavanaugh v. Looney*, 248 U.S. 453, 456
8 (1919). “[T]he basis for injunctive relief has always been irreparable injury and the inadequacy of
9 legal remedies.” *Weinberger*, 456 U.S. at 312.

10
11 Although the complaint seeks a permanent injunction, it does not specify the nature of the
12 injunction sought. At the very least, the amended complaint must articulate what behavior, by
13 which Defendants, the Plaintiff seeks to preclude. In the absence of this information, this Court is
14 unable to provide much specific guidance as to what Plaintiff must allege for her complaint to be
15 cognizable.

16
17 The complaint must allege facts supporting the relief Plaintiff seeks. Before a court may
18 enter a permanent injunction, a plaintiff seeking must satisfy a four-part test, demonstrating (1) that
19 it has suffered irreparable injury; (2) that remedies available at law, such as monetary damages, are
20 inadequate to compensate for that injury; (3) that, considering the balance of hardships between the
21 plaintiff and the defendant, an equitable remedy is warranted; and (4) that the public interest would
22 be served by a permanent injunction. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391
23 (2006). Plaintiff’s revision of the complaint may also be guided by F.R.Civ.P. 65(d)(1), which
24 requires every order granting an injunction to (A) state the reasons why it is issued; (B) state its
25 terms specifically; and (C) describe in reasonable detail the act or acts restrained or required.
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1 Because of Plaintiff's reference to a foreclosure sale scheduled for July 28, 2010, the Court
2 questions whether Plaintiff intended to seek a temporary injunction to preclude the sale pending
3 adjudication of her federal claims. If that was her intent, the complaint does not say so. "A
4 plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits,
5 that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of
6 equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural*
7 *Resources Defense Council, Inc.*, ___ U.S. ___, 129 S.Ct. 365, 374 (2008) (citations omitted).

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9 **VIII. Conclusion and Order**

10 As presently constituted, Plaintiff's complaint fails to state a claim upon which relief may
11 be granted. The Court will provide Plaintiff with the opportunity to file an amended complaint
12 curing the deficiencies identified by the Court in this order. *Noll v. Carlson*, 809 F.2d 1446, 1448-
13 49 (9th Cir. 1987). Plaintiff may not change the nature of this suit by adding new, unrelated claims
14 in his amended complaint. *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

15
16 Plaintiff's amended complaint should be brief, Fed. R. Civ. P. 8(a), but must state what
17 each named Defendant did in relation to each of Plaintiff's claimed causes of action. *Leer v.*
18 *Murphy*, 844 F.2d 628, 633-34 (9th Cir. 1988). Although accepted as true, the "[f]actual allegations
19 must be [sufficient] to raise a right to relief above the speculative level" *Twombly*, 550 U.S. at
20 555 (citations omitted). Plaintiff should focus on identifying her legal claims and setting forth, as
21 briefly but specifically as possible, the facts linking the Defendants she names to each claim for
22 which she claims that defendant is liable.

23
24 Finally, Plaintiff is advised that an amended complaint supercedes the original complaint,
25 *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *aff'd*, 525 U.S. 299 (1999); *King v.*
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1 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987), and must be “complete in itself without reference to the
2 prior or superceded pleading,” Local Rule 15-220. “All causes of action alleged in an original
3 complaint which are not alleged in an amended complaint are waived.” *King*, 814 F.2d at 567;
4 *accord Forsyth*, 114 F.3d at 1474.
5

6 Based on the foregoing, it is HEREBY ORDERED that:

- 7 1. Plaintiff’s complaint is dismissed with leave to amend for failure to state a claim;
- 8 2. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file an
9 amended complaint curing the deficiencies identified by the Court in this order; and
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- 11 3. If Plaintiff fails to file an amended complaint within **thirty (30) days** from the date
12 of service of this order, this action will be dismissed with prejudice for failure to
13 state a claim.
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18 IT IS SO ORDERED.

19 **Dated:** August 3, 2010

/s/ Sandra M. Snyder
UNITED STATES MAGISTRATE JUDGE