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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PHYLLIS A. TAYLOR,

CASE NO. 1:11-cv-00199-LJO-SKO

Plaintiff,

**ORDER DISMISSING PLAINTIFF'S
COMPLAINT WITH LEAVE TO AMEND**

v.

CENTRAL MORTGAGE COMPANY,

Defendant.

_____ /

I. INTRODUCTION AND FACTUAL BACKGROUND

On February 4, 2011, Plaintiff Phyllis A. Taylor ("Plaintiff"), proceeding pro se and in forma pauperis, filed this action against Central Mortgage Company ("Defendant"). Plaintiff's complaint states the following:

Plaintiff, PHYLLIS A. TAYLOR is an individual, [sic] and complaint against Defendant to produce original Promissory Note [sic] signed by Plaintiff on April 25, 2006[.] The acts alleged here between defendants CENTRAL MORTGAGE COMPANY including their [sic] authorized agents, and Plaintiff is requesting to obtain original documents before going to trustee sale or foreclosure and for my own personal inspection. The real property to which the contracts, obligations, duties, breaches and alleged herein, State of California and in the County of Fresno is located at 3745 E. Holland Avenue, Fresno, California, 93726.

(Doc. 2.)

1 **II. DISCUSSION**

2 **A. Screening Requirement**

3 The Court is required to screen complaints brought by parties proceeding in forma pauperis.
4 28 U.S.C. § 1915(e)(2). The Court must dismiss a complaint, or portion thereof, if it is legally
5 frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary
6 relief from a defendant who is immune from such relief. *Id.* If the Court determines that the
7 complaint fails to state a claim, leave to amend may be granted to the extent that the deficiencies of
8 the complaint can be cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en
9 banc).

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

11 In determining whether a complaint fails to state a claim, the Court uses the same pleading
12 standard used under Federal Rule of Civil Procedure 8(a). Under Rule 8(a), a complaint must
13 contain a "short and plain statement of the grounds for the court's jurisdiction . . ." and "a short and
14 plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1)-(2).
15 "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it
16 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v.*
17 *Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).
18 "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that
19 is plausible on its face.'" *Id.* (quoting *Twombly*, 550 U.S. at 570). "[A] complaint [that] pleads facts
20 that are 'merely consistent with' a defendant's liability . . . 'stops short of the line between possibility
21 and plausibility of entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). Further, although
22 a court must accept as true all factual allegations contained in a complaint, a court need not accept
23 a plaintiff's legal conclusions as true. *Id.* "Threadbare recitals of the elements of a cause of action,
24 supported by mere conclusory statements, do not suffice." *Id.* (quoting *Twombly*, 550 U.S. at 555).

25 **C. Jurisdiction of the Court**

26 The jurisdiction of the federal courts is limited to matters expressly provided in the
27 Constitution or through statute. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377
28 (1994). A federal court can exercise supplemental jurisdiction over state law claims, which would

1 ordinarily be outside federal authority, when those claims are logically related to federal claims
2 properly before the court. *Volt Info. Sciences, Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*,
3 489 U.S. 468, 484 (1989). In civil disputes, subject matter jurisdiction exists where (1) requirements
4 for diversity are met or (2) the complaint involves a claim arising under federal law. 28 U.S.C.
5 §§ 1332, 1331.

6 **1. Diversity Jurisdiction**

7 Diversity jurisdiction exists in civil disputes between citizens of different states where the
8 amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. §1332(a)-(a)(1).
9 Plaintiff does not make a monetary demand; she requests inspection of documents related to her
10 mortgage with Central Mortgage Company. Therefore, the amount in controversy is not pled to meet
11 the threshold for diversity jurisdiction.

12 Additionally, Plaintiff has not pled sufficient facts to indicate that there is complete diversity
13 between Plaintiff and Central Mortgage Company, i.e., that they are residents of different states.
14 "Individuals are citizens of their state of domicile." *Munoz v. Small Bus. Admin.*, 644 F.2d 1361,
15 1365 (9th Cir. 1981). "A person's domicile is [his/]her permanent home, where [he/]she resides with
16 the intention to remain or to which [he/]she intends to return." *Kanter v. Warner-Lambert Co.*, 265
17 F.3d 853, 857 (9th Cir. 2001). "[A] corporation shall be deemed to be a citizen of any State by
18 which it has been incorporated and of the State where it has its principal place of business" 28
19 U.S.C. §1332(c)(1). Plaintiff has not alleged her citizenship. Further, Plaintiff has failed to indicate
20 Central Mortgage Company's state of incorporation, and its principal place of business. Without this
21 information, Plaintiff has not established that the Court has diversity subject matter jurisdiction over
22 this action.

23 **2. Federal Question Jurisdiction**

24 Alternatively, Plaintiff can establish subject matter jurisdiction by showing the existence of
25 a federal question. The "well-pleaded complaint rule" states that a Plaintiff must properly plead a
26 federal question to obtain federal jurisdiction on that basis. *See California ex rel. Lockyer v. Dynegy,*
27 *Inc.*, 375 F.3d 831, 838 (9th Cir. 1994). "The federal issue must be disclosed upon the face of the
28 complaint" *Id.* (quoting *Gully v. First Nat'l Bank in Meridian*, 299 U.S. 109 (1936)).

1 Plaintiff appears to be asserting a contract action arising under state law. Contract actions
2 under state law do not generally implicate federal law. Plaintiff has not articulated any federal
3 statute or law under which her claim arises. Therefore, the complaint is insufficient to establish that
4 the Court has subject matter jurisdiction over this action on the basis of a federal question.

5 **D. Cognizable Claim**

6 Plaintiff's complaint does not clearly set forth the nature of the cause of action asserted.
7 Generally, issues related to mortgages and deeds of trust are governed by state law contract
8 principles. To the extent that Plaintiff is asserting that she has a contract right to a particular
9 foreclosure process contained in her deed of trust, she must clearly state how Central Mortgage
10 Company has breached any such contractual duty.

11 Also, as explained above, for a state law contract action to be justiciable in federal court,
12 Plaintiff must establish that there is diversity such that the Court may exercise subject matter
13 jurisdiction over this action. Alternatively, Plaintiff must identify what federal statute or law entitles
14 her to the relief she seeks.

15 **E. Amended Complaint Must Be Complete in Itself Without Reference to Any Prior
16 Pleading**

17 Plaintiff's complaint fails to assert facts which could establish diversity of citizenship. The
18 complaint also does not state a claim arising under federal law. Therefore, there is no basis for the
19 Court to exercise subject matter jurisdiction over this action.

20 Plaintiff will be given an opportunity to amend the deficiencies of the complaint as outlined
21 above. Plaintiff is advised that Local Rule 220 requires that an amended complaint be complete in
22 itself without reference to any prior pleading. As a general rule, an amended complaint supersedes
23 the original complaint. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967). Once Plaintiff files an
24 amended complaint, the original pleading no longer serves any function in the case. Therefore, in
25 an amended complaint, as in an original complaint, each claim and the involvement of each
26 defendant must be sufficiently alleged.

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III. CONCLUSION

Accordingly, Plaintiff's complaint is DISMISSED WITH LEAVE TO AMEND. Plaintiff SHALL file an amended complaint within thirty (30) days of the date of service of this order. If Plaintiff fails to cure the deficiencies noted above or fails to amend the complaint within 30 days, the Court will recommend that the entire action be dismissed with prejudice.

IT IS SO ORDERED.

Dated: February 10, 2011

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE