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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

KENNETH BAKER,

Plaintiff,

v.
WELLS FARGO BANK, N.A., et al.,

Defendants.

1:16-cv-01943-LJO-EPG

**MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFF’S
MOTION TO REMAND; GRANTING
DEFENDANT’S MOTION TO
DISMISS; ORDER TO SHOW CAUSE
TO PLAINTIFF’S COUNSEL**

(ECF Nos. 6 & 9)

I. INTRODUCTION

On October 26, 2016, Plaintiff Kenneth Baker filed suit in Stanislaus County Superior Court against Defendants World Savings Bank; Wells Fargo Home Mortgage (a division of Wells Fargo Bank); Barrett, Daffin, Frappier, Treder & Wiess, LLP (“Barrett”); “All Persons or Entities Unknown Claiming Any Legal or Equitable Right, Title, Estate, or Interest in the Property Described in this Complaint Adverse to Plaintiff’s Title, or Any Cloud Upon Plaintiff’s Title Thereto,” and Does 1-100, inclusive. Complaint, ECF No. 1, Ex. A (“Compl.”). Through this suit, Plaintiff is attempting to stop a pending non-judicial foreclosure commenced by Defendant Wells Fargo Bank (“Wells Fargo”) of real

1 property commonly known as 2117 Shaddox Avenue, Modesto, California (“the Property”), and to void
2 the previously recorded foreclosure notices related to the Property. *Id.* Plaintiff brings the following
3 claims against Defendants: 1) Quiet Title; 2) Wrongful Foreclosure; 3) Declaratory Relief; 4)
4 Cancellation of Instrument; 5) Slander of Title; 6) Violation of California Homeowner Bill of Rights; 7)
5 Violation of California Civil Code § 2936; 8) Violation of California Civil Code § 2934(a)(1)(A); 9)
6 Violation of Unfair Business Practices under California Business & Professional Code §§ 17200, *et seq.*;
7 and 10) Fraud. *Id.*

8 Wells Fargo, invoking diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441(b),
9 removed the case to this Court on December 30, 2016. ECF No. 1. On January 6, 2017, Wells Fargo
10 filed a motion to dismiss the Complaint pursuant to Federal Rule¹ of Civil Procedure 12(b)(6), setting
11 the motion hearing for February 9, 2017. ECF No. 6. Following the expiration of the opposition and
12 reply filing deadlines, the Court took Wells Fargo’s motion to dismiss under submission for decision on
13 the papers. ECF No. 8; *see also* E.D. Cal. L.R. 230(c) & (d).

14 On the same day the Court issued its minute order, Plaintiff filed both a motion to remand the
15 Complaint, setting the motion hearing for March 6, 2017 (ECF No. 9), and an untimely opposition to
16 Wells Fargo’s motion to dismiss (ECF No. 10). In the opposition, Plaintiff’s counsel apologized for her
17 failure to file a timely opposition, and indicated her failure to do so was on account of the fact that the
18 Court had not yet ruled on Plaintiff’s simultaneously-filed motion to remand, and that Wells Fargo did
19 not serve her with a copy of its motion to dismiss. ECF No. 10 at 2.² Wells Fargo subsequently filed a
20 reply in connection with its motion to dismiss, in which it contests both of Plaintiff’s assertions (ECF
21 No. 11) and has filed an opposition to Plaintiff’s motion to remand (ECF No. 12). Plaintiff did not file a
22 reply in connection with his motion to remand. *See* ECF No. 13.

23 _____
24 ¹ All further references to any “Rule” are to the Federal Rules of Civil Procedure unless otherwise indicated.

25 ² Pincites refer to CM/ECF pagination located at the top of each page.

1 The pending matters are suitable for disposition without oral argument. *See* E.D. Cal. L.R.
2 230(g); ECF No. 13. For the reasons the follow, the Court DENIES Plaintiff’s motion to remand,
3 GRANTS Wells Fargo’s motion to dismiss for lack of standing, and ORDERS Plaintiff’s counsel Laleh
4 Ensafi to show cause why she should not be sanctioned for violating Rule 11(b).

5 **II. SUMMARY OF COMPLAINT**

6 The crux of the Complaint is that Defendants failed to comply with the requirements of the
7 California Civil Code in executing a non-judicial foreclosure of the Property, as follows:

8 On or around October 19, 2006, Lamar and Lena Baker executed as borrowers “that Certain
9 Deed of Trust in the amount of \$175,000, (‘Deed of Trust’) securing a Promissory Note in like amount,
10 (‘Note’), secured by the Property.” ECF No. 1 at 17. The Property is located in Modesto, Stanislaus
11 County, California. *Id.* at 14. The Deed of Trust reflects that its beneficiary is World Savings Bank, and
12 its trustee is Golden West Savings Association Service Co. *Id.* “No assignments of the Deed of Trust or
13 Substitutions of Trustees have ever been recorded concerning the obligations and parties reflected in the
14 Deed of Trust.” *Id.*

15 On October 12, 2012, Wells Fargo, through its “agent” NDEX West LLC, caused a Notice of
16 Default to be recorded in relation to the Property. *Id.* Deutsche³ recorded or cause to be recorded another
17 Notice of Default (“NOD1”), and listed itself as the entity to contact, and declared that it had complied
18 with the requirements of section 2923.5 of the California Civil Code (“§ 2923.5”), when it had not in
19 fact complied with this section. *Id.* The NOD1 incorrectly named Wells Fargo as the beneficiary,
20 because it did not reflect when Wells Fargo “allegedly became” the beneficiary of the Deed of Trust. *Id.*
21 at 17-18. Because Wells Fargo was not the current beneficiary at the time Deutsche recorded the NOD1,
22 NDEX had no basis to execute the NOD1. *Id.* at 18. On January 25, 2013, NDEX noticed a Trustee Sale
23 for February 19, 2013, in relation to the Property. *Id.* The Trustee Sale was postponed several times. *Id.*

24
25 ³ The Complaint lists Deutsche as a Defendant in this particular allegation but does not name Deutsche as a Defendant.

1 On November 22, 2013, a certificate of death for Lamar Baker (indicating that he had passed
2 away on November 22, 2011) was filed with the Stanislaus County Recorder in connection with an
3 “Affidavit – Death of Joint Tenant” relating to the Property. *Id.* at 18.

4 On February 18, 2014, the interest in the Property was conveyed via quitclaim deed from Lena
5 Baker, the original borrower, to Plaintiff. *Id.* at 16. Lena Baker passed away on February 26, 2014. *Id.*
6 Since that time, the Property “as fully and legally described [in the Complaint], and the essence of the
7 instant action was residential real property indisputably owned of record by Plaintiff, in fee simple.” *Id.*
8 Plaintiff is the trustee⁴ of the Lena Mae Baker Trust. *Id.* at 14.

9 On June 23, 2015, NDEX published another Trustee Sale, noticing a sale date of July 16, 2015.
10 *Id.* at 18. While the NOD1 which had resulted in the first two Trustee Sales was still pending,
11 “Defendants initiated another concurrent duplicate foreclosure process by recording a new Notice of
12 Default on July 29, 2016.” *Id.* Defendants then rescinded the NOD1 on August 31, 2016. *Id.*

13 In the Declaration of Compliance pursuant to § 2923.5 attached to the Notice of Default recorded
14 on July 29, 2016, Evelia Garcia, an agent of Wells Fargo, declared that Wells Fargo had contacted the
15 borrower [of the Property] “to assess the borrower’s financial situation and explore options to avoid
16 foreclosure.” *Id.* at 19. Furthermore, Jeffrey Joplin, another agent of Wells Fargo, declared that Wells
17 Fargo had been unable to contact the borrower. *Id.* However, because both Lamar and Lena Baker had
18 passed away by July 2016, the declarations signed by Garcia and Joplin constitute a violation of
19 § 2923.5. *Id.*

20 **III. MOTION TO REMAND**

21 Because it concerns the Court’s subject matter jurisdiction, the Court will first address Plaintiff’s
22 motion to remand.

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25 ⁴ The Complaint is littered with typographical errors. While the Complaint describes Plaintiff as the “Trastee” of the Lena Mae Baker Trust, the Court assumes that the Complaint intended to state that Plaintiff is the “Trustee.”

1 **A. Legal Standard**

2 Removal to federal court is governed by 28 U.S.C. § 1441, which in relevant part states that “any
3 civil action brought in a State court of which the district courts of the United States have original
4 jurisdiction, may be removed by the defendant or defendants.” Original jurisdiction may be based on
5 diversity or the existence of a federal question, as set forth in 28 U.S.C. §§ 1331 and 1332. District
6 courts have diversity jurisdiction over all civil actions between citizens of different states where the
7 amount in controversy exceeds \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332. “Federal
8 jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v.*
9 *Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.1992) (per curiam). The defendant always bears the burden of
10 establishing that removal is proper, and the Court “resolves all ambiguity in favor of remand.” *Hunter v.*
11 *Philip Morris USA*, 582 F.3d 1039, 1042 (9th Cir.2009)

12 **B. Analysis**⁵

13 In this motion, Plaintiff provides three arguments for remand: 1) Wells Fargo did not obtain
14 unanimity of consent from co-defendants before filing the notice of removal, and that the case was
15 removed before Plaintiff could request service on the unknown defendants (*id.* at 5-6); 2) that this case
16 lacks a federal question (*id.* at 6-7); and 3) that the Court lacks diversity jurisdiction over this case
17 because the citizenship of the unknown Defendants is unknown and violates the “no local defendants”
18 rule (*id.* at 7-9).

19 Regarding the first argument, Wells Fargo correctly noted in its notice of removal that the
20 general requirement of consent does not apply to “nominal, unknown, or fraudulently joined parties.”
21 ECF No. 1 at 11 (citing *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 (9th Cir. 1988)). The Notice
22 of Removal demonstrates that Barrett, as a trustee named on the Deed of Trust encumbering the
23 Property with only a ministerial role in the foreclosure process is only a nominally joined party. *See id.*

24
25 ⁵ Because Plaintiff’s motion to remand presented a challenge to this Court’s subject matter jurisdiction, the Court finds it is not subject to the statutory 30-day deadline. *See* 28 U.S.C. § 1447(c).

1 at 7-8. In a declaration of non-monetary status filed in the state court case before Wells Fargo removed
2 this case, counsel for Barrett avers that Barrett “knows or maintains a reasonable belief that it has been
3 named as a defendant solely in its capacity as a substitute trustee under said Deed of Trust and that
4 plaintiff does not assert any legally viable claims for monetary relief against [Barrett].” ECF No. 1 at
5 101-03 (Ex. B). Furthermore, Barrett also consented to the removal of this case. ECF No.1-3. The
6 consent of the remaining defendants, all of whom are unknown or fictitious, was not required for
7 removal, under the plain language of the removal statute. *See* 28 U.S.C. § 1441(b)(2)(A); *Tatevossian v.*
8 *Wells Fargo Bank*, CV 16-03135 AB (MRWx), 2016 WL 4367235, at *3 (C.D. Cal. Aug. 12, 2016)
9 (“Plaintiff’s second argument that the lack of consent from and unknown citizenship of the Doe
10 Defendants undermines subject matter jurisdiction fails under the plain language of the removal statutes
11 ... [O]nly defendants who have been served need join in or consent to removal.”).

12 Plaintiff’s second argument that there is no federal question to resolve in this case is moot
13 because the Court has diversity jurisdiction.⁶ Pursuant to 28 U.S.C. § 1332(a)(1), “district courts shall
14 have original jurisdiction over all civil actions where the matter in controversy exceeds the sum or value
15 of \$75,000, exclusive of interests and costs, and is between ... citizens of different States.” Plaintiff does
16 not appear to dispute the amount in controversy. According to the Complaint, the residential loan at
17 issue in this case was in the amount of \$175,000. ECF No. 1 at 17; *see also Chapman v. Deutsche Bank*
18 *Nat. Trust Co.*, 651 F. 3d 1039, 1045 n.2 (9th Cir. 2011) (“In actions seeking declaratory or injunctive
19 relief, it is well established that the amount in controversy is measured by the value of the object of the
20 litigation.”); *Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp. 2d 1022, 1028-29 (N.D. Cal. Oct. 27,
21 2010) (“Numerous courts have held that, where a complaint seeks to invalidate a loan secured by a deed
22

23 ⁶ As Wells Fargo pointed out in its opposition (ECF No. 12 at 3-4), Plaintiff has admitted that the Court has diversity
24 jurisdiction in his opposition to Wells Fargo’s motion to dismiss. *See* ECF No. 10 at 3 (“The Court’s jurisdiction over this
25 matter is pursuant to diversity jurisdiction.”); at 6-7 (“This Court has original jurisdiction over the claims in the action based
on 28 U.S.C. § 1332 which confers original jurisdiction on federal district courts in suits between diverse citizens that involve
an amount in controversy in excess of \$75,000.00.”).

1 of trust, the amount in controversy is the loan amount.”). Moreover, the parties in this case are
2 completely diverse. In the Complaint, Plaintiff alleges that he is a citizen of Stanislaus County,
3 California. ECF No. 1 at 14. Plaintiff is therefore a citizen of California for purposes of diversity
4 jurisdiction. *Gaudin v. Remis*, 379 F.3d 631, 636 (9th Cir. 2004). Of the remaining⁷ named Defendants,
5 only the citizenship of Wells Fargo is used to determine whether the requirements for diversity
6 jurisdiction have been met.⁸ *Meadows v. Bicrodyne Corp.*, 785 F.2d 670, 672 (9th Cir. 1986) (following
7 merger, the citizenship of the surviving entity is considered for diversity purposes); *see also Moore v.*
8 *Wells Fargo Bank*, CIV No. 2:16-566 WBS CKD, 2016 WL 3091087, at *3 (E.D. Cal June 2, 2016)
9 (“Though the original lender under plaintiff’s loan merged with Wells Fargo, the court considers Wells
10 Fargo’s citizenship because it is the surviving entity from that merger.”). Wells Fargo is a national bank,
11 which is a corporate entity “chartered not by any State, but by the Comptroller of the Currency of the
12 U.S. Treasury.” *Wachovia Bank v. Schmidt*, 546 U.S. 303, 306 (2006). Pursuant to 28 U.S.C. § 1348, “a
13 national banking association is a citizen only of the state in which its main office is located.” *Rouse v.*
14 *Wachovia Mortg., FSB*, 747 F.3d 707, 715 (9th Cir. 2014). Wells Fargo has presented evidence
15 indicating that its main office is in South Dakota; therefore, it is a citizen of South Dakota. ECF No. 1 at
16 111-12 (Ex. F) (true and correct copies of the FDIC Profile and the Articles of Association for Wells
17 Fargo Bank, N.A., as issued by the Office of the Comptroller of the Currency, Administrator of National
18 Banks, indicating that the main office of Wells Fargo is in Sioux Falls, South Dakota). Because Plaintiff
19 is a citizen of California and Wells Fargo is a citizen of South Dakota, there is complete diversity of

21 ⁷ Because Barrett was a mere trustee in the foreclosure process and therefore lacked any monetary interest in the Property,
22 and the Complaint does not contain any specific allegations against Barrett, the Court may disregard Barrett’s citizenship for
23 purposes of diversity jurisdiction analysis. *See Ventimiglia v. Wells Fargo Bank, N.A.*, No. CIV. 2:13-00953 WBS CMK,
2013 WL 3367330, at *1 n.1 (E.D. Cal. July 5, 2013) (“[C]ourts have recognized the limited role of a non-monetary trustee
in mortgage litigation and have accordingly disregarded its citizenship in determining diversity jurisdiction upon removal.”).

24 ⁸ The Complaint names World Savings Bank, FSB and Wells Fargo Home Mortgage as defendants. Wells Fargo has
25 provided evidence that effective December 31, 2007, World Savings Bank changed its name to Wachovia Mortgage, FSB
(*see* ECF No. 1 at 107 (Ex. C)), and effective November 1, 2009, Wachovia Mortgage, FSB, was converted into Wells Fargo
Bank Southwest, N.A., and merged into Wells Fargo Bank, N.A. (*see id.* at 109 (Ex. D)).

1 citizenship between the parties, which provides the Court with diversity jurisdiction over this case.⁹ See
2 28 U.S.C. § 1332. Accordingly, the Court DENIES Plaintiff’s motion to remand.

3 **IV. MOTION TO DISMISS**¹⁰

4 **A. Legal Standard**

5 A motion to dismiss pursuant to Rule 12(b)(6) is a challenge to the sufficiency of the allegations
6 set forth in the complaint. Dismissal under Rule 12(b)(6) is proper where there is either a “lack of a
7 cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable legal theory.”
8 *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). In considering a motion to dismiss
9 for failure to state a claim, the court generally accepts as true the allegations in the complaint, construes
10 the pleading in the light most favorable to the party opposing the motion, and resolves all doubts in the
11 pleader’s favor. *Lazy Y. Ranch LTD v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

12 To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege “enough facts to state a
13 claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A
14 claim has facial plausibility when the Plaintiff pleads factual content¹⁰ that allows the court to draw the
15 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S.
16 662, 678 (2009). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for
17 more than a sheer possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at

18
19 ⁹ Plaintiff’s argument that naming Does 1-100 and “All persons or entities unknown claiming any legal or equitable right,
20 title, estate, lien or interest in the Property described in this Complaint” defeats diversity jurisdiction is meritless. Pursuant to
21 the removal statute, “[i]n determining whether a civil action is removable on the basis of [diversity jurisdiction], the
22 citizenship of defendants sued under fictitious names shall be disregarded.” 28 U.S.C. § 1441(b)(1); see also *Woodard v.*
Wells Fargo Bank, N.A., No. 5:14-CV-01017-ODW, 2014 WL 3534086, at *2 (C.D. Cal. July 16, 2014) (argument that
23 “unknown Defendants are unknown as well as their whereabouts” failed “based on well-established principles of law.”);
Woodard v. Wells Fargo Bank, N.A., No. 5:14-CV-01017-ODW, 2014 WL 5089411 (C.D. Cal. Oct. 8, 2014) (denying
24 plaintiff’s counsel’s motion to set aside or vacate the order denying her remand motion and ordering plaintiff’s counsel to
25 show cause why the court should not sanction her for violating Rule 11(b)).

¹⁰ Wells Fargo has requested that the Court take judicial notice of several documents in support of its motion to dismiss, six
of which are documents that relate directly to the ownership of the Property (Exs. A-C and I-K), and five of which are
documents reflecting official acts of the executive branch of the United States that relate to the merger of Wells Fargo (Exs.
D-H). Plaintiff has not objected to this request. Because all of these documents are proper subjects for judicial notice
pursuant to Federal Rule of Evidence 201 in that they are either referenced in the complaint or are matters of public record
whose accuracy cannot reasonably be questioned, the Court GRANTS Wells Fargo’s request.

1 556). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
2 allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more
3 than labels and conclusions.” *Twombly*, 550 U.S. at 555 (internal citations omitted). Thus, “bare
4 assertions . . . amount[ing] to nothing more than a ‘formulaic recitation of the elements’ . . . are not
5 entitled to be assumed true.” *Iqbal*, 556 U.S. at 681. “[T]o be entitled to the presumption of truth,
6 allegations in a complaint . . . must contain sufficient allegations of underlying facts to give fair notice
7 and to enable the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th
8 Cir. 2011). In practice, “a complaint . . . must contain either direct or inferential allegations respecting
9 all the material elements necessary to sustain recovery under some viable legal theory.” *Twombly*, 550
10 U.S. at 562. To the extent that the pleadings can be cured by the allegation of additional facts, a plaintiff
11 should be afforded leave to amend. *Cook, Perkiss and Liehe, Inc. v. Northern Cal. Collection Serv., Inc.*,
12 911 F.2d 242, 247 (9th Cir. 1990) (citations omitted).

13 **B. Analysis**

14 Wells Fargo first argues that Plaintiff lacks standing to bring the claims set forth in the
15 Complaint because he is not a “real party in interest” within the meaning of Rule 17(a)(1). ECF No. 6 at
16 17-18. Because Wells Fargo has challenged Plaintiff’s prudential standing, rather than his constitutional
17 standing, the motion is proper under Rule 12(b)(6). *See Doe v. Hamburg*, No. C-12-3412 EMC, 2013
18 WL 3783749, at *5 (N.D. Cal. July 16, 2013) (“While constitutional standing is evaluated under [Rule]
19 12(b)(1), prudential standing is evaluated under Rule 12(b)(6).”); *see also Wolfson v. Brammer*, 616
20 F.3d 1045, 1056 (9th Cir. 2010) (“the doctrine of prudential standing requires us to consider, among
21 other things, . . . whether the plaintiff is asserting her own rights or the rights of third parties . . .”).

22 Wells Fargo acknowledges that Plaintiff has alleged that Lena Baker passed away on February
23 26, 2014, that her interest in the Property was transferred to Plaintiff by quitclaim deed on February 28,
24 2014, and that Plaintiff is the Trustee of the Lena Mae Baker Trust. ECF No. 6 at 17-18. However,
25 Wells Fargo argues: 1) the Complaint does not include any allegations regarding the current status of

1 Lamar Baker or how his interest in the Property was transferred to Lena Baker, the trust, or Plaintiff; 2)
2 the Complaint does not include allegations regarding Lena Baker’s conservatorship or how Plaintiff
3 came to be designated as the Conservator with legal authority to execute the quitclaim deed; 3) Plaintiff
4 does not assert any allegations regarding the creation of the Lena Mae Baker Trust or any factual
5 allegations as to the legal document that named him the trustee; and 4) because Plaintiff was not a
6 borrower on the subject loan, he lacks standing to challenge the foreclosure of the Property and to bring
7 related claims. *Id.* at 18. Plaintiff’s untimely opposition fails to address any of these arguments. *See* ECF
8 No. 10.

9 Wells Fargo’s first contention regarding the whereabouts of Lamar Baker is erroneous. In the
10 Complaint, Plaintiff alleges that Lamar Baker passed away on November 22, 2011. ECF No. 1 at 18.
11 Furthermore, he filed alongside the Complaint a copy of Lamar Baker’s death certificate and the
12 Affidavit – Death of Joint Tenant filed with the Stanislaus County Recorder on November 21, 2013. *Id.*
13 at 75-76. However, upon review of the judicially noticeable documents in this case, which includes a
14 notarized quitclaim deed, filed with the Stanislaus County Recorder on February 18, 2014, conveying
15 the Property¹¹ from Lena Baker to Plaintiff, whom the deed lists as a “Conservator” (ECF No. 1 at 49),
16 the Court is persuaded by Wells Fargo’s argument that the Complaint fails to allege adequately that
17 Plaintiff is a “real party in interest” within the meaning of Rule 17(a). The Court acknowledges that Rule
18 17(a) permits trustees to sue on behalf of the real party in interest and that at this stage of proceedings,
19 the Court is obliged to assume the truth of the allegations in the Complaint that the interest in the
20 Property was conveyed from original borrowers Lena and Lamar Baker to Plaintiff, and that Plaintiff is
21 a trustee. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

22 Nevertheless, even assuming the truth of these allegations, the Court finds that Plaintiff lacks
23 prudential standing because the Complaint fails to state a claim upon which relief can be granted. Under

24 ¹¹ The quitclaim deed describes the Property as “Lot 25 in Block 5122 of Westridge No 2 as per map filed on March 21, 1978
25 in Vol. 27 of Maps Page 54, Stanislaus County Records Assessor Parcel Number: 081-023-017-000.” ECF No. 1 at 49. The
Deed of Trust, signed by Lamar and Lena Baker, provides an identical description of the Property. ECF No. 6-1 at 29.

1 California law,

2 Upon the transfer of real property covered by a mortgage or deed of trust as security for an
3 indebtedness, the property remains subject to the secured indebtedness but the grantee is not
4 personally liable for the indebtedness or to perform any of the obligations of the mortgage or
5 trust deed unless his agreement to pay the indebtedness, or some note or memorandum thereof, is
6 specifically provided for in the conveyance.

7 *Cornelison v. Kornbluth*, 542 P.2d 981, 985-86 (1975) (In Bank). The quitclaim deed makes no mention
8 of the Deed of Trust or any other encumbrance on the Property. *See* ECF No. 1 at 49. Both the
9 Complaint and its supporting record are devoid of any allegation or indication that Plaintiff has
10 expressly agreed to pay the indebtedness or to perform any of the obligations of the mortgage, or that he
11 has made any effort to fulfill the obligations imposed by the Deed of Trust on the borrowers.
12 Furthermore, the Deed of Trust lists only Lamar and Lena Baker as borrowers on the subject loan. *See*
13 ECF No. 6-1, Ex. B.

14 In *Ward v. Wells Fargo Home Mortgage*, a court in the Northern District of California
15 confronted a similar scenario. *See* No. 14-cv-00565 NC, 2014 WL 3885836 (N.D. Cal. Aug. 7, 2014).
16 As is the case here, the complaint in *Ward* alleged that a deceased individual, rather than the plaintiff,
17 was the borrower and the sole party to the mortgage contract with Wells Fargo, and that the decedent
18 transferred title to the property to a trust and that the plaintiff was the trustee of that trust. *Id.* at *2.
19 However, the complaint did not allege “that the trust was a party to the mortgage contract or that [the
20 decedent] assigned his contract rights to the trust.” *Id.* Accordingly, the court determined that the
21 decedent, rather than the plaintiff, had standing to pursue the contract-related claims. *Id.* The court also
22 observed that “under California law, when the party to a contract is deceased, claims arising out of the
23 contract may still live on.” *Id.* at *3 (citing *Barney v. Aetna Cas. & Sur Co.*, 185 Cal. App. 3d 966, 974
24 (1986), and *Tatum v. City and Cnty. of S.F.*, 441 F.3d 1090, 1094 n.2 (9th Cir. 2006)). The court found
25 that the plaintiff could bring the action if she was “the personal representative of [the decedent]’s estate
or his successor in interest. But the complaint does not allege that plaintiff holds either of these

1 positions.” Accordingly, the court dismissed the case for lack of standing, but granted the plaintiff leave
2 to amend “to either plead facts supporting her standing, or to substitute the proper plaintiff.” *Id.*

3 Here, the Court finds it appropriate to take the same approach. Given that Plaintiff has alleged
4 (and provided evidence) that both Lamar and Lena Baker are deceased, it remains possible that Plaintiff
5 is a trustee within the meaning of Rule 17(a), and therefore that he has prudential standing to assert the
6 Complaint’s claims. However, the sheer possibility that Plaintiff has standing is not enough to survive a
7 Rule 12(b)(6) motion. *Iqbal*, 556 U.S. at 678. The Complaint fails to allege any connection between the
8 subject loan and Plaintiff, and the Court’s review of the record revealed nothing that would suggest that
9 Plaintiff himself has standing to challenge the foreclosure of the Property. Therefore, the Court
10 GRANTS Wells Fargo’s motion to dismiss for lack of prudential standing.¹² Dismissal shall be with
11 leave to amend.

12 **V. ORDER TO SHOW CAUSE TO PLAINTIFF’S COUNSEL**

13 Plaintiff’s counsel Laleh Ensafi filed the motion to remand after the Court issued a minute order
14 indicating that the deadline to file an opposition to Wells Fargo’s motion to dismiss had expired, and
15 taking the matter under submission. *See* ECF Nos. 8 & 9. Ms. Ensafi stated that she failed to file a
16 timely opposition to the motion to dismiss because the Court had not yet ruled on the pending motion to
17 remand—which she had just filed—and because she was never served with a copy of the motion to
18 dismiss filed by Wells Fargo. ECF No. 10 at 2. Ms. Ensafi signed the opposition and filed it on February
19 3, 2017. *Id.* at 12; *see also* E.D. Cal. L.R. 131(c) (“Anything filed using an attorney’s name, login, and
20 password will be deemed to have been signed by that attorney for all purposes, including Fed. R. Civ. P.
21 11”).

22 The chronology of these events is not lost on the Court, and it seems most likely that Ms. Ensafi
23

24 ¹² Because the Court has granted Wells Fargo’s motion to dismiss on the issue of standing, the Court declines to reach the
25 remaining claims in this case.

1 filed the remand motion in order to stall the adjudication of this case when she failed to file a timely
2 opposition to Wells Fargo’s motion to dismiss. Furthermore, upon review of the motion to remand, it is
3 difficult not to deduce that Ms. Ensafi has merely copied and pasted a brief from another motion to
4 remand without even bothering to substitute in the correct names¹³ and dates¹⁴, or research whether
5 remand was a legally supportable option in this case. It is also clear that Ms. Ensafi was not being
6 forthright when she stated that she “was never served a copy of the Motion to Dismiss filed by
7 Defendant Wells Fargo Bank, N.A.” ECF No. 10 at 2. According to the Court’s CM/ECF system,
8 Defense Counsel Scott Reigle filed the Motion to Dismiss at 2:50 PM PST on January 6, 2017, and
9 notice was electronically mailed to Ms. Ensafi at two email addresses: lensafi@lpralc.com and
10 ensafilaw@gmail.com. *See* ECF No. 6; *see also* E.D. Cal. L.R. 135(a) (“Service” as utilized in these
11 Rules includes electronic service as set forth in the CM/ECF procedures in these Rules.”).

12 In its order denying a motion to remand substantially similar to the one in this case filed by Ms.
13 Ensafi, a court in the Central District of California warned Ms. Ensafi that the arguments she had made
14 in a motion to remand were “so clearly erroneous” that it found that Ms. Ensafi had “skirt[ed] the line of
15 violating Federal Rule of Civil Procedure 11.” *Woodard v. Wells Fargo Bank, N.A.*, No. 5:14-cv-01017-
16 ODW (SHx), 2014 WL 3534086, at *2 n.3 (C.D. Cal. July 16, 2014). After Ms. Ensafi subsequently
17 filed a Rule 60 motion to set aside, vacate or vacate judgment of dismissal the court’s order, not only did
18 the court deny the motion, but the court also ordered Ms. Ensafi to show cause why she should not be
19 sanctioned for violating Rule 11(b) because she raised the same meritless arguments that the court had
20 rejected in ruling on her motion to remand. *Woodard v. Wells Fargo Bank, N.A.*, No. 5:14-cv-01017-
21 ODW (SHx), 2014 WL 5089411, at *3 (C.D. Cal. Oct. 8, 2014).

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23 ¹³ The motion to remand makes two references to “BOFA” (which the Court assumes to mean “Bank of America”), which is
not referred to elsewhere in this case. *See* ECF No. 9 at 6, 8.

24 ¹⁴ The motion to remand refers to “a Notice of Pendency of Action [] recorded on the property in the Riverside County
25 Recorder’s Office on March 10, 2014,” ECF No. 9 at 6, and at least two times, indicates that it seeks remand to Fresno
County Superior Court, *id.* at 2, 3. However, this case arose in Stanislaus County and was not commenced until October 26,
2016. *See* Complaint.

1 The Court believes that Ms. Ensafi's conduct in this case likewise warrants the consideration of
2 substantial sanctions¹⁵ under Rule 11(c)(3). It is apparent that Ms. Ensafi has presented to this Court a
3 written motion, certifying to the best of her knowledge, information, and belief, that the motion was "not
4 presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase
5 the cost of litigation" and the "claims ... and only legal contentions are warranted by existing law or by
6 nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law,"
7 when the motion did in fact cause unnecessary delay and presented claims not warranted by existing
8 law. *See* Rule 11(b). Accordingly, the Court **ORDERS** Ms. Ensafi **TO SHOW CAUSE**, in writing, no
9 later than **Friday, March 17, 2017**, why the Court should not sanction her for violating Rule 11(b). Ms.
10 Ensafi's response should 1) address her reasons for stating that she was not served with Wells Fargo's
11 motion to dismiss, when the Court's review of the record indicates that she was in fact served via the
12 CM/ECF system; 2) describe her efforts in researching and drafting the motion to remand, especially in
13 light of the fact that in her simultaneously-filed opposition brief, she asserted that the Court has diversity
14 jurisdiction over this case (ECF No.10 at 3, 6-7); and 3) address her reasons for filing the motion to
15 remand at 12:57 PM PST and then filing her opposition to Wells Fargo's motion to dismiss at 1:16 PM
16 PST, and why she believed anyone would find it credible that she "erroneously failed to file an
17 opposition [to the motion to dismiss] due to the fact that the motion to remand had not been decided."
18 *See* E.D. Cal. L.R. 110. Ms. Ensafi's response is to be in Declaration form and under oath. Defendants
19 may file an optional responsive brief on or before **March 24, 2017**. If necessary, the Court will set a
20 hearing on the matter.

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25 ¹⁵ Any sanctions will only be levied against Ms. Ensafi, not Plaintiff Kenneth Baker. Fed. R. Civ. P. 11(c)(5).

1 **VI. CONCLUSION AND ORDERS**

2 For the reasons stated above:

- 3 1) Plaintiff Kenneth Baker's motion to remand (ECF No. 9) is **DENIED**.
- 4 2) Defendant Wells Fargo's motion to dismiss (ECF No. 6) is **GRANTED**. Plaintiff shall have
- 5 10 days from electronic service of this order to file an amended complaint. Plaintiff is
- 6 cautioned that he should only amend if amendment would not be futile based on the law and
- 7 findings in this Order.
- 8 3) Plaintiff's Counsel Laleh Ensafi (SBN 268917) is **ORDERED TO SHOW CAUSE** by
- 9 **March 17, 2017** why she should not be sanctioned for violating Rule 11(b), as described
- 10 above.

11

12 IT IS SO ORDERED.

13 Dated: March 9, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE