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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

J. PEDRO ZARATE,  
Plaintiff,  
v.  
AMTRUST BANK, et al.,  
Defendants.

No. 2:13-cv-0659 KJM KJN PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

By these findings and recommendations, the court recommends that plaintiff’s claims against defendant Federal Deposit Insurance Corporation as Receiver for and on behalf of Amtrust Bank (“FDIC”) be dismissed with prejudice and that plaintiff’s remaining claims be remanded to state court.

BACKGROUND<sup>1</sup>

On March 13, 2009, plaintiff, presently a resident of Sacramento, California, commenced this action concerning foreclosure of his real property in Acampo, California, against defendants Amtrust Bank, Linda K. Weeks, Re/Max Gold Real Estate, Williams & Williams Worldwide Real Estate Auctions, and Quality Loan Service Corporation in the San Joaquin County Superior

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<sup>1</sup> Because the resolution of plaintiff’s claims against the FDIC and remand of the remaining claims to state court do not implicate the substantive merits of plaintiff’s claims, the court does not set forth the background facts concerning plaintiff’s claims in significant detail.

1 Court. Plaintiff alleged that although representatives from Amtrust Bank had orally agreed to  
2 postpone a January 21, 2009 foreclosure sale if plaintiff submitted documentation required for a  
3 loan modification review, which plaintiff provided, Amtrust Bank nonetheless foreclosed on the  
4 property, with the assistance of Quality Loan Service Corporation as trustee.<sup>2</sup> Plaintiff further  
5 alleged that Amtrust Bank, defendant Linda Weeks (affiliated with defendant Re/Max Gold Real  
6 Estate), and/or others had wrongfully entered the real property and taken his personal belongings.  
7 Plaintiff asserted state law claims for (1) setting aside the trustee's sale; (2) cancellation of deed;  
8 (3) injunctive relief; (4) breach of contract; (5) fraud; (6) trespass to real property; (7) trespass to  
9 personal property; and (8) conversion. (See ECF No. 1-1 at 8-22.)

10 Amtrust Bank filed an answer to plaintiff's complaint in state court on June 16, 2009.  
11 (ECF No. 1-1 at 23-32.) During the pendency of the action in state court, the other defendants  
12 were not served with process. (ECF No. 9.) On December 4, 2009, Amtrust Bank was closed by  
13 the United States Department of the Treasury's Office of Thrift Supervision, and the FDIC was  
14 appointed as Receiver. (See FDIC's Request for Judicial Notice, ECF No. 16-2 ["RJN"] Ex. H.)<sup>3</sup>  
15 Thereafter, on April 30, 2011, the FDIC determined that "insufficient assets exist in the  
16 receivership of AmTrust Bank, Cleveland, Ohio, to make any distribution to general unsecured  
17 claims, and therefore such claims will recover nothing and have no value." (RJN Ex. I.) The  
18 FDIC's notice in the Federal Register setting forth the no-value determination explained:

19 On December 4, 2009, AmTrust Bank, Cleveland, Ohio, (FIN  
20 #10155) was closed by the Office of Thrift Supervision ("OTS"),  
21 and the Federal Deposit Insurance Corporation ("FDIC") was  
22 appointed as its receiver ("Receiver"). In complying with its  
23 statutory duty to resolve the institution in the method that is least  
24 costly to the deposit insurance fund, see 12 U.S.C. 1823(c)(4), the  
25 FDIC facilitated a transaction with New York Community Bank,  
26 Westbury, New York, to acquire the deposits and most of the assets  
27 of the failed institution.

28 Section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12

25 <sup>2</sup> Public records, discussed below, reveal that Amtrust Bank itself purchased the property at the  
26 foreclosure sale. (See Trustee's Deed Upon Sale, RJN Ex. F.) Thereafter, on December 16,  
27 2010, plaintiff's former property was conveyed to third parties via a special warranty deed  
28 recorded on December 21, 2010. (RJN, Ex. G.)

<sup>3</sup> FDIC's request for judicial notice is addressed in the "Discussion" section below.

1           U.S.C. 1821(d)(11)(A), sets forth the order of priority for  
2           distribution of amounts realized from the liquidation or other  
3           resolution of an insured depository institution to pay claims. Under  
4           the statutory order of priority, administrative expenses and deposit  
5           liabilities must be paid in full before any distribution may be made  
6           to general unsecured creditors or any lower priority claims.

7           As of December 31, 2010, the value of assets available for  
8           distribution by the Receiver, together with anticipated recovery  
9           sources, including recoveries on claims against directors, officers,  
10          and other professionals, claims in bankruptcy, and refunds of  
11          Federal and state taxes, was \$3,102,153,098. As of the same date,  
12          administrative expenses and depositor liabilities equaled  
13          \$4,555,852,340, exceeding available assets by \$1,453,699,242.  
14          Accordingly, the FDIC has determined that insufficient assets exist  
15          to make any distribution on general unsecured creditor claims (and  
16          any lower priority claims) and therefore all such claims, asserted or  
17          unasserted, will recover nothing and have no value.

18          (Id.)

19                 Subsequently, on March 14, 2013, the San Joaquin County Superior Court granted the  
20                 substitution of FDIC for Amtrust Bank for purposes of this action. (ECF No. 1-2 at 106-07.) On  
21                 April 4, 2013, FDIC then removed the action to this court pursuant to 12 U.S.C. § 1819, which  
22                 provides that generally, “all suits of a civil nature at common law or in equity to which the  
23                 [FDIC], in any capacity, is a party shall be deemed to arise under the laws of the United States”  
24                 for purposes of federal court jurisdiction. 12 U.S.C. § 1819(b)(2)(A).<sup>4</sup> Plaintiff did not file a  
25                 motion for remand or otherwise oppose the removal of the action to federal court.

26                 Presently pending before the court are several motions filed by various parties. On  
27                 August 5, 2013, plaintiff filed a motion for an extension of time until September 5, 2013, to serve  
28                 the remaining defendants with process. (ECF No. 9.) On September 23, 2013, defendant Quality  
29                 Loan Service Corporation appeared and filed a motion to dismiss pursuant to Federal Rule of  
30                 Civil Procedure 12(b)(6). (ECF No. 14.) Thereafter, on September 30, 2013, defendant FDIC  
31                 filed a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c).  
32                 (ECF No. 16.) Then, on October 15, 2013, defendants Linda K. Weeks and NorCal Gold, Inc.

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<sup>4</sup> An appropriate action must be removed by the FDIC “before the end of the 90-day period beginning on the date the action, suit, or proceeding is filed against the [FDIC] or the [FDIC] is substituted as a party.” 12 U.S.C. § 1819(b)(2)(B). Given that the FDIC was substituted as a party on March 14, 2013, the April 4, 2013 removal was timely.

1 (erroneously sued as Re/Max Gold Real Estate) appeared and joined in the motion to dismiss filed  
2 by defendant Quality Loan Service Corporation and the motion for judgment on the pleadings  
3 filed by defendant FDIC. (ECF No. 17.) These motions are addressed separately below.

4 DISCUSSION

5 Plaintiff's Motion for Extension of Time to Serve Defendants With Process

6 On August 5, 2013, plaintiff filed a motion for an extension of time until September 5,  
7 2013, to serve any remaining defendants with process. (ECF No. 9.) In that motion, plaintiff  
8 explained that he had not previously served the defendants other than Amtrust Bank with process,  
9 because he had relied on his former attorney to accomplish service of process. However,  
10 according to plaintiff, that attorney has since been suspended from the practice of law and no  
11 longer represents plaintiff.

12 Since the filing of plaintiff's motion, it appears that all of the defendants, except for  
13 defendant Williams & Williams Worldwide Real Estate Auctions, have now appeared through  
14 counsel. Nevertheless, in the interests of clarity, the court retroactively grants plaintiff an  
15 extension of time until September 5, 2013, to complete service of process.

16 FDIC's Motion for Judgment on the Pleadings

17 As noted above, FDIC filed a motion for judgment on the pleadings, which was noticed  
18 for hearing on November 7, 2013. (ECF No. 16.) Plaintiff failed to file an opposition or  
19 statement of non-opposition to that motion in accordance with Local Rule 230(c). After  
20 reviewing the papers in support of the motion, the court found the motion to be suitable for  
21 resolution without oral argument and submitted the motion on the record pursuant to Local Rule  
22 230(g). (ECF No. 19.)<sup>5</sup>

23 Request for Judicial Notice

24 Before proceeding to the substance of the FDIC's motion, the court addresses the FDIC's  
25 request for judicial notice filed in conjunction with that motion.

26 \_\_\_\_\_  
27 <sup>5</sup> The court notes that plaintiff had previously filed an opposition to the FDIC's first motion for  
28 judgment on the pleadings, which was withdrawn. (ECF Nos. 5, 11, 12.) In light of plaintiff's  
pro se status, the court has also reviewed and considered that prior opposition brief for purposes  
of the present motion for judgment on the pleadings.

1 “The court may judicially notice a fact that is not subject to reasonable dispute because it:  
2 (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and  
3 readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R.  
4 Evid. 201(b). A court may take judicial notice of “matters of public record.” Lee v. City of Los  
5 Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001).

6 The court grants the FDIC’s request for judicial notice, because the 11 exhibits of which  
7 judicial notice is requested (Exhibits A-K) are publicly recorded documents, public court records,  
8 documents from government agency websites, and/or contents from the Federal Register. As  
9 such, these documents constitute sources whose accuracy cannot reasonably be questioned.

10 *Substantive Analysis of the FDIC’s Motion for Judgment on the Pleadings*

11 “After the pleadings are closed--but early enough not to delay trial--a party may move for  
12 judgment on the pleadings.” Fed. R. Civ. P. 12(c). “Because the motions are functionally  
13 identical, the same standard of review applicable to a Rule 12(b) motion applies to its Rule 12(c)  
14 analog.” Dworkin v. Hustler Magazine Inc., 867 F.2d 1188, 1192 (9th Cir. 1989). Dismissal may  
15 generally be granted where there is no cognizable legal theory or lack of sufficient facts alleged  
16 under a cognizable legal theory. Balistreri v. Pacifica Police Dep’t, 901 F.2d 696, 699 (9th Cir.  
17 1990). In considering a motion for judgment on the pleadings, the Court accepts all factual  
18 allegations in the complaint as true and must construe them in the light most favorable to the non-  
19 moving party. Fleming v. Pickard, 581 F.3d 922, 925 (9th Cir. 2009). “[A] judgment on the  
20 pleadings is appropriate when, even if all allegations in the complaint are true, the moving party  
21 is entitled to judgment as a matter of law.” Westlands Water Dist. v. Firebaugh Canal, 10 F.3d  
22 667, 670 (9th Cir. 1993).

23 In its motion, the FDIC argues that plaintiff’s claims against the FDIC should be  
24 dismissed for lack of subject matter jurisdiction, because no effective relief can be granted as to  
25 such claims, which are moot and/or entirely precluded. That argument has merit.

26 Article III of the United States Constitution grants federal courts jurisdiction to decide  
27 only actual cases or controversies. U.S. Const. art. III, § 2, cl. 1; see also Gator.com Corp. v. L.L.  
28 Bean, Inc., 398 F.3d 1125, 1128 (9th Cir. 2005) (“It is an inexorable command of the United

1 States Constitution that the federal courts confine themselves to deciding actual cases and  
2 controversies.”). Thus, a federal court has a duty “to decide actual controversies by a judgment  
3 which can be carried into effect, and not to give opinions upon moot questions or abstract  
4 propositions, or to declare principles or rules of law which cannot affect the matter in issue in the  
5 case before it.” Mills v. Green, 159 U.S. 651, 653 (1895); see also Iron Arrow Honor Society v.  
6 Heckler, 464 U.S. 67, 70 (1983) (“Federal courts lack jurisdiction to decide moot cases because  
7 their constitutional authority extends only to actual cases or controversies.”); U.S. v. Geophysical  
8 Corp. of Alaska, 732 F.2d 693, 698 (9th Cir. 1984) (holding that federal courts “cannot take  
9 jurisdiction over a claim as to which no effective relief can be granted.”)

10 Based on the above-mentioned principles, courts have dismissed claims against the FDIC  
11 as receiver for mootness and lack of jurisdiction where the receivership estate has insufficient  
12 assets to satisfy the plaintiff’s claim. See Henrichs v. Valley View Development, 474 F.3d 609,  
13 615 (9th Cir. 2007) (affirming dismissal of moot claim against FDIC as receiver when no assets  
14 remained in the receivership to satisfy plaintiff’s claim, stating that federal courts “have no  
15 jurisdiction over moot claims.”); Rodrigues v. Fed. Deposit Ins. Corp., 2012 WL 1945497, at  
16 \*\*3-4 (N.D. Cal. May 30, 2012) (unpublished).

17 “Congress unequivocally expressed its intent to limit the maximum liability of the FDIC  
18 to the amount the claimant would have received in a liquidation under federal priority  
19 regulations.” First Ind. Fed. Sav. Bank v. F.D.I.C., 964 F.2d 503, 507 (5th Cir. 1992); Henrichs  
20 v. Valley View Dev., 474 F.3d 609, 615 (9th Cir. 2007) (citing First Ind. Fed. Sav. Bank, 964  
21 F.2d at 507); see also 12 U.S.C. § 1821(i)(2). Under the established priority scheme for  
22 distribution of receivership assets, general unsecured creditors, such as plaintiff here, are paid  
23 only after the administrative expenses incurred by the FDIC and depositor liabilities have first  
24 been paid in full. 12 U.S.C. § 1821(d)(11)(A); see also Fed. Deposit Ins. Corp. v. RPM Mortg.,  
25 2010 WL 9502044, at \*3 (C.D. Cal. Aug. 13, 2010) (unpublished).

26 In this case, the FDIC on April 30, 2011, formally determined, and on May 11, 2011,  
27 published a notice in the Federal Register, that the administrative expenses and depositor  
28 liabilities of the Amtrust Bank receivership exceeded available assets, and that “insufficient assets

1 exist in the receivership of AmTrust Bank, Cleveland, Ohio, to make any distribution to general  
2 unsecured claims, and therefore such claims will recover nothing and have no value.” (RJN Ex.  
3 I.)<sup>6</sup> Thus, the FDIC correctly points out that, even if all plaintiff’s allegations were accepted as  
4 true and plaintiff were to prevail on his claims against the FDIC, there would be no assets in the  
5 receivership estate from which plaintiff could recover any damages. As such, plaintiff’s damages  
6 claims against the FDIC are moot, there is no actual case or controversy with regards to such  
7 claims, and they should be dismissed for lack of subject matter jurisdiction.<sup>7</sup>

8 Furthermore, plaintiff’s claims for equitable relief, such as plaintiff’s claims for setting  
9 aside the trustee’s sale, cancellation of deed, and injunctive relief are barred by 12 U.S.C. §  
10 1821(j). The Ninth Circuit has explained that provision, and its role in the statutory framework,  
11 as follows:

12 Congress has granted the FDIC as receiver express statutory  
13 authority to dispose of receivership assets, thereby reducing the  
14 losses borne by federal taxpayers when federally insured financial  
15 institutions...fail. As receiver, the FDIC has broad authority to  
16 “take over the assets ... and conduct all business of the institution,”  
17 “collect all obligations and money due to the institution,” and  
18 “preserve and conserve the assets and property of such institution.”  
12 U.S.C. § 1821(d)(2)(B)(i), (ii), (iv). Moreover, the FDIC may  
“place the insured depository institution in liquidation and proceed  
to realize upon the assets of the institution...” 12 U.S.C. §  
1821(d)(2)(E). The FDIC as receiver may also “transfer any asset  
or liability of the institution in default ... without any approval,

19 <sup>6</sup> The court is permitted to consider the no-value determination in resolving the FDIC’s challenge  
20 to the court’s subject matter jurisdiction. See Rogers v. FDIC as Receiver for Downey Sav. &  
21 Loan, 2011 WL 2433647, at \*2 (E.D. Cal. June 14, 2011) (“Such evidence may be considered in  
22 conjunction with a challenge to subject matter jurisdiction.”) (citing McCarthy v. United States,  
850 F.2d 558, 560 (9th Cir. 1988)).

23 <sup>7</sup> Plaintiff’s opposition to the FDIC’s previously-withdrawn motion for judgment on the pleadings  
24 appears to question the accuracy of the FDIC’s no-value determination. However, courts have  
25 found such determinations, published in the Federal Register, to be “conclusive and binding on  
26 the court.” Nasoordeen v. F.D.I.C., 2010 WL 1135888, at \*8 (C.D. Cal. Mar. 17, 2010)  
27 (unpublished); see also Deutsche Bank Nat’l Trust Co. v. F.D.I.C., 854 F. Supp. 2d 756, 760 n.2  
28 (C.D. Cal. 2011). Even though there may well be other vehicles to challenge such administrative  
determinations, a collateral attack on the no-value determination in the context of this individual  
foreclosure action is improper. See 281-300 Joint Venture v. Onion, 938 F.2d 35, 38 (5th Cir.  
1991) (finding a collateral attack on a no-value determination to be improper); Bank of Am., N.A.  
v. F.D.I.C., 2013 WL 4505424, at \*6 (D.D.C. Aug. 26, 2013) (a no-value determination “is not  
subject to collateral attack through individual lawsuits against the FDIC.”).

1 assignment, or consent....” 12 U.S.C. § 1821(d)(2)(G)(i)(II).  
2 Finally, the FDIC may “exercise ... such incidental powers as shall  
3 be necessary to carry out such powers,” and “take any action  
4 authorized by this Chapter, which the [FDIC] determines is in the  
5 best interests of the depository institution, its depositors, or the  
6 [FDIC].” 12 U.S.C. § 1821(d)(2)(J)(i), (ii).

7 ...

8 Essential to these enumerated powers is the FDIC’s ability to carry  
9 out its basic functions as a receiver free from judicial restraint,  
10 pursuant to 12 U.S.C. § 1821(j). Section 1821(j), entitled  
11 “Limitation on court action,” states that “[e]xcept as provided in  
12 this section, no court may take any action, except at the request of  
13 the Board of Directors by regulation or order, to restrain or affect  
14 the exercise of powers or functions of the [FDIC] as a conservator  
15 or a receiver.”

16 It is well-established that § 1821(j) bars restraint by the courts on  
17 the statutory powers of the FDIC when it acts as receiver. *See In re*  
18 *Landmark Land Co.*, 973 F.2d 283, 290 (4th Cir. 1992) (stating that  
19 the comprehensive scheme of [the Financial Institutions Reform,  
20 Recovery, and Enforcement Act], which includes 12 U.S.C. §  
21 1821(j), indicates Congress’ intent to allow the RTC [the former  
22 entity charged with the FDIC’s present functions] full reign in  
23 exercising its statutory authority without injunctive restraints  
24 imposed by the courts); *Ward v. Resolution Trust Corp.*, 996 F.2d  
25 99, 102-04 (5th Cir. 1993) (stating that the RTC is free to liquidate  
26 receivership assets without being encumbered by the possibility of  
27 injunctive actions, and further explaining that rescission is even  
28 more problematic than an injunction); *Telematics Int’l, Inc. v.*  
*NEMLC Leasing Corp.*, 967 F.2d 703, 705 (1st Cir. 1992).

18 Sahni v. American Diversified Partners, 83 F.3d 1054, 1058 (9th Cir. 1996). Indeed, as the Ninth  
19 Circuit further observed:

20 [C]ourts have applied § 1821(j) to insulate the actions of the FDIC  
21 as receiver from restraint, even where the receiver is alleged to have  
22 violated state law and equitable remedies are available. *See Volges*  
23 *v. Resolution Trust Corp.*, 32 F.3d 50, 52 (2d Cir. 1994) (refusing to  
24 enjoin a receiver’s sale of mortgages even though the sale might  
25 violate state contract law because receivers have broad powers to  
26 dispose of the assets of a failed institution as they see fit), *cert.*  
27 *denied*, 515 U.S. 1162, 115 S.Ct. 2618, 132 L.Ed.2d 860 (1995);  
28 *Gross v. Bell Sav. Bank*, 974 F.2d 403, 407-08 (3d Cir. 1992)  
(holding that when the RTC performs functions assigned to it by  
statute, injunctive relief will be denied even when the RTC is acting  
in violation of other statutory schemes).

27 Id. at 1059-60.

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1 Here, plaintiff's property was foreclosed on and sold at a public auction on January 21,  
2 2009, at which Amtrust Bank itself purchased the property. (See Trustee's Deed Upon Sale, RJN  
3 Ex. F.) As noted above, the FDIC was subsequently appointed as Amtrust Bank's receiver on  
4 December 4, 2009. (RJN Ex. H.) Thereafter, on December 16, 2010, plaintiff's former property  
5 was conveyed by the FDIC to third parties via a special warranty deed recorded on December 21,  
6 2010. (RJN, Ex. G.) Plainly, the granting of plaintiff's requests for equitable relief in this action  
7 would constitute an improper judicial restraint on, and interference with, the FDIC's activities as  
8 receiver for Amtrust Bank in violation of section 1821(j), because such relief would essentially  
9 involve setting aside the prior conveyances and cancelling the associated deeds. Sahni, 83 F.3d at  
10 1059. Accordingly, plaintiff's equitable claims against the FDIC are precluded by section 1821(j)  
11 and are likewise subject to dismissal.

12 Therefore, for the reasons outlined above, the court concludes that the FDIC's motion for  
13 judgment on the pleadings should be granted. Because plaintiff's claims against the FDIC are not  
14 capable of being cured by further amendment, the claims should be dismissed with prejudice.

#### 15 Remaining Claims/Motions

16 As noted above, plaintiff's complaint contains only state law claims and does not assert  
17 any federal claims. Furthermore, the parties are not completely diverse, because plaintiff and at  
18 least one or more defendants (including defendant Linda K. Weeks) are alleged to be citizens of  
19 California. Indeed, the action was only removed to federal court in light of the FDIC's status as  
20 receiver of Amtrust Bank pursuant to 12 U.S.C. § 1819.

21 Therefore, in light of the recommendation that plaintiff's claims against the FDIC be  
22 dismissed with prejudice, the court also finds it appropriate to decline to exercise supplemental  
23 jurisdiction over the remaining claims. See 28 U.S.C. § 1367(c)(3) ("The district courts may  
24 decline to exercise supplemental jurisdiction over a claim...if – the district court has dismissed all  
25 claims over which it has original jurisdiction"); see also Acri v. Varian Associates, Inc., 114 F.3d  
26 999, 1000-01 (9th Cir. 1997) (" 'in the usual case in which all federal-law claims are eliminated  
27 before trial, the balance of factors . . . will point toward declining to exercise jurisdiction over the  
28 remaining state-law claims' "), quoting Carnegie-Mellon University v. Cohill, 484 U.S. 343, 350

1 n.7 (1988). Here, given that a trial date in this court has not yet been set, the court recommends  
2 that plaintiff's remaining claims be remanded to state court and that the pending motion to  
3 dismiss filed by defendant Quality Loan Service Corporation, and joined in by defendants Linda  
4 K. Weeks and NorCal Gold, Inc., be denied without prejudice. Importantly, the court expresses  
5 no opinion as to the merits of that motion, which may be renewed in state court pursuant to its  
6 procedures.

7 One issue raised by the motion to dismiss filed by defendant Quality Loan Service  
8 Corporation, and joined in by defendants Linda K. Weeks and NorCal Gold, Inc., requires some  
9 brief discussion. In that motion, these defendants contended, in addition to making other  
10 substantive arguments concerning the merits of plaintiff's claims, that plaintiff lacked standing to  
11 assert his claims, because plaintiff had filed a Chapter 13 bankruptcy petition in bankruptcy court,  
12 which was converted to a Chapter 7 case in September 2013. (ECF Nos. 14-1, 17.) It is well-  
13 established that "the bankruptcy code endows the bankruptcy trustee with the exclusive rights to  
14 sue on behalf of the estate." Estate of Spirtos v. One San Bernardino County Superior Court Case  
15 Numbered SPR 02211, 443 F.3d 1172, 1176 (9th Cir. 2006). The court further notes that, on  
16 October 24, 2013, plaintiff's Chapter 7 Trustee, Geoffrey Richards, filed a request for a  
17 continuance for at least 60 days to allow the Trustee, who had only recently been appointed, to  
18 make decisions on how to handle the case; for example, whether to pursue the claims, abandon  
19 the claims to plaintiff, etc. (ECF No. 18.)

20 Ordinarily, the court would be inclined to grant the Trustee such a continuance.  
21 Obviously, the issue of plaintiff's standing also applies to plaintiff's claims against the FDIC, and  
22 indeed, the FDIC also raised the standing issue in its motion for judgment on the pleadings. (ECF  
23 No. 16-1.) However, in light of the unique circumstances of this case, the court finds it  
24 appropriate to presently resolve the FDIC's motion for judgment on the pleadings. Regardless of  
25 whether the claims against the FDIC are ultimately pursued by the bankruptcy trustee or plaintiff  
26 (after any abandonment by the bankruptcy trustee), such claims are precluded for the reasons  
27 discussed above and must be dismissed. Because the involvement of the FDIC as a party is the  
28 only real basis for federal court jurisdiction, it makes little sense to grant the requested

1 continuance at this juncture, only in a few months to then recommend dismissal of the claims  
2 against the FDIC, with the action to be remanded to state court at that point. Judicial efficiency  
3 and economy are better served by addressing the incurable claims against the FDIC now, and  
4 allowing the case to be remanded to state court and to proceed without any unnecessary delays.

5 Notably, no prejudice to the Trustee would result. Due to the inherent time that passes  
6 between the issuance of these findings and recommendations and their adoption by the district  
7 judge (assuming that they are adopted), the Trustee should have sufficient time to investigate  
8 plaintiff's remaining claims and decide how he would like to proceed. Furthermore, upon any  
9 remand, the Trustee may also seek an appropriate extension of time in state court, if necessary.

#### 10 CONCLUSION

11 For the reasons discussed above, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's motion for an extension of time until September 5, 2013, to complete  
13 service of process (ECF No. 9) is GRANTED.
- 14 2. All further motion practice, except for any motions seeking relief of an emergency  
15 nature, is stayed pending resolution of the findings and recommendations by the  
16 district judge.


17 IT IS ALSO HEREBY RECOMMENDED that:

- 18 1. The FDIC's motion for judgment on the pleadings (ECF No. 16) be GRANTED.
- 19 2. Any asserted claims against the FDIC be DISMISSED WITH PREJUDICE.
- 20 3. The remaining claims in this action be REMANDED to the San Joaquin County  
21 Superior Court.
- 22 4. The motion to dismiss filed by defendant Quality Loan Service Corporation, and  
23 joined in by defendants Linda K. Weeks and NorCal Gold, Inc. (ECF No. 14), be  
24 DENIED WITHOUT PREJUDICE.
- 25 5. The Clerk of Court be directed to serve a certified copy of the order on the Clerk of  
26 the San Joaquin County Superior Court, and reference the state case number (39-2009-  
27 00206103-CU-OR-STK) in the proof of service.
- 28 6. The Clerk of Court be directed to close this case and vacate all dates.

1           These findings and recommendations are submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)  
3 days after being served with these findings and recommendations, any party may file written  
4 objections with the court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to the objections  
6 shall be served on all parties and filed with the court within fourteen (14) days after service of the  
7 objections. The parties are advised that failure to file objections within the specified time may  
8 waive the right to appeal the District Court’s order. Turner v. Duncan, 158 F.3d 449, 455 (9th  
9 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

10           IT IS SO ORDERED AND RECOMMENDED.

11 Dated: November 1, 2013

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14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE  
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