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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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JOHN TAYLOR, an individual;
and ANITA TAYLOR, an
individual,

No. 2:14-cv-02007-JAM-CMK

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Plaintiffs,

**ORDER GRANTING WELLS FARGO'S
MOTION TO DISMISS**

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v.

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WELLS FARGO BANK, N.A.; CAL-
WESTERN RECONVEYANCE CORP.,
and DOES 1-50, inclusive

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Defendants.

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Defendant Wells Fargo Bank, N.A. ("Wells Fargo") moves to

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dismiss (Doc. #15) Plaintiffs John and Anita Taylor's

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(collectively "Plaintiffs") first amended complaint ("FAC") (Doc.

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#14).¹ The motion is granted for the reasons set forth below.

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¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for February 11, 2015.

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1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 The factual allegations in the FAC are identical to those in
3 the original complaint (Doc. #1, Exh. A) and will not be
4 recounted at length here. In brief, Plaintiffs' claims are
5 premised on alleged misrepresentations by Wells Fargo that it
6 would not foreclose on a property despite Plaintiffs' default on
7 the underlying loan. Plaintiffs allege procedural defects in the
8 foreclosure and subsequent sale of their property and allege they
9 would have reinstated the loan had they known that the
10 foreclosure sale would take place.

11 The Court dismissed the original complaint in its entirety
12 with leave to amend (Doc. #13). Subsequently, Plaintiffs filed
13 the FAC, restating causes of action for (1) Wrongful Foreclosure;
14 (2) Negligent Misrepresentation; (3) Fraud; and (4) Quiet Title
15 and eliminating the cause of action for Breach of the Implied
16 Covenant of Good Faith and Fair Dealing. Plaintiffs' FAC is
17 nearly identical to the original complaint, contains only minimal
18 and non-substantive changes and fails to cure the defects of the
19 original complaint.

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21 II. OPINION

22 A. Request for Judicial Notice

23 Wells Fargo requests the Court take judicial notice (Doc.
24 #16) of numerous exhibits in support of its motion to dismiss.

25 Generally, the Court may not consider material beyond the
26 pleadings in ruling on a motion to dismiss for failure to state a
27 claim. The exceptions are material attached to, or relied on by,
28 the complaint so long as authenticity is not disputed, or matters

1 of public record, provided that they are not subject to
2 reasonable dispute. E.g., Sherman v. Stryker Corp., 2009 WL
3 2241664, at *2 (C.D. Cal. 2009) (citing Lee v. City of Los
4 Angeles, 250 F.3d 668, 688 (9th Cir. 2001) and Fed. R. Evid.
5 201).

6 The Court takes judicial notice of Wells Fargo's exhibits as
7 they are all either public or court records not subject to
8 reasonable dispute, information obtained from government
9 websites, or documents reflecting official acts of the executive
10 branch of the United States. Fed. R. Evid. 201; Williams v.
11 Wells Fargo Bank, NA, No. SA CV 13-0303-DOC, 2013 WL 2047000, at
12 *1 n.3 (C.D. Cal. 2013); Hines v. Wells Fargo Home Mortgage,
13 Inc., No. 2:14-CV-01386 JAM-KJN, 2014 WL 5325470, at *3 (E.D.
14 Cal. 2014).

15 B. Discussion

16 1. Wrongful Foreclosure

17 Wells Fargo moves to dismiss Plaintiffs' cause of action for
18 wrongful foreclosure. MTD at pp. 5-9. After carefully reviewing
19 the FAC, the Court finds Plaintiffs have failed to address any of
20 the deficiencies identified by the Court in its previous order
21 dismissing the original complaint and have simply restated the
22 original factual allegations verbatim.

23 The Court therefore grants Wells Fargo's motion to dismiss
24 Plaintiffs' wrongful foreclosure cause of action for failure to
25 allege the ability to tender the full amount of their
26 indebtedness or a basis for excusing them from the requirement.
27 See Gilliland v. Chase Home Fin., LLC, No. 2:13-CV-02042 JAM-AC,
28 2014 WL 325318, at *5 (E.D. Cal. 2014). As is clear by

1 Plaintiffs' failure to amend their pleading in any substantive
2 manner, the Court finds granting Plaintiffs further leave to
3 amend would be futile. See DeSoto v. Yellow Freight Sys., Inc.,
4 957 F.2d 655, 658 (9th Cir. 1992); Dick v. Am. Home Mortgage
5 Servicing, Inc., CIV. 2:13-00201 WBS, 2013 WL 5299180, at *6
6 (E.D. Cal. 2013). As a result, the Court dismisses the claim
7 with prejudice.

8 2. Negligent Misrepresentation and Fraud

9 Wells Fargo contends Plaintiffs' claims for negligent
10 misrepresentation and fraud also fail on the merits. MTD at pp.
11 9-13. Plaintiffs have not addressed the issues the Court cited
12 as fatal to these causes of action in the original complaint. As
13 stated previously, Plaintiffs were already contractually
14 obligated to make loan payments and were aware of the
15 consequences of failing to do so, default and foreclosure. See
16 Zierolf v. Wachovia Mortgage, C-12-3461 EMC, 2012 WL 6161352, at
17 *5-7 (N.D. Cal. 2012), appeal dismissed (July 31, 2013) (finding
18 "[t]he risk that one's home loan could go into default and one's
19 home be sold at a foreclosure auction for nonpayment is a remedy
20 provided in the loan agreement itself, not a consequence of
21 allegedly relying on promises to process a loan modification").

22 The Court is required to once again grant Defendant's motion
23 to dismiss Plaintiffs' causes of action for negligent
24 misrepresentation and fraud based on Plaintiffs' failure to
25 adequately allege damages as a result of the misrepresentations,
26 a necessary element of each claim. Based on Plaintiffs' repeated
27 failure to adequately state claims for negligent
28 misrepresentation and fraud, the Court finds granting leave to

1 amend would be futile. See DeSoto, 957 F.2d at 658; Dick, 2013
2 WL 5299180, at *6. Both causes of action are therefore dismissed
3 with prejudice.

4 3. Quiet Title

5 Finally, Wells Fargo moves to dismiss Plaintiffs' cause of
6 action for quiet title. MTD at pp. 13-14. In their opposition,
7 Plaintiffs' consent to the dismissal of this claim but request
8 that it be without prejudice. Opp. at pp. 1, f.n. 1, 3-4.
9 Plaintiffs also indicate that if they were allowed to file a
10 second amended complaint this claim would be omitted. Given that
11 the Court is not granting leave to amend the other causes of
12 action and this claim would not have been included in an amended
13 complaint, Plaintiff's request is denied.

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15 III. ORDER

16 Defendant's motion to dismiss Plaintiffs' First Amended
17 Complaint is GRANTED WITH PREJUDICE.

18 IT IS SO ORDERED.

19 Dated: February 12, 2015

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22 JOHN A. MENDEZ,
23 UNITED STATES DISTRICT JUDGE
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