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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

RAJ SINGH and KAREN SINGH, on  
behalf of themselves and all other similarly  
situated,

Plaintiffs,

v.

WELLS FARGO BANK and DOES 1  
through 1000,

Defendant.

No. 2:15-cv-2664-JAM-EFB PS

FINDINGS AND RECOMMENDATIONS

This case is before the court on defendant Wells Fargo Bank, N.A.’s motion to dismiss plaintiffs’ complaint pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6) for failure to state a claim or, in the alternative, for a more definite statement pursuant to Rule 12(e).<sup>1</sup> ECF No. 18. For the reasons explained below, it is recommended that the motion be granted and the compliant dismissed for failure to state a claim.<sup>2</sup>

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<sup>1</sup> This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1)

<sup>2</sup> The court determined that oral argument would not materially assist in the resolution of the pending motion and the matter was ordered submitted on the briefs. ECF No. 24; see E.D. Cal. L.R. 230(g);

1 I. Factual Allegations

2 The factually allegations in the complaint are limited. Plaintiffs Raj Singh and Karen  
3 Singh purport to bring this action on behalf of themselves and all persons similarly situated  
4 against defendant Wells Fargo Bank, N.A. (“Wells Fargo”) for “violations of California Codes  
5 and United States Codes.” Compl. (ECF No. 1) 1. The complaint suggests that plaintiffs owned  
6 real property located at 4304 Swiss Court, Elk Grove, California (the “subject property”). *Id.* At  
7 some unspecified time, defendant obtained the subject property through foreclosure “at the price  
8 of balance of mortgage.” *Id.* at 1-2. After purchasing the property, defendant allegedly informed  
9 the Internal Revenue Service that it purchased the property for significantly less than the actual  
10 purchase price, which increased plaintiffs’ tax liability. *Id.* at 2. Plaintiffs further claim that  
11 defendant illegally evicted them “without providing necessary documents and notices.” *Id.*

12 Plaintiffs also generally allege that defendant has engaged in a policy of misleading and  
13 discriminating against borrowers by charging erroneous fines and costs. *Id.* at 1. Defendant also  
14 allegedly denied short sales, loan modification and other foreclosure alternatives “illegally and in  
15 misleading way[s].” *Id.* The complaint purports to assert three causes of action styled as: (1)  
16 “Illegal Hardship and/or illegal acts of Defendants,” (2) “Violation of Constitutional Rights,” and  
17 (3) “Civil Conspiracy.” *Id.* at 2-4. The complaint further states that the action is brought  
18 “pursuant to California Health and Safety Code, California Business and Professions Code and  
19 other codes for damages and restitution and disgorgement of profits obtained by Defendants [sic]  
20 as a result of their violations of the California codes and their harassment to Plaintiffs.” *Id.* at 2.

21 II. Rule 12(b)(6) Standard

22 To survive dismissal for failure to state a claim pursuant to Rule 12(b)(6), a complaint  
23 must contain more than a “formulaic recitation of the elements of a cause of action”; it must  
24 contain factual allegations sufficient to “raise a right to relief above the speculative level.” *Bell*  
25 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading must contain something more  
26 . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of  
27 action.” *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-  
28 236 (3d ed. 2004)). “[A] complaint must contain sufficient factual matter, accepted as true, to

1 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)  
2 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when plaintiff pleads factual  
3 content that allows the court to draw the reasonable inference that the defendant is liable for the  
4 misconduct alleged.” *Id.* Dismissal is appropriate based either on the lack of cognizable legal  
5 theories or the lack of pleading sufficient facts to support cognizable legal theories. *Balistreri v.*  
6 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

7 In considering a motion to dismiss, the court must accept as true the allegations of the  
8 complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), construe  
9 the pleading in the light most favorable to the party opposing the motion, and resolve all doubts in  
10 the pleader’s favor. *Jenkins v. McKeithem*, 395 U.S. 411, 421, *reh’g denied*, 396 U.S. 869  
11 (1969). The court will “presume that general allegations embrace those specific facts that are  
12 necessary to support the claim.” *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 256  
13 (1994) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

14 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.  
15 *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir.  
16 1985). The Ninth Circuit has held that the less stringent standard for pro se parties is now higher  
17 in light of *Iqbal* and *Twombly*, but the court still continues to construe pro se filings liberally.  
18 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). However, the court’s liberal interpretation of  
19 a pro se litigant’s pleading may not supply essential elements of a claim that are not pled. *Pena v.*  
20 *Gardner*, 976 F.2d 469, 471 (9th Cir. 1992); *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d  
21 266, 268 (9th Cir. 1982). Furthermore, “[t]he court is not required to accept legal conclusions  
22 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the  
23 facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). Neither  
24 need the court accept unreasonable inferences, or unwarranted deductions of fact. *W. Mining*  
25 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

26 In deciding a Rule 12(b)(6) motion to dismiss, the court may consider facts established by  
27 exhibits attached to the complaint. *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir.  
28 1987). The court may also consider facts which may be judicially noticed, *Mullis v. U.S. Bankr.*

1 Ct., 828 F.2d 1385, 1388 (9th Cir. 1987), and matters of public record, including pleadings,  
2 orders, and other papers filed with the court, *Mack v. South Bay Beer Distribs.*, 798 F.2d 1279,  
3 1282 (9th Cir. 1986).

4 III. Discussion

5 Defendant argues that the complaint must be dismissed for failure to allege sufficient facts  
6 to state a claim for relief. ECF No. 18 at 4-5. Defendant further argues that, to the extent  
7 plaintiffs' claims are predicated on the foreclosure of the subject property, they are barred by the  
8 applicable statute of limitations. *Id.* at 6.

9 As a threshold matter, plaintiffs cannot maintain this case as a class action lawsuit. It is  
10 well established that while individuals may appear *in propria persona* on their own behalf, they  
11 may not represent the interests of others without first obtaining counsel. *C E. Pope Equity Trust*  
12 *v. United States*, 818 F.2d 698 (9th Cir. 1987) (citing *McShane v. United States*, 366 F.2d 286  
13 (9th Cir. 1966)). The assertion of class claims is also inappropriate because plaintiffs, as laymen,  
14 cannot "fairly and adequately protect the interests of the class," as required by Rule 23(a)(4) of  
15 the Federal Rules of Civil Procedure. *See Martin v. Middendorf*, 420 F. Supp. 779 (D.D.C.  
16 1976). Thus, plaintiffs may only assert individual claims.

17 As to the claims on their own behalf, plaintiffs fail to allege sufficient facts to state a  
18 claim for relief. As argued by defendant, the complaint rests heavily on vague and conclusory  
19 allegations, without identifying the specific conduct performed by defendant that caused harm to  
20 plaintiffs. For instance, plaintiffs refer to "contracts between Wells Fargo and its borrowers," and  
21 contend that defendant maintained "a policy of misleading, discriminating, and charging  
22 erroneous fines and costs," ECF No. 1 at 1, but they fail to state whether they were charged  
23 improper fees or even had a contractual relationship with defendant.

24 It is also not clear the precise causes of action plaintiffs intend to assert against defendant.  
25 They purport to assert claims for "Illegal Hardship and/or illegal acts of Defendants," "Violation  
26 of Constitutional Rights, and "Civil Conspiracy," but fail to identify any specific constitutional or  
27 statutory violation. While plaintiffs also contend that the complaint is brought pursuant to the  
28 California Health and Safety Code and California Business and Professions Code, they do not

1 identify a specific provision that defendant allegedly violated, nor do they allege any facts to  
2 support a violation under these codes. Accordingly, plaintiffs' complaint must be dismissed for  
3 failure to state a claim.

4 In his opposition, plaintiff Raj Singh appears to acknowledge that the complaint is  
5 deficient and provides additional factual background concerning the foreclosure of the subject  
6 property. ECF No. 21 at 1-5. He also filed a proposed first amended complaint, which he intends  
7 to serve as a more definite statement.<sup>3</sup> *Id.* at 7-11. Although the additional facts provided in  
8 these documents may not be considered in resolving defendant's Rule 12(b)(6) motion, as the  
9 inquiry for that motion is limited to the sufficiency of the allegations in the operative complaint,  
10 *Schneider v. Cal. Dep't of Corrections*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) ("In determining  
11 the propriety of a Rule 12(b)(6) dismissal, a court *may not* look beyond the complaint to a  
12 plaintiff's moving papers, such as a memorandum in opposition to a defendant's motion to  
13 dismiss."), such facts may be considered in deciding whether leave to amend is appropriate.  
14 *Broam v. Bogan*, 320 F.3d 1023, 1026 n. 2 (9th Cir. 2003). Here, even with the additional facts,  
15 plaintiffs cannot state a claim for relief.

16 In his opposition, Mr. Singh explains that this action was filed "primarily to correct the  
17 amount of cancelled debt." ECF No. 21 at 2. He explains that Ms. Singh obtained a loan from  
18 defendant in the amount of \$357,000, which was secured by a deed of trust on the subject  
19 property. ECF No. 21 at 1. After she fell behind on her mortgage payments, foreclosure  
20 proceedings were initiated and the property was eventually sold to defendant at a Trustee Sale on  
21 May 12, 2010. *Id.* at 2. Mr. Singh claims, however, that "Wells Fargo Bank illegally took the  
22 property without paying anything and simply showing the consideration of \$170,133.30." *Id.* He  
23 contends that defendant could not purchase the property for less than \$368,292.84, which was the  
24 amount owed on the loan. He further alleges that defendant wrongfully reported to the IRS that a

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26 <sup>3</sup> Karen Singh did not file an opposition to Wells Fargo's motion. Raj Singh submitted an  
27 opposition which purports to assert arguments on behalf of both plaintiffs. *See* ECF No. 21.  
28 However, that opposition, as well as the proposed first amended complaint, are not signed by  
Karen Singh. As Mr. Singh is not an attorney, and therefore is not permitted to represent Ms.  
Singh's interest in this action, the court construes the opposition as filed only by Raj Singh.

1 debt in the sum of \$174,899.18 remained after the sale, which increased the amount plaintiffs  
2 owed in taxes.<sup>4</sup> *Id.*

3 Mr. Singh's opposition and proposed amended complaint demonstrate that leave to amend  
4 would be futile. First, Mr. Singh's claim that defendant purchased the property without tendering  
5 payment, even if true, does not provide a basis for relief. "At the nonjudicial foreclosure sale, the  
6 beneficiary is entitled to make a credit bid up to the amount of his indebtedness, since it would be  
7 useless to require him to tender cash which would only be immediately returned to him."

8 *Sumitomo Bank v. Taurus Developers, Inc.*, 185 Cal. App. 3d 211, 219 (1986); *see also First*  
9 *Commercial Mortgage Co. v. Reece*, 89 Cal. App. 731, 737 (2001) ("[T]he lender is not required  
10 to pay cash, but is entitled to make a credit bid up to the amount of the outstanding indebtedness.  
11 The purpose of this entitlement is to avoid the inefficiency of requiring the lender to tender cash  
12 which would be immediately returned to it."). Furthermore, Wells Fargo was permitted to  
13 purchase the subject property for less than amount owed on the loan. *See Romo v. Stewart Title*  
14 *of Cal.*, 35 Cal. App. 4th 1609, 1614 n.3 (1995) ("The lender-beneficiary is not required to make  
15 a full credit bid. He may bid whatever amount he thinks the property is worth. Indeed, many  
16 creditors enter low bids to provide access to additional security or additional funds.");  
17 *Commonwealth Mortgage Assurance Co. v. Superior Court*, 211 Cal. App. 3d 508, 520 (1989)  
18 ("The lender is not required to open the bidding with a full credit bid, but may bid whatever  
19 amount he thinks the property is worth.").

20 Lastly, Mr. Singh's contention that defendant wrongfully reported a debt to the IRS also  
21 fails to provide a basis for liability. Mr. Singh claims that defendant should not have reported a  
22 debt to the IRS because any debt owed to defendant was extinguished upon foreclosure of the  
23 property. ECF No. 21 at 2-3. California Civil Code Section 580b provides that "[n]o deficiency  
24 judgment shall lie in the event after a sale of real property for failure of the purchaser to complete  
25 his contract of sale . . . [u]nder a deed of trust or mortgage on a dwelling . . . given to a lender to  
26 secure repayment of a loan that was used to pay all or part of the purchase price of that dwelling."

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27 <sup>4</sup> Mr. Singh also filed a sur reply which confirms that crux of this dispute is over Wells  
28 Fargo reporting a debt to the IRS. *See generally* ECF No. 25.

1 Cal. Civ. Code. 580b(a)(3). While the statute bars the lender from obtaining a deficiency  
2 judgment, it does not extinguish the underlying debt. *See, e.g., Johnson v. Wells Fargo Home*  
3 *Mortg., Inc.*, 2013 WL 7211905, at \*4-7 (C.D. Cal. Sept. 13, 2013) (“Section 580b as currently  
4 written eliminates a creditor’s ability to seek a deficiency judgment [after a nonjudicial  
5 foreclosure], but does not eliminate or extinguish the underlying debt.”); *Abdelfattah v.*  
6 *Carrington Mort. Services LLC*, 2013 WL 495358, at \* 2-3 (N.D. Cal. Feb. 7, 2013) (“The statute  
7 only bars a creditor from obtaining a deficiency judgment from a borrower after the creditor has  
8 completed non judicial foreclosure,” and does not preclude the reporting of a deficiency); *Prianto*  
9 *v. Experian Information Solutions, Inc.*, 2014 WL 3381578, at \*5 (N.D. Cal. July 10, 2014)  
10 (“[b]ecause section 580b does not extinguish a consumer’s underlying debt, there can be no  
11 liability for a furnisher accurately reporting the existence of that debt unless there is a dispute  
12 about the debt’s patent or facial accuracy.”). Accordingly, contrary to Mr. Singh’s contention, the  
13 unsatisfied portion of the debt was not extinguished after the foreclosure of the subject property,  
14 and therefore the reporting of the remaining debt fails to support a claim upon which relief may  
15 be granted.

16 As it is clear from the facts already presented by plaintiff that granting leave to amend  
17 would be futile, it is recommended that plaintiff’s complaint be dismissed without further leave to  
18 amend. *See Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987) (While the court ordinarily  
19 would permit a pro se plaintiff to amend, leave to amend should not be granted where it appears  
20 amendment would be futile).

#### 21 IV. Conclusion

22 Accordingly, it is hereby RECOMMENDED that:

- 23 1. Defendant’s motion to dismiss the complaint for failure to state a claim (ECF No. 18)  
24 be granted;
- 25 2. The complaint be dismissed without leave to amend;
- 26 3. The Clerk be directed to close the case.

27 These findings and recommendations are submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written  
2 objections with the court and serve a copy on all parties. Such a document should be captioned  
3 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
4 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
5 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

6 DATED: August 17, 2017.

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8 EDMUND F. BRENNAN  
9 UNITED STATES MAGISTRATE JUDGE  
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