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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANA ALVAREZ,
Plaintiff,
v.
MTC FINANCIAL INC., et al.,
Defendants.

Case No. [3:16-cv-06428-WHO](#)

**ORDER GRANTING MOTION FOR
JUDGMENT ON THE PLEADINGS**

Re: Dkt. No. 51

INTRODUCTION

Plaintiff Ana Alvarez brought this action against defendants MTC Financial, Inc. dba Trustee Corps (“MTC”) and JPMorgan Chase Bank (“Chase”) alleging claims arising from defendants’ failure to contact her prior to pursuing foreclosure of her residence. I previously dismissed eight of ten of her causes of action—first with leave to amend, Dkt. No. 24, and then without leave to amend, Dkt. No. 50. That left her with two claims remaining—one under the Homeowners Bill of Rights, and another under Civil Code section 2923.5. Chase subsequently rescinded its notice of default. With no notice of default, there can be no pending foreclosure, and therefore, no remedy for her claims. Chase’s motion for judgment on the pleadings is GRANTED.

BACKGROUND¹

On June 26, 2007, Alvarez obtained a \$600,000 loan from Chase secured by a Deed of Trust (“DOT”) for the real property located at 270 Beachview Avenue, #14, Pacifica, California

¹ The background is recited in full in previous orders, only a snapshot is presented here.

1 94044. *See* Def.’s Request for Judicial Notice (RJN), Ex. 1 (Dkt. No. 51-2).² On June 26, 2015,
2 MTC was substituted as the trustee under the DOT. FAC ¶ 22; RJN, Ex. 2 (Dkt. No. 51-3). On
3 July 10, 2015, MTC issued a Notice of Default and Election to Sell (“NOD”), and caused the
4 NOD to be recorded on July 13, 2015. *See* RJN, Ex. 3 (Dkt. No. 51-4). MTC issued a Notice of
5 Trustee’s Sale on July 19, 2016. *See* RJN, Ex. 4 (Dkt. No. 51-5).

6 Alvarez filed this action on September 26, 2016, and after two rounds of briefing on
7 Chase’s motions to dismiss, only Alvarez’s claims under the HBOR and California Civil Code
8 section 2923.5 remained. *See* Dkt. Nos. 24, 50.

9 On April 26, 2017, the NOD was rescinded, and the Notice of Rescission was recorded on
10 May 2, 2017. *See* RJN, Ex. 5 (Dkt. No. 51-6). On June 8, 2017, Chase moved for judgment on
11 the pleadings. Mot. for J. on Pleadings (“Mot.”)(Dkt. No. 51). Alvarez filed an opposition that
12 largely copied her earlier, unsuccessful opposition to the Motion to Dismiss, but did not appear at
13 the hearing on July 19, 2017. *See* Dkt. Nos. 53, 44, 50.

14 **LEGAL STANDARD**

15 A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c)
16 utilizes the same standard as a motion to dismiss for failure to state a claim under Federal Rule of
17 Civil Procedure 12(b)(6). *Cafasso, United States ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d
18 1047, 1055 n.4 (9th Cir. 2011). Under both provisions, the court accepts the facts alleged in the
19 complaint as true and must determine whether the facts entitle the plaintiff to a legal remedy.
20 *Chavez v. United States*, 683 F.3d 1102, 1108 (9th Cir. 2012) (citation omitted). Either motion
21 may be granted only when it is clear that “no relief could be granted under any set of facts that
22

23 ² Chase requests the court to take judicial notice of: (1) the 2007 Deed of Trust (RJN, Ex. 1, Dkt.
24 No. 51-2); (2) 2015 Substitution of Trustee (RJN, Ex. 2, Dkt. No. 51-3); (3) 2015 Notice of
25 Default and Election to Sell Under the Deed of Trust (RJN, Ex. 3, Dkt. No. 51-4); (4) the July
26 2016 Notice of Trustee’s Sale (RJN, Ex. 4, Dkt. No. 51-5); (5) the Notice of Rescission recorded
27 on May 2, 2017 (RJN, Ex. 5, Dkt. No. 51-6). Plaintiff submits no objection to the request. Under
28 Federal Rules of Evidence 201, a court may take judicial notice of facts “not subject to reasonable
dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or
(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be
questioned.” Fed. R. Evid. 201(b). Judicial notice of public records is appropriate, *United States
v. 14.02 Acres of Land More or Less in Fresno County*, 547 F.3d 943, 955 (9th Cir. 2008), and
defendant’s request is GRANTED.

1 could be proven consistent with the allegations.” *McGlinchy v. Shull Chem. Co.*, 845 F.2d 802,
2 810 (9th Cir. 1988) (citations omitted). Dismissal may be based on either the lack of a cognizable
3 legal theory or absence of sufficient facts alleged under a cognizable legal theory. *Robertson v.*
4 *Dean Witter Reynolds, Inc.*, 749 F. 2d 530, 534 (9th Cir. 1984).

5 A plaintiff's complaint must allege facts to state a claim for relief that is plausible on its
6 face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). A claim has “facial plausibility” when the
7 party seeking relief “pleads factual content that allows the court to draw the reasonable inference
8 that the defendant is liable for the misconduct alleged.” *Id.* Although the court must accept as
9 true the well-pleaded facts in a complaint, conclusory allegations of law and unwarranted
10 inferences will not defeat an otherwise proper Rule 12(b)(6) motion. *See Sprewell v. Golden State*
11 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). “[A] plaintiff's obligation to provide the ‘grounds’ of
12 his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of
13 the elements of a cause of action will not do. Factual allegations must be enough to raise a right to
14 relief above the speculative level.” *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
15 (citations and footnote omitted).

16 **DISCUSSION**

17 Alvarez’s first claim alleges violations of Civil Code sections 2923.55 and 2924.17, FAC
18 ¶¶ 44–53, and her second claim alleges a violation of civil code section 2923.5, *id.* ¶¶ 54–59.
19 These provisions require a mortgage servicer to attempt to contact a lender to discuss alternatives
20 to foreclosure, prior to pursuing foreclosure proceedings. “The sole remedy for noncompliance
21 with the procedural requirements of section 2923.5 is postponement of a foreclosure sale until
22 there has been compliance with the statute.” *Davis v. Nationstar Mortg., LLC*, 2016 WL 7178466,
23 at *7 (E.D. Cal. Dec. 9, 2016). Since Chase rescinded the NOD, plaintiffs’ claims must fail.

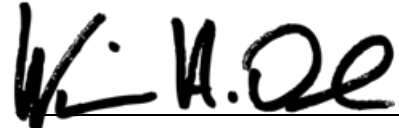
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CONCLUSION

In accordance with the foregoing, Chase’s motion for judgment on the pleadings is GRANTED, and judgment will be entered accordingly.

IT IS SO ORDERED.

Dated: July 20, 2017



William H. Orrick
United States District Judge