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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHARLES E. WARD, ET AL.,

No. C-13-01735 DMR

Plaintiff(s),

**ORDER GRANTING MOTION TO  
DISMISS QUIET TITLE CLAIM  
AGAINST GREGORY ALAN PICKETT  
AND PENNY JANE PICKETT [DOCKET  
NO. 78]**

v.

GREGORY ALAN PICKETT, ET AL.,

Defendant(s).

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Before the court is a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) filed by Defendants Gregory Alan Pickett and Penny Jane Pickett (the “Picketts”). [Docket No. 78.] The court finds that the motion is appropriate for resolution without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons stated below, the motion is granted, and the quiet title claim is dismissed without leave to amend.

**I. BACKGROUND**

The allegations of the original complaint are summarized in the court’s previous order on several motions to dismiss, dated October 3, 2013. *See* Docket No. 59 at 2-4. The order granted Plaintiffs Charles E. Ward and Linda S. Ward (“Plaintiffs”) leave to file an amended complaint as to certain claims. The revised First Amended Complaint (“RFAC”), *see* Docket No. 73, alters some of the original allegations and adds others, but the key allegations in this dispute remain unchanged:

1 Plaintiffs allege that Defendants engaged in alleged acts of fraud and deceit that culminated in the  
2 loss of Plaintiffs’ home (the “Property”), in a foreclosure sale dated April 22, 2010. RFAC at ¶ 14.  
3 Specifically, Plaintiffs allege that their neighbors, the Picketts, led Plaintiffs to believe that the  
4 Picketts would contract directly with Plaintiffs to purchase the Property, but instead surreptitiously  
5 purchased the property at a foreclosure sale. RFAC at ¶¶ 22-31.

6 The original complaint had alleged a quiet title claim against all Defendants. On October 3,  
7 2013, the court dismissed the quiet title claim because of two specific deficiencies in its pleading:  
8 (1) “Plaintiffs’ quiet title claim fails at the outset because Plaintiffs have failed to allege facts  
9 supporting their allegation that they are the rightful owners of the Property. Instead, they admit (and  
10 the documents of which the court has taken judicial notice show) that they were in default”;  
11 and (2) “[f]urthermore . . . Plaintiffs do not allege that they have attempted to tender the loan  
12 amount, have the ability to do so, or that such equitable circumstances exist such that tender should  
13 not be required.” Docket No. 59 at 20. The court also found that Plaintiffs had abandoned the quiet  
14 title claim against all Defendants other than the Picketts. The court then dismissed the quiet title  
15 claim with leave to amend only as to Plaintiffs’ claim against the Picketts.

16 The RFAC again asserts a quiet title claim against the Picketts. The RFAC adds the  
17 following new allegations that are relevant to this motion: (1) Plaintiffs “are the rightful owners of  
18 the Property,” (2) Plaintiffs “are prepared to pay the entire amount of the secured debt and  
19 associated charges promptly,” and (3) Plaintiffs “could have paid the entire secured debt and  
20 associated penalties/fees or the amount in default (plus associated penalties and fees) prior to April  
21 15, 2010, could have obtained alternate financing, or could have obtained another buyer,”<sup>1</sup> but did  
22 not exercise any of these options “because of the fraudulent misrepresentations of the Pickett  
23 Defendants and the wrongful foreclosure and negligence of Wells Fargo.” RFAC at ¶¶ 33-34.

24 **II. LEGAL STANDARD**

25 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in  
26 the complaint. *See Parks Sch. of Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). When

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28 <sup>1</sup> Plaintiffs further allege that “a developer had offered to subdivide and develop the Property,  
which offer exceeded the sum owed to Wells Fargo before and at the foreclosure sale.” RFAC at ¶ 34.

1 reviewing a motion to dismiss for failure to state a claim, the court must “accept as true all of the  
2 factual allegations contained in the complaint,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per  
3 curiam) (citation omitted), and may dismiss the case “only where there is no cognizable legal  
4 theory” or there is an absence of “sufficient factual matter to state a facially plausible claim to  
5 relief.” *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing  
6 *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.  
7 2001)) (quotation marks omitted). A claim has facial plausibility when a plaintiff “pleads factual  
8 content that allows the court to draw the reasonable inference that the defendant is liable for the  
9 misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged  
10 must demonstrate “more than labels and conclusions, and a formulaic recitation of the elements of a  
11 cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 555 (2007) (citing *Papasan*  
12 *v. Allain*, 478 U.S. 265, 286 (1986)); see *Lee v. City of L.A.*, 250 F.3d 668, 679 (9th Cir. 2001),  
13 *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

14 Federal Rule of Civil Procedure 15(a) establishes that leave to amend “shall be freely given  
15 when justice so requires.” However, “[w]hen a proposed amendment would be futile, there is no  
16 need to prolong the litigation by permitting further amendment.” *Gardner v. Martino*, 563 F.3d 981,  
17 990 (9th Cir. 2009).

### 18 III. DISCUSSION

19 “The purpose of a quiet title action ‘is to finally settle and determine, as between the parties,  
20 all conflicting claims to the property in controversy, and to decree to each such interest or estate  
21 therein as he may be entitled to.’” *Martinez v. America’s Wholesale Lender*, No. 09-cv-5630 WHA,  
22 2010 WL 934617 at \*5 (N.D.Cal. Mar. 15, 2010) (quoting *Peterson v. Gibbs*, 147 Cal. 1, 5, 81 P.  
23 121 (1905)), *rev’d in part on other grounds*, 446 Fed. Appx. 940 (9th Cir. 2011).

24 California Code of Civil Procedure § 761.020 sets forth the requirements for a quiet title  
25 claim. Specifically, this statute requires that Plaintiffs set forth five elements in a “verified  
26 complaint”<sup>2</sup>: (1) a legal description and common designation of the property; (2) the title of the

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28 <sup>2</sup> Neither the complaint nor the RFAC are verified. The failure to verify the complaint provides  
an additional basis for dismissing Plaintiffs’ quiet title claim.

1 plaintiff and its basis; (3) the adverse claims to the plaintiff’s title; (4) the date as of which the  
2 determination is sought; and (5) a prayer that title is quieted in the plaintiff. Cal. Civ. Proc. Code §  
3 760.020(a)-(e). *See Briosos v. Wells Fargo Bank*, No. 10-cv-2834 LB, 2011 WL 1740100 at \*11  
4 (N.D. Cal. May 5, 2011).

5         The second requirement of the statute requires plaintiffs bringing quiet title claims to show  
6 they “are the rightful owners of the property, i.e., that they have satisfied their obligations under the  
7 Deed of Trust.” *Kelley v. Mortgage Elec. Registration Sys.*, 642 F.Supp.2d 1048, 1057 (N.D.Cal.  
8 2009). “It is settled in California that a mortgagor cannot quiet his title against the mortgagee  
9 without paying the debt secured.” *Briosos v. Wells Fargo Bank*, 737 F. Supp. 2d 1018, 1032 (N.D.  
10 Cal. 2010) (quoting *Shimpones v. Stickney*, 219 Cal. 637, 649 (1934)). In other words, parties who  
11 have defaulted on their obligations under the deed of trust are not considered rightful owners. *See*,  
12 *e.g., Tamburri v. Suntrust Mortgage, Inc.*, No. 11-cv-2899-EMC, 2011 WL 6294472 at \*15 (N.D.  
13 Cal. Dec. 15, 2011) (“The problem with Plaintiff’s [quiet title] argument is that, even if the proper  
14 party did not initiate foreclosure, Plaintiff does not allege that she is the rightful owner as she admits  
15 that she is in default.”); *Castillo v. Wachovia Mortgage et al.*, No. 12-cv-101-EMC, 2012 WL  
16 123296 at \*7 (N.D Cal. Apr. 11, 2012) (plaintiff had “no cognizable quiet title claim because he has  
17 not alleged that he is the rightful owner of the property, i.e. that he has satisfied his obligations  
18 under the deed of trust”); *Allen v. U.S. Bank, NA*, No. 13-cv-1527-LJO SMS, 2013 WL 5587389 at  
19 \*5 (E.D. Cal. Oct. 10, 2013) (complaint lacks allegations that plaintiff has satisfied his obligations  
20 under the Deed of Trust and thus quiet title claim is insufficiently pled).

21         In addition to the statutory requirements for a quiet title claim, “the tender requirement  
22 applies to a quiet title action that seeks to set aside a trustee’s sale for irregularities in sale notice or  
23 procedure” except where the foreclosure sale is void, as opposed to merely voidable. *Martinez*, 446  
24 F. Appx. at 943 (quotations omitted); *Montoya v. Countrywide Bank*, No. 09-cv-641 JW, 2009 WL  
25 1813973 at \*11-12 (N.D. Cal. June 25, 2009) (“Under California law, the ‘tender rule’ requires that  
26 as a precondition to challenging a foreclosure sale, or any cause of action implicitly integrated to the  
27 sale, the borrower must make a valid and viable tender of payment of the debt” and applying tender  
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1 rule to quiet title and wrongful foreclosure claims). *See also* Docket No. 59 at 16-19 (discussing the  
2 tender requirement as applied to the original allegations in this case).

3 Plaintiffs’ main argument for the sufficiency of their renewed quiet title claim is that the  
4 RFAC adds allegations that, at the time of the foreclosure sale, Plaintiffs were able tender the loan  
5 amount, and that Plaintiffs are now prepared to pay the entire amount of the secured debt and  
6 associated charges. Even assuming arguendo that these new allegations of Plaintiffs’ past and  
7 present ability to tender the debt amount are sufficient to meet the tender requirement, Plaintiffs’  
8 amended quiet title claim remains deficient because Plaintiffs have failed to allege facts supporting  
9 their allegation that they are the rightful owners of the Property. Instead, they admit (and the  
10 documents of which the court has previously taken judicial notice show) that they were in default.  
11 *See* Docket No. 59 at n. 2 (taking judicial notice of, inter alia, (1) a Deed of Trust requiring Plaintiffs  
12 to “pay to Lender, on time, all principal and interest due under the Secured Notes”; (2) a Notice of  
13 Default and Election to Sell Under Deed recorded July 13, 2009, indicating that Plaintiffs had been  
14 in default since April 1, 2009; and (3) a Notice of Trustee’s Sale recorded on October 13, 2009,  
15 indicating a foreclosure sale date of November 6, 2009 and listing the total amount outstanding on  
16 the loan as \$1,995,662); RFAC Ex. C (Trustee’s Deed Upon Sale showing that on April 22, 2010,  
17 the date of foreclosure sale, Plaintiffs’ owed unpaid debt of \$1,966,963.81); RFAC at ¶ 16  
18 (Plaintiffs admit they were in default). Because Plaintiffs were in default as of April 22, 2010, they  
19 were not the rightful owners of the Property as of that date, and they cannot meet the statutory  
20 requirements for a quiet title claim.

21 Plaintiffs also argue that this case presents a matter of first impression because the “wrongful  
22 foreclosure that conveyed the Property to [the Picketts]” was caused by the Picketts’ alleged fraud,  
23 and equity requires the court to create an exception to the statutory requirement of rightful  
24 ownership. *Opp.* [Docket No. 82] at 2, 6. This argument is specious. First, other courts *have*  
25 considered quiet title claims in which plaintiffs alleged that the foreclosure was fraudulent, and have  
26 still required those plaintiffs to allege that they satisfied their obligations under the deed of trust.  
27 *See, e.g., Adesokan v. U.S. Bank, N.A.*, No. 11-cv-1236-LJO-SKO, 2012 WL 395969 at \*5 (E.D.  
28 Cal. Feb. 7, 2012). Furthermore, Plaintiffs fail to cite to any cases or even simply explain why

1 equity should permit an exception to a statutory requirement where the Picketts' alleged fraud was  
2 not connected to Plaintiffs' defaulting on their loan obligations.<sup>3</sup> Plaintiffs' failure to satisfy their  
3 obligations under the Deed of Trust was not caused by the Picketts, and thus the court declines to  
4 find an equitable exception to the rule that a borrower who fails to meet his loan obligations is not  
5 the rightful owner and cannot bring a quiet title claim.

6 **IV. CONCLUSION**

7 For the reasons stated above, the court grants the motion. Because Plaintiffs have admitted  
8 they defaulted on the loan and they are therefore not the rightful owners of the Property, any  
9 amendment to this claim would be futile. The court therefore dismisses the quiet title claim without  
10 leave to amend.

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12 IT IS SO ORDERED.

13 Dated: January 14, 2014



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28 <sup>3</sup> The RFAC admits that Plaintiffs went into default simply because they did not have the money to pay for the Property. RFAC at ¶ 16 (“In late 2009 and early 2010, like many feeling the impact of the recession, the Wards fell behind on mortgage payments . . .”).