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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TERESA TRINH,

Plaintiff,

v.

CITIBANK, N.A. et al.,

Defendants.

Case No.: 5:12-CV-03902-PSG

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

(Re: Docket No. 35, 53)

In this action challenging a completed foreclosure proceeding, Defendants Mortgage Electronic Registration Systems, Inc. ("MERS"), Bank of America, N.A. ("BANA"), and Citibank, N.A. ("Citibank") (collectively, Defendants) move to dismiss the First Amended Complaint ("FAC") filed by Plaintiff Teresa Trinh ("Plaintiff"). After careful review, the court has determined Defendants' Motions to Dismiss should be GRANTED for the reasons stated below.

I. BACKGROUND

On or about July 27, 2007, Orlando Canton ("Canton") and Teresa Trinh ("Plaintiff"), a husband and wife, executed a Note and Deed of Trust for \$583,433.00 in favor of Countrywide KB Home Loans to purchase real property located in San Jose, California (the "Property").¹

¹ See Request for Judicial Notice ("RJN"), Docket No. 6 at 8.

1 ReconTrust Company, N.A. ("ReconTrust") was named as the trustee² and MERS was designated
2 as the nominee of the lender and the beneficiary.³

3 After presumably paying on the note for nearly four years, Plaintiff defaulted on the loan
4 payments due under the Deed of Trust. On December 1, 2011, ReconTrust recorded a Notice of
5 Default indicating that, as of November 29, 2011, Plaintiff owed \$113,173.23.⁴ On March 2, 2012,
6 a Notice of Trustee's Sale was recorded and the property was sold to Citibank at a foreclosure sale
7 held on May 29, 2012.⁵

8 On July 25, 2012, Plaintiff filed suit alleging negligence, violation of the Helping Families
9 Save Their Homes Act of 2009, violation of the Fair Debt Collection Practices Act, and wrongful
10 foreclosure, and sought declaratory relief and quiet title. The case was originally assigned to Judge
11 Davila. On December 17, 2012, the court dismissed the negligence cause of action with leave to
12 amend, and dismissed all other causes of action with prejudice.⁶ The court also found Canton to be
13 a "required party" under Federal Rule of Civil Procedure 19, and directed Plaintiff to join him as a
14 party in any amended complaint.⁷ On January 4, 2013, Plaintiff filed an amended complaint.⁸
15 Defendants each filed nearly identical motions to dismiss the FAC.⁹ The case was then reassigned
16 to the undersigned.¹⁰

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20 ² See id. at 9.

21 ³ See id.

22 ⁴ See id. at 34.

23 ⁵ See id. at 39, 42.

24 ⁶ See Docket No. 20 at 11.

25 ⁷ See id. at 4, 11-12.

26 ⁸ See Docket No. 21.

27 ⁹ See Docket Nos. 35, 53.

28 ¹⁰ See Docket No. 51.

II. LEGAL STANDARD

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2 Federal Rule of Civil Procedure 8(a) requires a plaintiff to plead a claim with sufficient
3 specificity to "give a defendant fair notice of what . . . the claim is and the grounds upon which it
4 rests."¹¹ A complaint which falls short of this standard may be dismissed if it fails to state a claim
5 upon which relief can be granted.¹² "Dismissal under Rule 12(b)(6) is appropriate only where the
6 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory."¹³
7 Any factual allegations "must be enough to raise a right to relief above the speculative level" such
8 that the claim "is plausible on its face."¹⁴
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10 When deciding whether to grant a motion to dismiss, the court generally "may not consider
11 any material beyond the pleadings."¹⁵ The court must generally accept as true all "well-pleaded
12 factual allegations,"¹⁶ and must construe the alleged facts in the light most favorable to the
13 plaintiff.¹⁷ However, "courts are not bound to accept as true legal conclusion couched as factual
14 allegation."¹⁸
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16 Leave to amend may be granted freely when justice so requires.¹⁹ But a motion for leave to
17 amend may be denied if it would be futile or legally insufficient.²⁰ A proposed amendment is futile
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19 ¹¹ Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal quotations omitted).

20 ¹² See Fed. R. Civ. P. 12(b)(6).

21 ¹³ Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).

22 ¹⁴ Twombly, 550 U.S. at 556-557.

23 ¹⁵ Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990).

24 ¹⁶ Ashcroft v. Iqbal, 566 U.S. 662, 664 (2009).

25 ¹⁷ See Love v. United States, 915 F.2d 1242, 1245 (9th Cir. 1988)

26 ¹⁸ Twombly, 550 U.S. at 555.

27 ¹⁹ Fed R. Civ. P. 15(a).

28 ²⁰ See Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988).

1 if no set of facts can be proved under the amendment to the pleadings that would constitute a valid
2 and sufficient claim or defense.²¹

3 **III. DISCUSSION**

4 **A. Plaintiff Has Failed to Join a Required Party**

5 In the December 17, 2012 order granting Defendants' motion to dismiss, the court found
6 Canton to be a "required party" and ordered Plaintiff to join him as a party in any amended
7 complaint.²² A person is a "necessary" party to a proceeding if "in that person's absence, the court
8 cannot accord complete relief among existing parties"; or that person holds an interest relating to
9 the action such that their absence would either "impair or impede the person's ability to protect that
10 interest"; or that person's absence would "leave an existing party subject to a substantial risk of
11 incurring double, multiple, or otherwise inconsistent obligations because of the interest."²³ Here,
12 the Deed of Trust lists both Plaintiff and Canton as borrowers,²⁴ and "in an action to set aside a
13 lease or contract, all parties who may be affected by the determination are indispensable."²⁵
14 Moreover, Defendants would remain at risk for multiple and potentially inconsistent obligations
15 without Canton's participation.²⁶ The court has already determined that Canton is a necessary party
16 to this action,²⁷ and Plaintiff alleges no new facts justifying a departure from that finding.
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22 ²¹ See *id.*

23 ²² See Docket No. 20 at 4, 11-12.

24 ²³ Fed. R. Civ. P. 19(a).

25 ²⁴ See Docket No. 6 at 8.

26 ²⁵ *Lomayaktewa v. Hathaway*, 520 F.2d 1324, 1325 (9th Cir. 1975).

27 ²⁶ See *In re Dinkins*, 79 B.R. 253, 257-258 (E.D. Pa. 1987).

28 ²⁷ See Docket No. 20 at 3-4.

1 On March 19, 2013, Plaintiff did file a separate request to join Canton as an additional
2 plaintiff in this action after Defendants filed their motions to dismiss.²⁸ However, the court
3 explicitly required Plaintiff to join Canton in her amended complaint to be filed no later than
4 January 4, 2013, or else Plaintiff's claims would be dismissed.²⁹ Plaintiff provides no reason for
5 waiting more than two months to join Canton after the court explicitly directed her to do so without
6 delay.

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8 **B. Plaintiff Has Not Articulated a Cognizable Theory of Negligence**

9 Although Plaintiff's failure to timely join Canton as a party in violation of court order might
10 be sufficient reason to grant Defendants' motions, in the interest of completeness the court
11 nonetheless addresses additional deficiencies in Plaintiff's FAC. Plaintiff was given leave to
12 amend only her negligence claim to allege a legitimate basis for finding Defendants owed her a
13 duty of care.³⁰ However, Plaintiff has again failed to allege appropriate facts to correct that
14 deficiency.

15 To state a claim of negligence, plaintiffs must demonstrate: (1) that defendant owed a legal
16 duty to the plaintiff; (2) that the defendant breached that duty; and (3) that the breach was the
17 proximate and actual cause of the plaintiff's injury.³¹ "[A]s a general rule, a financial institution
18 owes no duty of care to a borrower when the institution's involvement in the loan transaction does
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22 ²⁸ See Docket No. 43.

23 ²⁹ See Docket No. 20 at 3-4, 11. See also *Williams v. County of Ventura*, Case No. CV 07-7655-
24 AHM (MLG), 2009 WL 4110113, at *13 (C.D. Cal. Nov. 24, 2009) (ignoring the court's amended
25 complaint instructions "weighs against Plaintiff").

26 ³⁰ See Docket No. 20 at 11 ("The negligence cause of action is DISMISSED WITH LEAVE TO
27 AMEND. All other causes of action in the Complaint are DISMISSED WITHOUT LEAVE TO
28 AMEND").

³¹ See *Sohal v. Fed. Home Loan Mortg. Corp.*, Case No. 11-01941, 2011 U.S. Dist. LEXIS 97355,
at *24, 2011 WL 3842195 (N.D. Cal. Aug. 30, 2011).

1 not exceed the scope of its conventional role as a mere lender of money."³² Nor do lenders have an
2 obligation to offer borrowers a loan modification,³³ to approve any such modifications offered,³⁴ or
3 to complete any such modification prior to foreclosure.³⁵ In the FAC, Plaintiff again only alleges
4 that Defendant engaged in conduct that falls well within the scope of conventional money lending
5 and cannot establish a duty of care on these facts.

6 Moreover, even if Plaintiff could establish a duty of care, Plaintiff cannot prove that
7 Defendant breached that duty, or that their conduct was the proximate and actual cause of her
8 harm. First, Plaintiff does not allege that her application was mishandled, or that the denial of her
9 application was negligently unreasonable. Plaintiff merely believes that her loan modification and
10 short sale applications should have been approved. But disagreement with a bank's lending policy
11 is no basis for negligence.³⁶ Second, Plaintiff admits she was in default on her loan; Defendants
12 had the right to foreclose on the property at any point after she defaulted.³⁷ Plaintiff does not
13 contend that Defendants promised to modify her loan and that she relied upon any such promise.
14 As such, it was the default alone that caused the foreclosure and the injury, not Defendants' denial
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21 ³² Nymark v. Heart Fed. Savings & Loan Assn., 231 Cal. App. 3d 1089, 1096 (1991).

22 ³³ See Carpenter v. Bank of America, N.A., Case No. 12cv0973 (BLM), 2013 WL 28772 at *2-3
23 (S.D. Cal. Jan 2, 2013).

24 ³⁴ See Clemens v. J.P. Morgan Chase Nat. Corporate Services, Inc., Case No. C-09-3365 EMC,
2009 WL 4507742, at *8 (N.D. Cal. Dec. 1, 2009).

25 ³⁵ See DeLeon v. Wells Fargo Bank, N.A., Case No. 10-CV-01390-LHK, 2010 WL 4285006, at *4
26 (N.D. Cal. Oct. 22, 2010).

27 ³⁶ See Carpenter, 2013 WL 28772 at *3.

28 ³⁷ See Solomon v. Aurora Loan Services LLC, Case No. CIV 2:12-209 WBS KJN, 2012 WL
2577559, at *5 (E.D. Cal. July 3, 2012)

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of a home loan modification.³⁸ Because Plaintiff can salvage neither of these positions by alleging new facts, this claim is dismissed without leave to amend.³⁹

IV. CONCLUSION

For the aforementioned reasons, Defendants' Motion to Dismiss is GRANTED.

IT IS SO ORDERED.

Dated: June 28, 2013



PAUL S. GREWAL
United States Magistrate Judge

³⁸ See id.; DeLeon v. Wells Fargo Bank, N.A., Case No. 10-CV-01390-LHK, 2011 WL 311376, at *7 (N.D. Cal. Jan. 28, 2011).

³⁹ See Miller, 845 F.2d at 214.