

1 appointed the FDIC as the bank’s receiver. The same day, OTS authorized the creation
2 of IndyMac Federal Bank, FSB (“IndyMac Federal”) and appointed the FDIC as
3 conservator for IndyMac Federal (“FDIC-Conservator”). Also on that day, pursuant to a
4 purchase and assumption agreement, the bulk of the assets and deposit liabilities of
5 IndyMac were transferred to the FDIC-Conservator.

6 On March 19, 2009, the OTS closed IndyMac Federal and appointed the FDIC as
7 receiver for IndyMac Federal. The same day, substantially all of the assets and liabilities
8 of IndyMac Federal were transferred to OneWest, pursuant to an agreement between the
9 FDIC, as receiver for IndyMac Federal, and OneWest.

10 On November 12, 2009, the FDIC, by its Board of Directors, issued a resolution
11 determining that in each IndyMac receivership, “[I]nsufficient assets exist to make any
12 distribution on general unsecured claims . . . and therefore all such claims, asserted or
13 unasserted, will recover nothing and have no value.” FDIC Ex. D (hereinafter “no value
14 determination”). On November 18, 2009, the FDIC published a notice of the no value
15 determination in the Federal Register. 74 Fed. Reg. 59540; FDIC Ex. E.

16 On May 12, 2010, Plaintiff brought suit against OneWest and IndyMac Bank for
17 “Damages and for Injunctive Relief to Stay Wrongful Foreclosure Sale of Property and Ex
18 Parte Application for Temporary Restraining Order” in the San Diego County – North
19 County Regional Center, Superior Court of California. [Dock. # 9, Ex. 1] On August 16,
20 2010, Plaintiff filed an amended complaint asserting the following claims: (1) Wrongful
21 Foreclosure, (2) Fraud by Concealment, (3) Fraud by Misrepresentation, (4) Conversion,
22 and (5) Intentional Infliction of Emotional Distress. [Dock. # 9, Ex. 2] Plaintiff seeks
23 monetary damages and injunctive relief to prevent Defendants “from any and all further
24 attempts to affect plaintiff’s ownership interest in subject PROPERTY.” *Id.* at 13. On
25 September 9, 2010, the FDIC, in its capacity as receiver for IndyMac Bank, removed this
26 action to federal court pursuant to 12 U.S.C. § 1819(b) and 28 U.S.C. § 1441. [Dock. #1]

27 //

28 //

1 **II. STANDARDS OF REVIEW**

2 **A. FRCP 12(b)(1)**

3 A moving party may base a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1)
4 for lack of subject matter jurisdiction on the allegations of the complaint, or may bring a
5 factually based motion "by presenting affidavits or other evidence properly brought before
6 the court" *Savage v. Glendale Union High School*, 343 F.3d 1036, 1039 n.2 (9th
7 Cir. 2003). If the motion to dismiss for lack of jurisdiction is factually based, the court
8 may look beyond the allegations of the complaint. *Id.* (citing *White v. Lee*, 227 F.3d,
9 1214, 1242 (9th Cir. 2000)). If the moving party supports a motion to dismiss for lack of
10 jurisdiction with evidence, the nonmoving party "must furnish affidavits or other evidence
11 necessary to satisfy its burden of establishing subject matter jurisdiction." *Id.*

12
13 **B. FRCP 56**

14 Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil
15 Procedure if the moving party demonstrates the absence of a genuine issue of material
16 fact and entitlement to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S.
17 317, 322 (1986). A fact is material when, under the governing substantive law, it could
18 affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
19 (1986); *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997). A dispute is genuine if a
20 reasonable jury could return a verdict for the nonmoving party. *Anderson*, 477 U.S. at
21 248.

22 A party seeking summary judgment always bears the initial burden of establishing
23 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The moving
24 party can satisfy this burden in two ways: (1) by presenting evidence that negates an
25 essential element of the nonmoving party's case; or (2) by demonstrating that the
26 nonmoving party failed to establish an essential element of the nonmoving party's case
27 on which the nonmoving party bears the burden of proving at trial. *Id.* at 322-23.

28 Once the moving party establishes the absence of genuine issues of material fact,

1 the burden shifts to the nonmoving party to set forth facts showing that a genuine issue of
2 disputed fact remains. *Celotex*, 477 U.S. at 314. The nonmoving party cannot oppose a
3 properly supported summary judgment motion by “rest[ing] on mere allegations or denials
4 of his pleadings.” *Anderson*, 477 U.S. at 256. When ruling on a summary judgment
5 motion, the court must view all inferences drawn from the underlying facts in the light
6 most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio*
7 *Corp.*, 475 U.S. 574, 587 (1986).

8

9 **C. FRCP 12(b)(6)**

10 To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), a complaint must
11 meet the requirements of Rule 8(a)(2), which requires the pleader to make a “short and
12 plain statement of the claim.” This motion should be granted only where a plaintiff’s
13 complaint lacks a “cognizable legal theory” or sufficient facts to support a cognizable
14 legal theory. *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1988). When
15 reviewing a motion to dismiss, the allegations of material fact in plaintiff’s complaint are
16 taken as true and construed in the light most favorable to the plaintiff. *See Parks Sch. of*
17 *Bus., Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Although detailed factual
18 allegations are not required, factual allegations “must be enough to raise a right to relief
19 above the speculative level.” *Bell Atlantic v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955,
20 1965 (2007). “A plaintiff’s obligation to prove the ‘grounds’ of his ‘entitle[ment] to relief’
21 requires more than labels and conclusions, and a formulaic recitation of the elements of
22 a cause of action will not do.” *Id.* “[W]here the well-pleaded facts do not permit the court
23 to infer more than the mere possibility of misconduct, the complaint has alleged - but it
24 has not show[n] that the pleader is entitled to relief.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937,
25 1950 (2009) (internal quotation marks omitted).

26 //

27 //

28 //

1
2
3 **III. DISCUSSION**

4 **A. CLAIMS AGAINST THE FDIC**

5 The FDIC argues that the Court lacks jurisdiction over Plaintiff's claims for
6 monetary relief because, *inter alia*, they are moot due to the FDIC's no value
7 determination. Federal courts lack subject matter jurisdiction to hear claims that are
8 moot. See *In re Burrell*, 415 F.3d 994, 998 (9th Cir.2005) ("If the controversy is moot,
9 both the trial and appellate courts lack subject matter jurisdiction, and the concomitant
10 'power to declare the law' by deciding the claims on the merits.") (citations omitted).
11 Under Article III of the United States Constitution, federal courts have jurisdiction to
12 decide only actual cases or controversies. To satisfy Article III's case or controversy
13 requirement, Plaintiff "must have suffered some actual injury that can be redressed by a
14 favorable judicial decision." *Henrichs v. Valley Ciew Development*, 474 F.3d 609, 615
(9th Cir. 2007).

15 Due to the FDIC's no value determination, Plaintiff's claims for monetary relief
16 cannot be redressed by a favorable judicial decision. See *Tinoco v. IndyMac, FSB, et*
17 *al.*, No. CV 09-9174, Order Granting Motion To Dismiss or in the Alternative Summary
18 Adjudication (C.D. Cal., Feb 5, 2010). As noted by the *Tinoco* court, "If the Plaintiff were
19 to succeed on any of his claims for monetary relief, the FDIC as Receiver would simply
20 have no assets to satisfy a judgment." *Id.* The Court follows this reasoning and the
21 reasoning of several courts that have considered this issue and dismisses monetary
22 claims against the FDIC for lack of subject matter jurisdiction because the Court cannot
23 provide meaningful relief even if it were to render judgment in favor of Plaintiff. See, e.g.,
24 *Brech v. CU Mortg. Direct, LLC*, No. CIV. 10-4123-KES, 2011 U.S. Dist. LEXIS 12543, at
25 *12-13 (D.S.D. Feb. 7, 2011); ("Courts routinely find that they lack jurisdiction under the
26 prudential mootness doctrine when a plaintiff sues the FDIC and the FDIC has
27 determined that the receivership estate has insufficient assets to satisfy the claims.");
28 *Henrichs v. Valley View Dev.*, 474 F.3d 609, 615 (9th Cir. 2007); *FDIC v. Kooyomjian*,

1 220 F.3d 10, 15 (1st Cir. 2000); *Tinoco*, No. CV 09-9174 (Feb 5, 2010); *Nasoordeen v.*
2 *F.D.I.C.*, No. CV 08-05631, 2010 WL 1135888, at *8 (C.D. Cal., March 17, 2010).

3 Plaintiff's remaining claims for equitable relief against the FDIC are barred by 12
4 U.S.C. § 1821(j). This provision precludes courts from taking "any action . . . to restrain
5 or affect the exercise of powers or functions of the Corporation [the FDIC] as a
6 conservator or a receiver." The Ninth Circuit has described this ban as an essential part
7 of the FDIC's ability to function as a receiver and has held that this provision bars the
8 granting of the equitable remedy of rescission. *Sahni v. American Diversified Partners*,
9 83 F.3d 1054, 1058-1059 (9th Cir. 1996). Other courts have specifically held that §
10 1821(j) bars injunctive relief restraining a foreclosure sale. *See Freeman v. FDIC*, 56
11 F.3d 1394, 1399 (D.C. Cir. 1995); *Tillman v. Resolution Trust Corp.*, 37 F.3d 1032, 1036
12 (4th Cir. 1994). In line with these decisions, the Court concludes that the FDIC, in its
13 capacity as receiver for IndyMac Bank, is entitled to judgment as a matter of law on
14 Plaintiff's remaining claims for equitable relief. Defendant FDIC's motion for dismissal or
15 summary judgment on all of Plaintiff's claims is **GRANTED**. This order removes the
16 FDIC, in its capacity as receiver for IndyMac Bank, as a party to this case.

17 18 **B. CLAIMS AGAINST ONEWEST**

19 Following this dismissal of claims against the FDIC, there exists no ground for
20 original subject matter jurisdiction over Plaintiff's claims against OneWest. *See Schwartz*
21 *v. IndyMac Fed. Bank*, 10-cv-00516, 2010 U.S. Dist. LEXIS 136435, at *4 (E.D. Cal. Dec.
22 14, 2010).¹ Plaintiff's claims against OneWest are sufficiently related to the claims
23 against the FDIC, as receiver for IndyMac Bank, "that they form part of the same case or
24 controversy." 28 U.S.C. § 1367(a). The Court will exercise supplemental jurisdiction over

25
26 ¹ The circuits are split as to whether a district court retains original federal jurisdiction
27 over the entire suit or merely has the discretion to retain supplemental jurisdiction over state
28 claims following dismissal of the FDIC from an action. *See Destfino v. Reiswig*, 630 F.3d
952, 958 (9th Cir. 2011). The Ninth Circuit has not taken a position on this question, *see id.*,
but it appears that most district courts in this circuit follow the supplemental jurisdiction
approach, *see Schwartz*, 2010 U.S. Dist. LEXIS 136435, at *4 n.1 (listing cases). The Court
does so here.

1 these claims and consider OneWest's motion to dismiss each count in Plaintiff's first
2 amended complaint and its motion to expunge the *lis pendens*.

3
4 1. Wrongful Foreclosure (Count One)

5 Plaintiff's first cause of action for wrongful foreclosure alleges that Defendants
6 violated California Civil Code section 2923.5(a). Section 2923.5 provides that a
7 mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default
8 pursuant to Section 2924 until 30 days after initial contact is made or 30 days after failing
9 to contact the borrower despite the exercise of due diligence as defined in subsection (g).

10 "Initial contact" is governed by the following requirements:

11 A mortgagee, beneficiary, or authorized agent shall contact the borrower in
12 person or by telephone in order to assess the borrower's financial situation
13 and explore options for the borrower to avoid foreclosure. During the initial
14 contact, the mortgagee, beneficiary, or authorized agent shall advise the
15 borrower that he or she has the right to request a subsequent meeting and,
16 if requested, the mortgagee, beneficiary, or authorized agent shall schedule
17 the meeting to occur within 14 days. The assessment of the borrower's
18 financial situation and discussion of options may occur during the first
19 contact, or at the subsequent meeting scheduled for that purpose. In either
20 case, the borrower shall be provided the toll-free telephone number made
21 available by the United States Department of Housing and Urban
22 Development (HUD) to find a HUD-certified housing counseling agency.
23 Any meeting may occur telephonically.

24 Cal. Civ. Code § 2923.5(a)(2). Plaintiff's first cause of action largely parrots the text of
25 the statute without providing any supporting facts and is therefore insufficiently pled. See
26 *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009); *Resendiz v. Recontrust Co., N.A.*, No.
27 09CV1959 DMS (CAB), 2010 U.S. Dist. LEXIS 36936, at *8 (S.D. Cal. Apr. 13, 2010).

28 Moreover, judicially noticeable documents contradict key allegations in this count.
29 For example, paragraph 38(l) alleges that Defendants failed to "file a notice of default
30 with section 2924 language which includes a declaration that defendants have contacted
31 borrower-plaintiff" However, the notice of default includes the declaration required
32 by section 2923.5(b) stating that the borrower was contacted to discuss the borrower's
33 financial situation and options for the borrower to avoid foreclosure. (Def. RJN Ex. D)

34 The first cause of action also incorporates the prior paragraphs of the first

1 amended complaint. Although it is not entirely clear which allegations Plaintiff believes
2 supports a claim for wrongful foreclosure, nearly all are pled with insufficient particularity
3 to meet the standard required by *Twombly* and *Iqbal*. See, e.g., FAC ¶ 22 (alleging that
4 “none of the defendants have yet to respond to Plaintiff’s Debt Validation letter and
5 RESPA letter” without providing any facts detailing when such letters were sent or their
6 contents).

7 Other allegations that theoretically could impact Defendants right to initiate
8 foreclosure proceedings fail as a matter of law. Plaintiff contends that foreclosure would
9 be invalid because Defendants do not possess the original note. (FAC ¶¶ 16, 32) This
10 holder in due course argument has been consistently rejected by the courts. See *Usher*
11 *v. Greenpoint Mortg. Funding, Inc.*, No. CIV S-10-0952 LKK DAD PS, 2010 U.S. Dist.
12 LEXIS 127311, at *6 (E.D. Cal. Dec. 1, 2010). It is well-settled under California law that
13 non-judicial foreclosures can be commenced without producing the original promissory
14 note.

15 Plaintiff also contends that the securitization of his mortgage was somehow
16 improper. (FAC ¶¶ 16, 32) Such allegations, too, do not provide the basis for a cause of
17 action. See *Sarmiento v. Bank of N.Y. Mellon*, CIVIL NO. 10-00349 JMS/BMK, 2011
18 U.S. Dist. LEXIS 24365, at *17 (D. Haw. Mar. 10, 2011) (citing cases).

19 20 2. Fraud By Concealment (Count Two)

21 Plaintiff’s second cause of action is for fraud by concealment. Under California
22 law, the elements of a claim of fraud by concealment are: 1) suppression of a material
23 fact; 2) by one who is bound to disclose it, or who gives information of other facts which
24 are likely to mislead for want of communication of that fact; 3) with intent to deceive a
25 person unaware of the concealed fact and who would not have acted had he known of
26 the fact. *Melanson v. United Air Lines, Inc.*, 931 F.2d 558, 563 (9th Cir. 1991) (citing Cal.
27 Civ. Code §§ 1709, 1710); see also *Newson v. Countrywide Home Loans, Inc.*, No. C
28 09-5288 SBA, 2010 U.S. Dist. LEXIS 126383, at *13 (N.D. Cal. Nov. 29, 2010).

1 Here, Plaintiff's FAC fails to identify what material facts were not disclosed or what
2 Plaintiff was induced to do or not do as a result of the concealment. Plaintiff has failed to
3 plead the elements of a fraud by concealment claim.

4 The allegations Plaintiff does raise largely fail as a matter of law. First, Plaintiff
5 reiterates the allegation that Defendants failed to satisfy the requirements of California
6 Civil Code section 2923.5. As set forth above, judicially noticeable documents contradict
7 key aspects of this claim. Moreover, even if properly pled, it is questionable that such a
8 claim could support a cause of action for fraud because a private right of action for
9 violation of Section 2923.5 "is limited to obtaining a postponement of an impending
10 foreclosure to permit the lender to comply with section 2923.5." *Mabry v. Superior Court*,
11 185 Cal. App. 4th 208, 214 (Cal. App. 4th Dist. 2010).

12 Second, Plaintiff asserts that fraud was committed because Defendants did not
13 "obtain[] plaintiff's consent to Monetize the Promissory Note in a transfer to another
14 mortgage pool in violation of the statute of fraud of this state, as well as in violation of
15 pertinent securities and banking laws." (FAC ¶ 41) However, Plaintiff does not cite any
16 law that would require a borrower's consent to securitize a mortgage and identifies no
17 oral agreement that would give rise to a statute of frauds violation. Plaintiff also contends
18 that Defendants failed to comply with California Civil Code section 2941.7, which,
19 according to Plaintiff, "require[s] Defendants to record a corporate bond accompanied
20 with the declaration after transfer or conveyance to another mortgage pool." (*Id.*)
21 Assuming, *arguendo*, that section 2941.7 would provide Plaintiff with a private right of
22 action and that its provisions have otherwise been violated, Plaintiff's reliance on this
23 statute is improper, as it only applies when an "obligation secured by a mortgage or deed
24 of trust has been fully satisfied and the present mortgagee or beneficiary of record cannot
25 be located after diligent search." Cal. Civ. Code § 2941.7. Plaintiff does not allege that
26 either condition has been met here.

27 Finally, Plaintiff alleges that transfer of assets from Indymac to OneWest "is illegal
28 and against bankruptcy rules." (FAC ¶ 44) Contrary to Plaintiff's allegation, Indymac is in

1 receivership, not bankruptcy. Plaintiff provides absolutely no basis for the assertion that
2 the transfer of assets to OneWest was illegal.

3
4 3. Fraud By Misrepresentation (Count Three)

5 Plaintiff's third cause of action is for fraudulent misrepresentation. To state a
6 claim for fraudulent misrepresentation, a party must allege facts to support the following
7 elements: 1) misrepresentation; 2) knowledge of falsity; 3) intent to defraud; 4) justifiable
8 reliance; and 5) damages. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1126 (9th Cir. 2009)
9 (citing *Engalla v. Permanente Medical Group, Inc.*, 15 Cal. 4th 951, 974 (1997)). As
10 above, Plaintiff failed to allege the elements of this claim.

11 Plaintiff's misrepresentation claim also fails on additional grounds. Plaintiff asserts
12 that Defendants "committed fraud" through statements or omissions made on August 12,
13 2005. (FAC ¶ 50) To the extent that Plaintiff's claim rests on events occurring on that
14 date, this claim is barred by the three-year statute of limitations for a claim of fraud. Cal.
15 Code Civ. Proc. § 338(d). Plaintiff's original complaint was filed well after this three-year
16 limit, and Plaintiff does not raise any basis to toll this limitations period.

17 Moreover, this claim is not pled with sufficient particularity required by Fed. R. Civ.
18 P. 9(b). The FAC does not allege when many of the purportedly fraudulent acts were
19 committed, how they were committed, or which defendant committed them. For
20 example, Plaintiff alleges that "Defendants . . . committed fraud by transferring the note
21 and enter [sic] into a real estate transaction without disclosing to Plaintiff . . . the terms of
22 the new loan. And since there was a modification of the named parties to the original
23 contract[,] that binds plaintiff." (FAC ¶ 53) The FAC does not allege when, how, or by
24 whom the note was transferred, does not allege any facts in connection with a "real
25 estate transaction," and does not allege any facts relevant to a loan modification.

26 Finally, Plaintiff alleges that Defendants committed fraud "by selling nonexempt
27 securities without permit as required by California Corporations code § 25110." (FAC ¶
28 51) This statute provides, in pertinent part: "It is unlawful for any person to offer or sell in

1 this state any security in an issuer transaction . . . , whether or not by or through
2 underwriters, unless such sale has been qualified.” Cal. Corp. Code § 25110. Plaintiff’s
3 complaint does not identify what “securities” are the subject of this claim, however, to the
4 extent that Plaintiff is referencing her own mortgage transaction, this claim fails as a
5 matter of law. A promissory note secured by a lien on real property is expressly
6 exempted from the requirements of section 25110. Cal. Corp. Code § 25100(p).

7
8 4. Conversion (Count Four)

9 Plaintiff’s fourth cause of action alleges conversion based on a misapplication of
10 mortgage loan payments in violation of California Civil Code section 2985.3. Under
11 California law, the elements of a conversion claim are 1) the plaintiff’s ownership or right
12 to possession of the property at the time of the conversion; 2) the defendant’s conversion
13 by a wrongful act or disposition of property rights; and 3) damages. *Mindys Cosmetics,*
14 *Inc. v. Dakar*, 611 F.3d 590, 601 (9th Cir. 2010) (citing *Oakdale Village Group v. Fong*, 50
15 Cal. Rptr. 2d 810, 812 (Cal. App. 3d Dist. 1996).

16 Here, Plaintiff failed to allege that Plaintiff owned or had a right to possess
17 anything withheld by OneWest. Clearly, a mortgagor does not have a right to possess
18 payments made under the loan – even if, as alleged by Plaintiff, they were misapplied by
19 Defendants for an improper use. Plaintiff’s conversion claim fails.

20
21 5. Intentional Infliction Of Emotional Distress (Count Five)

22 Plaintiff’s fifth cause of action is for intentional infliction of emotional distress.
23 Under California law, the elements of a claim for intentional infliction of emotional distress
24 are: 1) extreme and outrageous conduct by the defendant with the intent to cause, or
25 reckless disregard for the probability of causing, emotional distress; 2) suffering of severe
26 or extreme emotional distress by the plaintiff; and 3) the plaintiff’s emotional distress is
27 actually and proximately the result of defendant’s outrageous conduct. *Chang v.*
28 *Lederman*, 90 Cal. Rptr. 3d 758, 774 (Cal. App. 2d Dist. 2009).

1 The FAC is devoid of facts to support this claim, stating only: “Defendants . . .
2 have engaged in intentional torts, actions and have intentionally failed to act in [sic] way
3 that is extreme and outrageous transcending all bounds of decency and, as a result,
4 have actually and proximately caused plaintiff and his family to severe emotional distress
5 and other similar symptoms.” (FAC ¶ 65) This conclusory statement is not sufficient to
6 meet the pleading standards required by *Twombly* and *Iqbal*.

7 8 6. Motion To Expunge *Lis Pendens*

9 “At any time after notice of pendency of action has been recorded, any party . . .
10 may apply to the court in which the action is pending to expunge the notice.” Cal. Code
11 Civ. Proc. § 405.30. Pursuant to California Code of Civil Procedure sections 405.32, a
12 court shall order that the notice be expunged if “the court finds that the claimant has not
13 established by a preponderance of the evidence the probable validity of the real property
14 claim.”

15 Although the Court dismisses Plaintiff’s claims against OneWest without prejudice
16 so that she may have an opportunity to cure the deficiencies discussed above, the Court
17 holds that Plaintiff has not met her burden of proving the “probable validity” of her claims.
18 See Cal. Code Civ. Proc. § 405.30. Moreover, based on the allegations in the FAC, it is
19 not likely that Plaintiff will be able to meet this burden by filing a second amended
20 complaint. Many of Plaintiff’s claims fail as a matter of law and the remainder lack the
21 specificity necessary to conclude “that the claimant will obtain a judgment against the
22 defendant on the claim.” Cal. Code Civ. Proc. § 405.3. Accordingly, the Court
23 **EXPUNGES** the *lis pendens* without prejudice. If Plaintiff files a second amended
24 complaint, she may apply to have the *lis pendens* reinstated.

25 26 **IV. CONCLUSION**

27 The Court holds that it lacks subject matter jurisdiction over Plaintiff’s monetary
28 claims against the FDIC and that Plaintiff’s equitable claims against the FDIC are

1 foreclosed as a matter of law. Accordingly, the Court **GRANTS** Defendant FDIC's, in its
2 capacity as receiver for IndyMac Bank, motion for dismissal under Fed. R. Civ. P.
3 12(b)(1), or, in the alternative, for summary judgment on all of Plaintiff's claims. [Dock. #
4 6].

5 Plaintiff's claims against OneWest are **DISMISSED** with leave to amend. Plaintiff
6 may file an amended complaint within twenty days to cure the deficiencies discussed
7 above. OneWest's motion to expunge the *lis pendens* is **GRANTED** without prejudice to
8 Plaintiff applying to have the *lis pendens* reinstated if she chooses to file a second
9 amended complaint.

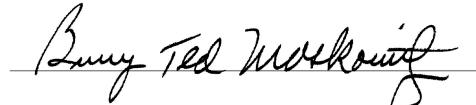
10

11 **IT IS SO ORDERED.**

12

DATED: June 23, 2011

13



14

Honorable Barry Ted Moskowitz
United States District Judge

15

16

17

18

19

20

21

22

23

24

25

26

27

28