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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MARGARETTE SMITH, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

SPECIALIZED LOAN SERVICING,
LLC,

Defendant.

CASE NO. 16cv2519-GPC(BLM)
**ORDER DEFERRING RULING ON
MOTION TO DISMISS**

Before the Court is Defendant’s motion to dismiss the first amended complaint (“FAC”). (Dkt. No. 19.) Plaintiff filed an opposition and Defendant filed a reply. (Dkt. Nos. 22, 23.) Based on the reasoning below, the Court DEFERS ruling on Defendant’s motion to dismiss until the Court’s ruling on the motion to substitute parties that Plaintiff intends to file by July 25, 2017.

Background

On October 7, 2016, Plaintiff Margarett Smith (“Plaintiff” or “Smith”) filed a purported class action complaint against Defendant Specialized Loan Servicing, LLC (“Defendant” or “SLS”) for violations of Regulation X of the Real Estate Settlement Procedures Act (“RESPA”), 12 C.F.R. § 1024.41 and related causes of action. (Dkt. No. 1.) On May 3, 2017, the Court granted in part and denied in part Defendant’s motion to dismiss with leave to amend. (Dkt. No. 16.) On May 10, 2017, Plaintiff

1 filed a first amended purported class action complaint against Defendant for violations
2 of Regulation X, 12 C.F.R. §1024.41, and California Unfair Competition Law
3 (“UCL”), Cal. Bus. & Prof. Code 17200 *et seq.* (Dkt. No. 17, FAC.)

4 Prior to the filing of the FAC, Smith died on April 18, 2017. (Id. ¶ 8.)
5 According to her last will and testament filed with the San Diego Recorder’s Office,
6 Smith’s home at 2452 Blackton Drive, San Diego, CA 92105, the subject property at
7 issue in this case, is part of an irrevocable trust to which her three granddaughters,
8 Zarah Kimble, Seher Basak, and Sarah Sakinah Groza O’Loughlin are equal
9 beneficiaries. (Id.) According to the FAC, Smith’s granddaughters are her successors
10 in interest and succeeded to Smith’s interest in the property. (Id.)

11 In its motion, Defendant moves to dismiss the FAC for lack of Article III
12 standing simply because Plaintiff has passed away and no longer has a cognizable
13 interest in the outcome of the pending litigation, and her successors in interest or
14 representatives have not been named as parties to the action.¹ Defendant also contends
15 that Smith lacks prudential standing because she does not have the capacity to sue
16 under Rule 17(b)(1) as a deceased plaintiff. In response, Plaintiff’s counsel argues that
17 she informed defense counsel about Smith’s death and requested that defense counsel
18 stipulate to a joint motion to substitute in Smith’s successors-in-interest. When defense
19 counsel declined to stipulate, Plaintiff’s counsel asserts that she intends to file a motion
20 to substitute parties under Rule 25(a)(1) by the deadline of July 25, 2017.

21 It is not disputed that Smith, now deceased, is not a proper plaintiff in this action
22 and a successor-in-interest or a personal representative must be substituted in pursuant
23 to Rule 25(a)(1). After a review of the parties’ briefs, the Court questions why
24 Defendant did not take up Plaintiff’s counsel’s offer to stipulate for an extension of
25 time to respond to the FAC to allow Plaintiff to file a motion to substitute in order to

26
27 ¹Alternatively, in the event the Court declines to dismiss the action, Defendant
28 also argues that the class allegations should be struck pursuant to Rule 12(f) as the
successor in interest issue will delay class certification and unique defenses by the
purported successors cannot satisfy the typicality or adequate representation elements
for class certification.


1 avoid unnecessary filings and conserve judicial resources. The Court also questions
2 why Plaintiff's counsel did not seek leave of court for an extension of time to file the
3 FAC in order to address substitution issues. In the interests of efficiency and
4 conserving resources, the Court DEFERS its ruling on the motion to dismiss until the
5 substitution issues are resolved.

6 In opposition, Plaintiff's granddaughters request leave to amend and to be
7 substituted in as Plaintiffs; however, an opposition is not the proper avenue to seek
8 substitution of parties. Even if it were proper, although the parties address the
9 substitution issues in the motion to dismiss, the Court is not in the position to make a
10 determination based on the lack of sufficient documentation and legal authority
11 provided by the parties. In the upcoming motion to substitute parties, the parties must
12 provide the Court with relevant legal authority and supporting documentation,
13 including whether the subject property was transferred to the Trust or is subject to
14 probate.

15 The hearing date set for July 21, 2017 shall be **vacated**.

16 IT IS SO ORDERED.

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18 DATED: July 12, 2017

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20 HON. GONZALO P. CURIEL
21 United States District Judge
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