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

NANCY L. FENTON,
Plaintiff,
v.
WELLS FARGO HOME
MORTGAGE ET AL.,
Defendants.

Case No. 17-cv-0113 DMS (WVG)

**ORDER (1) GRANTING MOTION
TO DISMISS AND (2) GRANTING
IN PART AND DENYING IN
PART REQUEST FOR JUDICIAL
NOTICE**

Pending before the Court is Defendant Wells Fargo Home Mortgage’s (“Wells Fargo”) motion to dismiss Plaintiff Nancy L. Fenton’s complaint and request for judicial notice. Defendant Northwest Trustee Services, Inc. (“Northwest”) joins in Wells Fargo’s motion to dismiss. Plaintiff filed a response, and Defendant Wells Fargo filed a reply. For the following reasons, Defendant’s motion to dismiss is granted and the request for judicial notice is granted in part and denied in part.

**I.
BACKGROUND**

This action concerns the foreclosure proceedings on Plaintiff’s real property located at 4175 Porte De Merano #163, San Diego, California 92122 (“subject

1 property”). (ECF No. 1, Ex. A (“Complaint”) ¶ 5.) Plaintiff allegedly obtained a
2 loan from Golden West Savings Association Service Co. (“Golden West Savings”)
3 to purchase the subject property.¹ (*Id.* ¶ 6.) Plaintiff claims she paid off the loan on
4 July 21, 2004.² (*Id.*)

5 Thereafter, on September 22, 2006, Plaintiff obtained a loan from World
6 Savings Bank, FSB (“World Savings”) in the amount of \$308,500. Wells Fargo is
7 the legal successor to World Savings.³ (ECF No. 1, Ex. C.) This loan was secured
8 by a deed of trust recorded against the subject property.⁴ (*Id.*) The deed of trust lists
9 Golden West Savings as trustee.⁵ (*Id.*)

10 In August 2016, Wells Fargo executed and recorded a notice of default against
11 Plaintiff. (ECF No., Ex. B.) Wells Fargo claims the notice of default indicated that
12 Plaintiff was \$16,251.75 in default on her loan. (Mem. of P. & A. in Supp. of Mot.
13 at 3.) Subsequently, the subject property was scheduled for foreclosure on
14 December 20, 2016. (Compl. ¶ 10.)

16 ¹ Plaintiff does not identify the amount of the loan or the date she obtained the loan.

17 ² Plaintiff alleges she obtained a home-equity loan with Washington Mutual on
18 August 17, 2005. (Compl. ¶ 7.) She used a portion of the loan to make a down
19 payment on a senior citizen’s unit located at 6350 Genesee Avenue #113, San Diego,
20 CA 92122. (*Id.*) This loan is irrelevant to the foreclosure proceedings, as Plaintiff
21 claims she paid off the loan with Washington Mutual on October 21, 2015. (*Id.* at ¶
22 9.)

23 ³ On December 31, 2007, World Savings changed its name to Wachovia Mortgage,
24 FSB. (ECF No. 1, Ex. E.) Subsequently, on November 1, 2009, Wachovia
25 Mortgage, FSB merged with Wells Fargo. (*Id.*, Ex. F.)

26 ⁴ In the opposition to the motion to dismiss, Plaintiff contends for the first time that
27 she never obtained a loan from World Savings and the deed of trust is a forgery.
28 (Declaration of Nancy L. Fenton (“Fenton Decl.”) ¶ 4.) Because the focus of a
motion to dismiss under Rule 12(b)(6) is the complaint, the Court declines to
consider Plaintiff’s declaration in deciding this motion. *See Schneider v. Cal. Dep’t
of Corr.*, 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (holding, court may not take into
account additional facts asserted in memorandum opposing motion to dismiss).

⁵ On August 18, 2016, World Savings substituted Northwest Trustee Services, Inc.
as trustee. (*Id.*, Ex. J.)

1 On December 6, 2016, Plaintiff filed a complaint in the San Diego County
2 Superior Court, alleging the following claims: (1) quiet title, (2) declaratory relief,
3 and (3) injunctive relief. (Compl. ¶¶ 11–21.) Subsequently, Plaintiff filed an
4 emergency ex parte application to cancel foreclosure, which the Superior Court
5 granted on December 8, 2016. ((ECF No., Ex. B.) On January 20, 2017, Defendants
6 removed the action to federal court, invoking this Court’s diversity jurisdiction
7 pursuant to 28 U.S.C. § 1332. The present motion followed.

8 II.

9 DISCUSSION

10 A. Request for Judicial Notice

11 Generally, a court may not consider material beyond the complaint in ruling
12 on a Rule 12(b)(6) motion. *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001).
13 However, a court may “consider certain materials—documents attached to the
14 complaint, documents incorporated by reference in the complaint, or matters of
15 judicial notice—without converting the motion to dismiss into a motion for summary
16 judgment.” *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003). Under
17 Federal Rule of Evidence 201(b), a judicially noticed fact must be one “not subject
18 to reasonable dispute because it: (1) is generally known within the trial court’s
19 territorial jurisdiction; or (2) can be accurately and readily determined from sources
20 whose accuracy cannot reasonably be questioned.” Therefore, “[a] court may take
21 judicial notice of ‘matters of public record’ without converting a motion to dismiss
22 into a motion for summary judgment,” as long as the facts noticed are not “subject
23 to reasonable dispute.” *Intri-Plex Technologies, Inc. v. Crest Group Inc.*, 499 F.3d
24 1048, 1052 (9th Cir. 2007) (quoting *Lee*, 250 F.3d at 689).

25 Defendant requests the Court take judicial notice of the following ten
26 documents: (1) deed of trust recorded on July 12, 2004 (“Exhibit A”), (2) deed of
27 trust recorded on October 6, 2006 (“Exhibit B”), (3) full reconveyance recorded on
28 October 19, 2006 (“Exhibit C”), (4) certificate of corporate existence issued by

1 Office of Thrift Supervision, Department of the Treasury (“OTS”) (“Exhibit D”), (5)
2 a letter from OTS reflecting name change from World Savings Bank, FSB to
3 Wachovia Mortgage, FSB (“Exhibit E”), (6) charter of Wachovia Mortgage
4 (“Exhibit F”), (7) official certification of the Comptroller of the Currency, reflecting
5 Wachovia Mortgage’s merger into Wells Fargo (“Exhibit G”), (8) printout from
6 website of the Federal Deposit Insurance Corporation (“FDIC”), showing the history
7 of Wachovia Mortgage (“Exhibit H”), (9) portions of Plaintiff’s bankruptcy petition
8 filed on February 5, 2014 (“Exhibit I”), and (10) notice of default and election to sell
9 under deed of trust recorded on August 22, 2016 (“Exhibit J”). Plaintiff challenges
10 the authenticity of Exhibits A and B, contending the deeds of trust are forgeries. As
11 to the remaining exhibits, Plaintiff does not question their authenticity. Plaintiff,
12 however, objects insofar as Defendant seeks to have the Court take judicial notice
13 of the truth of the statements contained in the documents.

14 Initially, the Court finds it is unnecessary to take judicial notice of Exhibits B,
15 E, and G, because these documents are already before the Court as exhibits to the
16 Notice of Removal.⁶ *See, e.g., Beal v. Royal Oak Bar*, No. C 13-04911 LB, 2014
17 WL 1678015, at *2 n.2 (N.D. Cal. Apr. 28, 2014) (denying request for judicial notice
18 “[b]ecause these documents are already filed in the docket for this action, it is
19 unnecessary for the court to take judicial notice of them.”); *Johnson v. Haight*
20 *Ashbury Med. Clinics, Inc.*, No. C–11–02052–YGR, 2012 WL 629312, at *1 (N.D.
21 Cal. Feb. 27, 2012) (denying request for judicial notice “because it is unnecessary to
22 take judicial notice of documents in the record in this action”). Accordingly,
23 Defendant’s request for judicial notice as to Exhibits B, E, and G is denied.

24 Moreover, the Court declines to take judicial notice of Exhibit A, because
25 there is sufficient dispute as to the authenticity of the deed of trust. Plaintiff
26 challenges the authenticity of the deed of trust, arguing it is a forgery. In support,
27

28 ⁶ *See* Exhibits C, E, and F to Notice of Removal.

1 Plaintiff has submitted a declaration, attesting that “Exhibit A purports to be a Deed
2 of Trust executed by me in 2004, securing a note from World Savings. The signature
3 on the document is a forgery; I deny taking out any loan from World Savings in
4 2004.” (Fenton Decl. ¶ 4.) Accordingly, Defendant’s request for judicial notice as
5 to Exhibit A is denied. *See, e.g., Doss v. Clearwater Title Co.*, 551 F.3d 634, 640
6 (7th Cir. 2008) (finding the district court erred in taking judicial notice of a deed of
7 sale when plaintiff claimed it was a forgery); *Deen v. City of Redding*, No. CIV. S-
8 13-1569 KJM C, 2014 WL 1513353, at *3 (E.D. Cal. Apr. 11, 2014) (denying
9 request for judicial notice because “the accuracy of the proof of service might be
10 subject to reasonable dispute”).

11 Exhibits C, D, F and H are government records and public documents that are
12 not subject to reasonable dispute and are proper subjects of judicial notice. *See, e.g.,*
13 *Bondarenko v. Wells Fargo Bank, N.A.*, No. CV 15-403 DMG (JEMX), 2016 WL
14 6267927, at *3 (C.D. Cal. Aug. 10, 2016) (granting judicial notice of certificate of
15 corporate existence, notice of amendment of charter and bylaws, charter of
16 Wachovia mortgage, and merger and conversion of Wachovia to Wells Fargo);
17 *Ismail v. Wells Fargo Bank, N.A.*, No. 2:12-CV-01653-MCE, 2013 WL 930611, at
18 *3 (E.D. Cal. Mar. 8, 2013) (similar); *Beltran v. AccuBank Mortg. Corp.*, No. 1:12-
19 CV-0287 AWI BAM, 2013 WL 2434703, at *1 (E.D. Cal. June 4, 2013) (granting
20 judicial notice of full reconveyance and notice of default); *Shapiro v. Bank of Am.,*
21 *N.A.*, No. 2:11-CV-00576-JAM, 2011 WL 4851145, at *2 (E.D. Cal. Oct. 12, 2011)
22 (same). Accordingly, Defendant’s request for judicial notice as to Exhibits C, D, F,
23 and H is granted.

24 Judicial notice of court records and other publicly filed records is also
25 routinely granted as to the existence of the documents, but not always as to the truth
26 of matters stated therein. Although a court “may take judicial notice of the existence
27 of unrelated court documents ... it [should] not take judicial notice of such documents
28 for the truth of the matter asserted therein.” *In re Bare Escentuals, Inc. Sec. Lit.*,

1 745 F. Supp. 2d 1052, 1067 (N.D. Cal. 2010); *see Wallis v. Centennial Ins. Co.*, 927
2 F. Supp. 2d 909, 913–14 (E.D. Cal. 2013) (“[w]hile the authenticity and existence
3 of a particular order, motion, pleading or judicial proceeding, which is a matter of
4 public record, is judicially noticeable, veracity and validity of its contents (the
5 underlying arguments made by the parties, disputed facts, and conclusions of
6 applicable facts or law) are not.”) (quoting *United States v. S. Cal. Edison Co.*, 300
7 F. Supp. 2d 964, 974 (E.D. Cal. 2004); *Lee*, 250 F.3d at 690 (court may take judicial
8 notice of another court’s opinion, not for the truth of the facts recited therein, but for
9 the existence of the opinion). Accordingly, the Court grants Defendant’s request for
10 judicial notice as to the existence of Exhibits I (bankruptcy petition) and J (notice of
11 default and election to sell under deed of trust), but not as to the truth of the matters
12 stated therein.

13 **B. Motion to Dismiss**

14 A motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil
15 Procedure tests the legal sufficiency of the claims asserted in the complaint. Fed. R.
16 Civ. P. 12(b)(6); *Navarro v. Block*, 250 F.3d 729, 731 (9th Cir. 2001). In deciding
17 a motion to dismiss, all material factual allegations of the complaint are accepted as
18 true, as well as all reasonable inferences to be drawn from them. *Cahill v. Liberty*
19 *Mut. Ins. Co.*, 80 F.3d 336, 338 (9th Cir. 1996). However, a court need not accept
20 all conclusory allegations as true. Rather, it must “examine whether conclusory
21 allegations follow from the description of facts as alleged by the plaintiff.” *Holden*
22 *v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992) (citation omitted); *see Benson v.*
23 *Arizona State Bd. of Dental Examiners*, 673 F.2d 272, 275–76 (9th Cir. 1982) (court
24 need not accept conclusory legal assertions). A motion to dismiss should be granted
25 if a plaintiff’s complaint fails to contain “enough facts to state a claim to relief that
26 is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A
27 claim has facial plausibility when the plaintiff pleads factual content that allows the
28 court to draw the reasonable inference that the defendant is liable for the misconduct

1 alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at
2 556).

3 **i. Quiet Title**

4 A quiet title action may be brought “to establish title against adverse claims
5 to real or personal property or any interest therein.” Cal. Civ. Proc. Code § 760.020.
6 In order to state a claim for quiet title, the complaint must allege “(1) the subject
7 property’s description, including both its legal description and its street address or
8 common designation; (2) plaintiff’s alleged title to the property; (3) the adverse
9 claims against which a determination is sought; (4) the date as of which the
10 determination is sought; and (5) a prayer for the determination of the title against the
11 adverse claims.” *Metcalfe v. Drexel Lending Grp.*, No. 08-CV-00731 W POR, 2008
12 WL 4748134, at *5 (S.D. Cal. Oct. 29, 2008) (citing Cal. Civ. Proc. § 761.020). In
13 addition, a plaintiff must allege in the complaint that he or she is the rightful owner
14 of the property, “i.e. that they have satisfied their obligations under the Deed of
15 Trust.” *Kelley v. Mortg. Elec. Registration Sys., Inc.*, 642 F. Supp. 2d 1048, 1057
16 (N.D. Cal. 2009); *see Rockridge Trust v. Wells Fargo, N.A.*, 985 F. Supp. 2d 1110,
17 1158 (N.D. Cal. 2013) (“In most circumstances, a requirement of an action to quiet
18 title is an allegation that plaintiffs ‘are the rightful owners of the property, i.e. that
19 they have satisfied their obligations under the deed of trust.’”) (citation omitted).
20 Therefore, “a borrower may not assert quiet title against a mortgagee without first
21 paying the outstanding debt on the property.” *Rosenfeld v. JPMorgan Chase Bank,*
22 *N.A.*, 732 F. Supp. 2d. 952, 975 (N.D. Cal. 2010) (internal citations omitted); *see*
23 *Boza v. U.S. Bank NA (Two Cases)*, 606 F. App’x 357, 358 (9th Cir. 2015) (“Because
24 the FAC fails to allege that [Plaintiffs] paid or offered to pay their mortgage debt,
25 [Plaintiffs’] claim to quiet title fails as a matter of law.”); *Watson v. Bank of Am.,*
26 *N.A.*, No. 16CV513-GPC(MDD), 2016 WL 3552061, at *19 (S.D. Cal. June 30,
27 2016) (“It is settled in California that a mortgagor cannot quiet his title against the
28 mortgagee without paying the debt secured.”) (quoting *Shimpones v. Stickney*, 219

1 Cal. 637, 649 (Cal. 1934)).

2 Defendant argues Plaintiff has failed to state a claim for quiet title because the
3 complaint does not state facts supporting relief.⁷ Indeed, Plaintiff does not allege all
4 elements required to state a claim for quiet title. Although Plaintiff alleges she paid
5 off her loan with Golden West Savings, which is irrelevant to the present action, she
6 does not allege she has paid or offered to pay her loan with Wells Fargo. The record
7 shows Plaintiff obtained a loan on September 22, 2006, in the amount of \$308,500
8 from World Savings Bank, which is now Wells Fargo. This loan was secured by a
9 deed of trust recorded against the subject property. The complaint does not allege
10 Plaintiff is the rightful owner of the subject property or that she has tendered or has
11 the ability to tender any outstanding debt on the subject property. Therefore,
12 Plaintiff's allegations are insufficient to state a claim for quiet title. Accordingly,
13 the Court grants Defendant's motion to dismiss the quiet title claim.

14 **ii. Declaratory Relief**

15 Federal courts sitting in diversity apply the substantive law of the forum state.
16 *See Clark v. Allstate Insurance Co.*, 106 F. Supp. 2d 1016, 1018 (S.D. Cal. 2000)
17 (“It is well-established that federal courts sitting in diversity must apply state
18 substantive law and federal procedural rules.”). Therefore, federal courts have
19 applied California Code of Civil Procedure § 1060 rather than the federal
20 Declaratory Judgment Act when sitting in diversity. *See, e.g., Hernandez v. Select*
21 *Portfolio, Inc.*, No. CV 15-01896 MMM AJWX, 2015 WL 3914741, at *13 (C.D.
22 Cal. June 25, 2015) (applying § 1060 to a declaratory relief claim); *De Vico v. U.S.*
23 *Bank*, No. CV1208440MMMFFMX, 2013 WL 12129387, at *18 (C.D. Cal. Feb. 1,
24 2013) (same); *Acceptance Ins. Co. v. Am. Safety Risk Retention Grp., Inc.*, No.

25 _____
26 ⁷ Defendant also contends the allegations of the complaint are contradicted by
27 judicially noticeable documents as to all three claims for relief. However, as
28 discussed, Defendant's request for judicial notice is denied as to the truth of the
contents stated in the bankruptcy petition and other pertinent documents. Therefore,
the Court finds this argument to be without merit and declines to further address it.

1 08CV1057-L(WMC), 2010 WL 744291, at *4 (S.D. Cal. Mar. 3, 2010) (same). “To
2 assert a cause of action for declaratory relief, Code of Civil Procedure section 1060
3 requires that there be an ‘actual controversy relating to the legal rights and duties of
4 the respective parties,’ not an abstract or academic dispute.” *Centex Homes v. St.*
5 *Paul Fire & Marine Ins. Co.*, 237 Cal. App. 4th 23, 29 (Cal. Ct. App. 2015) (citing
6 *Connerly v. Schwarzenegger*, 146 Cal. App. 4th 739, 746–47(Cal. Ct. App. 2007)).
7 A “claim for declaratory relief is not a stand-alone claim, but rather depends upon
8 whether or not Plaintiff states some other substantive basis for liability.” *Nguyen v.*
9 *JP Morgan Chase Bank*, No. SACV 11-1908 DOC (ANx), 2012 WL 294936, at *4
10 (C.D. Cal. Feb. 1, 2012); *see Hernandez v. Select Portfolio, Inc.*, No. CV 15-01896
11 MMM AJWX, 2015 WL 3914741, at *14 (C.D. Cal. June 25, 2015) (granting
12 motion to dismiss declaratory relief claim “[b]ecause [Plaintiff] has failed to state
13 any substantive claims”); *Javaheri v. JPMorgan Chase Bank, N.A.*, No. 2:10-CV-
14 08185-ODW, 2012 WL 6140962, at *8 (C.D. Cal. Dec. 11, 2012) (“Declaratory and
15 injunctive relief do not lie where all other claims have been dismissed.”)

16 Here, Plaintiff seeks a declaration that “the title to the subject property is
17 vested in Plaintiff, Nancy L. Fenton’s name alone and that the Defendant, Wells
18 Fargo herein, and each of them, be declared to have no estate, right, title or interest
19 in the subject property and that said Defendant Wells Fargo, and each of them, be
20 forever enjoined from asserting any estate, right, title or interest in the subject
21 property[.]” (Compl. ¶ 16.) Plaintiff, however, has failed to state any substantive
22 claims. Because the Court grants Defendant’s motion to dismiss on the quiet title
23 cause of action, the declaratory relief claim, which is based on the same factual and
24 legal theories, must also be dismissed. Accordingly, the Court grants Defendant’s
25 motion to dismiss the declaratory relief claim.

26 **iii. Injunctive Relief**

27 “Injunctive relief is a remedy, not a cause of action.” *Guessous v. Chrome*
28 *Hearts, LLC*, 179 Cal.App.4th 1177, 1187 (Cal. Ct. App. 2009) (quoting *City of S.*

1 *Pasadena v. Dep't of Transp.*, 29 Cal. App. 4th 1280, 1293 (Cal. Ct. App. 1994)). It
2 is “a remedy that derives from the underlying claims, not an independent claim.”
3 *Bridgeman v. United States*, No. 2:10-CV-01457 JAM, 2011 WL 221639, at *17
4 (E.D. Cal. Jan. 21, 2011) (citations omitted). Therefore, “a cause of action must
5 exist before injunctive relief may be granted.” *Shell Oil Co. v. Richter*, 52 Cal. App.
6 2d 164, 168 (Cal. Ct. App. 1942).

7 As indicated above, because Plaintiff’s quiet title claim is insufficiently
8 pleaded, Plaintiff has failed to state any viable causes of action. Therefore,
9 Plaintiff’s injunctive relief claim must also be dismissed. Accordingly, the Court
10 grants Defendant’s motion to dismiss the injunctive relief claim.

11 **iv. Leave to Amend**

12 Defendant argues the complaint should be dismissed with prejudice because
13 Plaintiff has “presented no facts that undermine the validity of the 2006 deed of
14 trust.” (Mem. of P. & A. in Supp. of Mot. at 5.) Defendant contends Plaintiff
15 “validated the debt and 2006 deed of trust herself in the bankruptcy schedules she
16 filed on February 5, 2014, declaring under penalty of perjury that the 2006 deed of
17 trust held by Wells Fargo was valid.” (*Id.*) This is not a proper argument at this
18 stage of the proceedings. The validity of the 2006 deed of trust, including whether
19 it was fraudulently obtained, are matters that may be addressed in a Rule 56 motion
20 following discovery. Accordingly, the Court grants Defendant’s motion to dismiss
21 with leave to amend. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048,
22 1051 (9th Cir. 2003) (“leave shall be freely given when justice so requires[,]” and
23 “[t]his policy is to be applied with extreme liberality.”) (citations and internal
24 quotations omitted).

25 **III.**

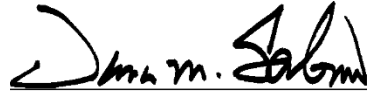
26 **CONCLUSION**

27 For the foregoing reasons, Defendant’s motion to dismiss is granted and
28 Defendant’s request for judicial notice is granted in part and denied in part. Plaintiff

1 is granted leave to file a First Amended Complaint (“FAC”) that cures the pleading
2 deficiencies identified in this Order. The FAC shall be filed on or before April 26,
3 2017.

4 **IT IS SO ORDERED.**

5 Dated: April 12, 2017



6 Hon. Dana M. Sabraw
7 United States District Judge

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