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

PATRICIA CUETO,  
  
Plaintiff,  
  
v.  
  
WORLD SAVINGS BANK, FSB;  
WORLD SAVINGS BANK FSB, THE  
BANK OF NEW YORK MELLON AS  
TRUSTEE FOR SECURITIZED TRUST  
WORLD SAVINGS BANK  
MORTGAGE PASS-THROUGH  
CERTIFICATES REMIC 23 TRUST  
WORLD SAVINGS BANK, FSB; and  
DOES 1 through 100, inclusive,  
  
Defendants.

Case No.: 17-cv-01144-H-AGS

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS WITH  
LEAVE TO AMEND**

**[Doc. No. 3]**

On June 12, 2017, Defendants Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Southwest, N.A., f/k/a Wachovia Mortgage, FSB f/k/a World Savings Bank, FSB and The Bank of New York Mellon (“Defendants”) filed a motion to dismiss Plaintiff Patricia Cueto’s (“Plaintiff”) complaint. (Doc. No. 3.) On June 28, 2017, the Court submitted the motion on the papers. (Doc. No. 6.) In that same order, the Court noted that Plaintiff’s opposition had not yet been filed, and ordered the opposition to be

1 filed on or before July 3, 2017, with Defendant’s reply, if any, due by July 10, 2017. (Id.)  
2 To date, Plaintiff has yet to file an opposition. For the reasons below, the Court grants  
3 Defendant’s motion to dismiss the complaint without prejudice.

#### 4 Background

5 This action arises out of Plaintiff’s mortgage. On March 15, 2006, Plaintiff  
6 borrowed \$420,000.00 from World Savings Bank, FSB (“World Savings”) and executed a  
7 Deed of Trust to real property commonly known as 4944 Chateau Dr., San Diego, CA, as  
8 a security for the loan. (Doc. No. 4, Request for Judicial Notice (“RJN”) Ex. A.)<sup>1</sup> In  
9 January 2008, World Savings changed its name to Wachovia Mortgage, FSB (“Wachovia  
10 Mortgage”). (Doc. No. 4, RJN Ex. C.) In November 2009, Wachovia Mortgage changed  
11 its name to Wells Fargo Bank Southwest, N.A., and merged into Wells Fargo Bank, N.A.  
12 (“Wells Fargo”). (Doc. No.4, RJN Ex. E.)

13 On May 29, 2013, there was a Notice of Default and Election to Sell under the Deed  
14 of Trust. (Doc. No. 4, RJN Ex. F.) On November 16, 2016, there was a Notice of Trustee’s  
15 Sale as to Plaintiff’s property. (Doc. No. 4, RJN Ex. G.) On April 7, 2017, Plaintiff filed  
16 for bankruptcy pursuant to Chapter 13 of the United States Bankruptcy Code. (Doc. No.  
17 4, RJN Ex. H.) On April 25, 2017, the bankruptcy court dismissed Plaintiff’s Chapter 13  
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20 <sup>1</sup> The Court takes judicial notice under Federal Rule of Evidence 201, of the following public  
21 documents: Deed of Trust executed on March 3, 2006 and recorded on March 15, 2006 in the official  
22 records of San Diego County as Document 2006-0178417 (Doc. No. 4, RJN Ex. A); Certificate of  
23 Corporate Existence dated April 21, 2006 (Id. Ex. B); Notice of Amendment of Charter and Bylaws  
24 dated November 19, 2007 (Id. Ex. C); Charter of Wachovia Mortgage, FSB dated March 16, 2009 (Id.  
25 Ex. D); Official Certification of the Comptroller of the Currency stating that Wachovia Mortgage, FSB,  
26 converted to Wells Fargo Bank Southwest, N.A., which then merged with Wells Fargo Bank, N.A.,  
27 dated November 1, 2009 (Id. Ex. E); Notice of Default and Election to Sell Under Deed of Trust  
28 recorded on May 29, 2013 in the official records of San Diego County as Document No. 2013-0333621  
(Id. Ex. F); Notice of Trustee’s Sale recorded on November 16, 2016 in the official records of San Diego  
County as Document No. 2016-0625225 (Id. Ex. G); Voluntary Petition for Bankruptcy dated and filed  
on April 7, 2017 with the United States Bankruptcy Court, Southern District of California, as Case No.  
17-02070-LT13 (Id. Ex. H); Order Dismissing Chapter 13 Case without Prejudice entered on April 24,  
2017 by the United States Bankruptcy Court, Southern District of California, as Case No. No. 17-02070-  
LT13 (Id. Ex. I). See Lee v. City of Los Angeles, 250 F. 3d 668, 688-89 (9th Cir. 2001) (“[U]nder Fed.  
R. Evid. 201, a court may take judicial notice of ‘matters of public record.’”).

1 action. (Doc. No. 4, RJN Ex. I.)

2 On May 25, 2017, following the dismissal of her bankruptcy action, Plaintiff,  
3 proceeding *pro se*, filed a complaint in the San Diego County Superior Court against  
4 Defendants Wells Fargo<sup>2</sup> and The Bank of New York Mellon (“Bank of New York”),  
5 alleging causes of action for (1) wrongful foreclosure; (2) fraud in the concealment; (3)  
6 fraud in the inducement; (4) unconscionable contract; (5) breach of contract; (6) breach of  
7 fiduciary duty; (7) quiet title; (8) temporary restraining order and injunctive relief; and (9)  
8 declaratory relief. (Doc. 1-2, Compl.) On June 6, 2017, Defendants removed the action  
9 pursuant to 28 U.S.C. § 1441 to this Court on the basis of diversity jurisdiction. (Doc. No.  
10 1, Notice of Removal.) By the present motion, Defendants move to dismiss all of the  
11 causes of action in Plaintiff’s complaint pursuant to Federal Rule of Civil Procedure  
12 12(b)(6) for failure to state a claim. (Doc. No. 3-1.)

13 **Discussion**

14 **I. Legal Standards for a Rule 12(b)(6) Motion to Dismiss**

15 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal  
16 sufficiency of the pleadings and allows a court to dismiss a complaint if the plaintiff has  
17 failed to state a claim upon which relief can be granted. See Conservation Force v. Salazar,  
18 646 F.3d 1240, 1241 (9th Cir. 2011). Federal Rule of Civil Procedure 8(a)(2) requires that  
19 a pleading stating a claim for relief contain “a short and plain statement of the claim  
20 showing that the pleader is entitled to relief.” The function of this pleading requirement is  
21 to “give the defendant fair notice of what the . . . claim is and the grounds upon which it  
22 rests.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

23 A complaint will survive a motion to dismiss if it contains “enough facts to state a  
24 claim to relief that is plausible on its face.” Twombly, 550 U.S. at 570. “A claim has facial  
25 plausibility when the plaintiff pleads factual content that allows the court to draw the  
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28 <sup>2</sup> In her complaint, Plaintiff refers to the defendant as “World Savings Bank,” but World Savings Bank has merged into Wells Fargo.

1 reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v.  
2 Iqbal, 556 U.S. 662, 678 (2009). “A pleading that offers ‘labels and conclusions’ or ‘a  
3 formulaic recitation of the elements of a cause of action will not do.” Id. (quoting  
4 Twombly, 550 U.S. at 555). “Nor does a complaint suffice if it tenders ‘naked assertion[s]’  
5 devoid of ‘further factual enhancement.’” Id. (quoting Twombly, 550 U.S. at 557).  
6 Accordingly, dismissal for failure to state a claim is proper where the claim “lacks a  
7 cognizable legal theory or sufficient facts to support a cognizable legal theory.”  
8 Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).

9 In reviewing a Rule 12(b)(6) motion to dismiss, a district court must accept as true  
10 all facts alleged in the complaint, and draw all reasonable inferences in favor of the  
11 plaintiff. See Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am., 768 F.3d  
12 938, 945 (9th Cir. 2014). But a court need not accept “legal conclusions” as true. Ashcroft  
13 v. Iqbal, 556 U.S. 662, 678 (2009). Further, it is improper for a court to assume the plaintiff  
14 “can prove facts which it has not alleged or that the defendants have violated the . . . laws  
15 in ways that have not been alleged.” Associated Gen. Contractors of Cal., Inc. v. Cal. State  
16 Council of Carpenters, 459 U.S. 519, 526 (1983). In addition, a court may consider  
17 documents incorporated into the complaint by reference and items that are proper subjects  
18 of judicial notice. See Coto Settlement v. Eisenberg, 593 F.3d 1031, 1038 (9th Cir. 2010).

19 If the court dismisses a complaint for failure to state a claim, it must then determine  
20 whether to grant leave to amend. See Doe v. United States, 58 F.3d 494, 497 (9th Cir.  
21 1995). “‘A district court may deny a plaintiff leave to amend if it determines that  
22 ‘allegation of other facts consistent with the challenged pleading could not possibly cure  
23 the deficiency,’ or if the plaintiff had several opportunities to amend its complaint and  
24 repeatedly failed to cure deficiencies.” Telesaurus VPC, LLC v. Power, 623 F.3d 998,  
25 1003 (9th Cir. 2010) (internal quotation marks and citations omitted).

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1 **II. Plaintiff's Complaint**

2 **A. Lack of Standing/Wrongful Foreclosure**

3 Plaintiff alleges a cause of action for lack of standing/wrongful foreclosure against  
4 both Defendants. (Doc. No. 1-2, Compl. ¶ 37.) Defendants argue that this claim should  
5 be dismissed because Plaintiff's allegations are conclusory, and because Plaintiff lacks  
6 standing to challenge Defendants' right to foreclose. (Doc. No. 3-1 at 4-5.)

7 In order to state a claim for wrongful foreclosure, Plaintiff must allege that "(1) the  
8 trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real  
9 property pursuant to a power of sale in a mortgage or deed of trust; (2) she was prejudiced  
10 or harmed; and (3) she tendered the amount of the secured indebtedness or was excused  
11 from tendering." Lona v. Citbank, N.A., 202 Cal. App. 4th 89, 103 (2011); accord Miles  
12 v. Deutsche Bank Nat'l Trust Co., 236 Cal. App. 4th 394, 408 (2015). Because the first  
13 element of a claim for wrongful foreclosure requires that the defendant caused an illegal,  
14 fraudulent, or willfully oppressive sale, a plaintiff "cannot state a claim for wrongful  
15 foreclosure . . . until a sale has occurred." Williams v. Bank of America, N.A., No. 15-  
16 17335, 2017 WL 2983055, at \*1 (9th Cir. July 13, 2017) (citing Miles, 236 Cal. App. 4th  
17 at 408); see Jacinto v. Ditech Fin. LLC, No. 16-CV-02815-MMC, 2016 WL 6248901, at  
18 \*2 (N.D. Cal. Oct. 26, 2016) (citing Jenkins v. JP Morgan Chase Bank, N.A., 216 Cal.  
19 App. 4th 497, 511 (2013)).

20 Here, Plaintiff has not alleged that her house has been sold through a foreclosure  
21 sale. Indeed, a review of the judicially noticeable documents does not reflect that her house  
22 has been sold. (See Doc. No. 4, RJN Ex. A-I.) Thus, Plaintiff has failed to adequately  
23 allege sufficient facts to state a cause of action for wrongful foreclosure. See Williams,  
24 2017 WL 2983055, at \*1; Jacinto, 2016 WL 6248901, at \*2. Accordingly, the Court grants  
25 Defendants' motion to dismiss Plaintiff's claim for lack of standing/wrongful foreclosure.

26 **B. Fraud in the Inducement**

27 Plaintiff alleges a cause of action for fraud in the inducement against both  
28 Defendants. (Doc. No. 1-2, Compl. ¶¶ 59-66.) Defendants argue Plaintiff's claim does not

1 satisfy Federal Rule of Civil Procedure 9's requirement of particularity. (Doc. No. 3-1 at  
2 7-9.)

3 Under California law, the general elements of fraud are: "(1) a misrepresentation,  
4 which includes a concealment or nondisclosure; (2) knowledge of the falsity of the  
5 misrepresentation, i.e., scienter; (3) intent to induce reliance on the misrepresentation; (4)  
6 justifiable reliance; and (5) resulting damages." Cadlo v. Owens-Illinois, Inc., 125 Cal.  
7 App. 4th 513, 519 (2004). In addition, a claim for fraud against a corporation "requires the  
8 plaintiff to allege the names of the persons who made the allegedly fraudulent  
9 representations, their authority to speak, to whom they spoke, what they said or wrote, and  
10 when it was said or written." Tarmann v. State Farm Mut. Auto. Ins. Co., 2 Cal. App. 4th  
11 153, 157 (1991).

12 Further, under Federal Rule of Civil Procedure 9, a plaintiff must plead fraud with  
13 particularity. Fed. R. Civ. P. 9(b). "Rule 9(b)'s particularity requirement applies to state-  
14 law causes of action." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103 (9th Cir.  
15 2003). This means that Plaintiff must allege the "who, what, when, where, and how of the  
16 misconduct charged." United States v. United Healthcare Ins. Co., 848 F.3d 1161, 1180  
17 (9th Cir. 2016). To this end, "mere conclusory allegations of fraud are insufficient." Id.  
18 "Broad allegations that include no particularized supporting detail do not suffice, but  
19 'statements of the time, place and nature of the alleged fraudulent activities are sufficient.'" Id.  
20 Id. (internal citations omitted.)

21 The allegations in support of Plaintiff's cause of action for fraud in the inducement  
22 consist only of conclusory allegations of fraud, and do not contain the particularity  
23 necessary to satisfy Rule 9(b). (See Doc. No. 1-2, Compl. ¶¶ 59-66.) Plaintiff alleges that  
24 Defendants misrepresented certain provisions of the contract. (Id. at ¶ 61.) Plaintiff does  
25 not provide the name of the person who allegedly made the fraudulent representation, their  
26 authority to speak, when it occurred, or what specifically was said. Thus, Plaintiff has  
27 failed to adequately allege sufficient facts to satisfy Rule 9(b)'s particularity requirement  
28 or to state a claim for fraud in the inducement. See Tarmann, 2 Cal. App. 4th at 157; United

1 Healthcare Ins., 848 F.3d at 1180. Accordingly, the Court grants Defendants’ motion to  
2 dismiss Plaintiff’s claim for fraud in the inducement.

3 **C. Fraud in the Concealment**

4 Plaintiff alleges a cause of action for fraud in the concealment against Defendant  
5 Wells Fargo. (Doc. No. 1-2, Compl. ¶¶ 48-58). Plaintiff alleges that Wells Fargo  
6 concealed certain aspects of the contract from them, and also did not reveal that they were  
7 not a Federal Reserve Depository Bank. (Id at ¶ 50.) Defendants argue that fraud based  
8 on concealment requires a fiduciary duty between Plaintiff and Defendant, which does not  
9 exist here. (Doc. No. 3-1 at 7-9.)

10 To state a claim for fraud in the concealment, “the defendant must have been under  
11 a duty to disclose the [relevant material] fact to the plaintiff.” Bank of Am. Corp. v.  
12 Superior Court, 198 Cal. App. 4th 862, 870 (2011). “Absent a fiduciary relationship, non-  
13 disclosure is not fraudulent concealment.” Long v Walt Disney Co., 116 Cal. App. 4th  
14 868, 874 (2004).

15 Here, Plaintiff has failed to allege any facts supporting the existence of a fiduciary  
16 relationship between herself and either Defendant. “[A]bsent special circumstances . . . a  
17 loan transaction is at arm’s length and there is no fiduciary relationship between the  
18 borrower and lender.” Perlas v. GMAC Mortg., LLC, 187 Cal. App. 4th 429, 436 (2010);  
19 see also Nymark v. Heart Fed. Sav. & Loan Assn., 231 Cal. App. 3d 1089, 1096 (1991)  
20 (“[A]s a general rule, a financial institution owes no duty of care to a borrower when the  
21 institution's involvement in the loan transaction does not exceed the scope of its  
22 conventional role as a mere lender of money.”). Thus, Plaintiff has failed to adequately  
23 allege a cause of action for fraud in the concealment. See Bank of Am., 198 Cal. App. 4th  
24 at 870. Accordingly, the Court grants Defendants’ motion to dismiss Plaintiff’s claim for  
25 fraud in the concealment.

26 **D. Unconscionable Contract**

27 Plaintiff alleges a cause of action for unconscionable contract against Defendant  
28 Wells Fargo. (Doc. No. 1-2, Compl. ¶ 67.) Unconscionability is not an affirmative cause

1 of action; rather, it is a defense. Cal. Grocers Ass'n v. Bank of America, 22 Cal. App. 4th  
2 205, 217 (1994). While there could be statutes that may provide affirmative causes of  
3 action for unconscionability, Plaintiff has not provided any basis to support such an  
4 affirmative cause of action. See id. Accordingly, the Court grants Defendants' motion to  
5 dismiss Plaintiff's claim for unconscionability. See e.g., Wyatt v. Lehman Brothers Bank,  
6 FSB, 2015 WL 12746234, at \*8 (C.D. Cal. March 12, 2015) (dismissing claim asserting  
7 that the deed of trusts are unconscionable); Nava v. VirtualBank, 2008 WL 2873406, at  
8 \*10 (E.D. Cal. July 16, 2008) (“[P]laintiff’s allegation that defendants breached the Note  
9 because the Note was unconscionable does not create a recognized claim under California  
10 law.”).

#### 11 **E. Breach of Contract**

12 Plaintiff alleges a cause of action for breach of contract against Defendant Wells  
13 Fargo. (Doc. No. 1-2, Compl. ¶ 79.) Plaintiff alleges that Wells Fargo “was obligated to  
14 satisfy, release and reconvey the beneficial security interest in Plaintiff’s pledged Deed of  
15 Trust,” and that Wells Fargo “failed to satisfy release and reconvey the security  
16 instrument.” (Id. at ¶¶ 77, 79.) Defendants argue that this claim should be dismissed  
17 because Plaintiff has failed to adequately allege her performance of the contract. (Doc.  
18 No. 3-1 at 10-11.)

19 In California, the elements of a claim for breach of contract are “(1) the contract, (2)  
20 plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4)  
21 damage to plaintiff therefrom.” Wall St. Network, Ltd. V. New York Times Co., 164 Cal.  
22 App. 4th 1171, 1178 (2008).

23 Here, Plaintiff does not allege that she complied with the terms of the contract, nor  
24 does she allege any reasons for why her non-performance was excused. (See Doc. No. 1-  
25 2, Compl. ¶¶ 75-79.) Thus, Plaintiff has failed to adequately state a claim for breach of  
26 contract. Accordingly, the Court grants Defendants’ motion to dismiss Plaintiff’s claim  
27 for breach of contract.

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1           **F. Breach of Fiduciary Duty**

2           Plaintiff alleges a cause of action for breach of fiduciary duty against both  
3 Defendants. (Doc. No. 1-2, Compl. ¶ 85.) To properly allege a claim for breach of  
4 fiduciary duty, “a plaintiff must show the existence of a fiduciary relationship, its breach,  
5 and damage caused by the breach.” Apollo Capital Fund, LLC v. Roth Capital Partners,  
6 LLC, 158 Cal. App. 4th 226, 243 (2007). As discussed above in connection with Plaintiff’s  
7 claim for fraud in the concealment, Plaintiff has failed to allege the existence of a fiduciary  
8 relationship between herself and either Defendant. See Perlas, 187 Cal. App. 4th at 435;  
9 Nymark, 231 Cal. App. 3d at 1096. Accordingly, the Court grants Defendants’ motion to  
10 dismiss Plaintiff’s claim of breach of fiduciary duty.

11           **G. Quiet Title**

12           Plaintiff alleges a cause of action to quiet title in the property. (Doc. No. 1-2, Compl.  
13 ¶¶ 92, 93.) To state a claim for quiet title, a plaintiff must allege (1) a description of the  
14 property that is the subject of the action, (2) the title of the plaintiff as to which a  
15 determination is sought and the basis of the title, (3) the adverse claims to the title of the  
16 plaintiff against which a determination is sought, (4) the date as of which the determination  
17 is sought, and (5) a prayer for the determination of the title of the plaintiff against the  
18 adverse claims. See Cal. Code Civ. Pro. § 761.020; Lester v J.P. Morgan Chase Bank, 926  
19 F. Supp. 2d 1081, 1095 (N.D. Cal. 2013). “A borrower may not, however, quiet title  
20 against a secured lender without first paying the outstanding debt on which the mortgage  
21 or deed of trust is based.” Lueras v. BAC Home Loans Servicing, LP, 221 Cal. App. 4th  
22 49, 86-87 (2013); see Watson v. Bank of Am., N.A., No. 16CV513-GPC (MDD), 2016  
23 WL 3552061, at \*19 (S.D. Cal. June 30, 2016) (“It is settled in California that a mortgagor  
24 cannot quiet his title against the mortgagee without paying the debt secured.”).  
25 Accordingly, “a ‘plaintiff seeking to quiet title in the face of a foreclosure must allege  
26 tender or an offer of tender of the amount borrowed.’” Watson, 2016 WL 3552061, at \*19;  
27 see Dahnken v. Wells Fargo Bank, NA, No. 4:13-cv-02838-PJH, 2017 WL 3049552, at \*2  
28 (9th Cir. 2017) (“Nor did [plaintiff] allege that he had paid his debt, which is a necessary

1 prerequisite to quiet title to the property.”).

2 Here, Plaintiff has not alleged that she has paid or offered to pay her mortgage debt.  
3 Accordingly, Plaintiff has failed to adequately state a claim for quiet title, and the Court  
4 grants Defendants’ motion to dismiss Plaintiff’s claim of quiet title. See Boza v. U.S. Bank  
5 NA, 606 F. App’x 357, 358 (9th Cir. 2015) (“Because the FAC fails to allege that the Bozas  
6 paid or offered to pay their mortgage debt, the Bozas’ claim to quiet title fails as a matter  
7 of law.”).

#### 8 **H. Temporary Restraining Order and Injunctive Relief**

9 Plaintiff alleges a cause of action for a temporary restraining order and for injunctive  
10 relief. (Doc. No. 1-2, Compl. ¶ 99.) “Injunctive relief is a remedy, not a cause of action.”  
11 Guessous v. Chrome Hearts, LLC, 179 Cal. App. 4th 1177, 1187 (2009). Thus, a “cause  
12 of action must exist before injunctive relief may be granted.” Shell Oil Co. v. Richter, 52  
13 Cal. App. 2d 164, 168 (1942); accord Fenton v. Wells Fargo Home Mortg., No. 17-CV-  
14 0113 DMS (WVG), 2017 WL 1346672, at \*5 (S.D. Cal. Apr. 12, 2017). Here, Plaintiff  
15 has failed to state any viable causes of action. Accordingly, the Court grants Defendants’  
16 motion to dismiss Plaintiff’s claim for temporary restraining order and injunctive relief.

#### 17 **I. Declaratory Relief**

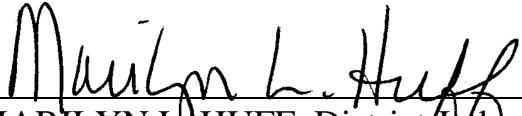
18 Plaintiff alleges a cause of action for declaratory relief. (Doc. No. 1-2, Compl. ¶¶  
19 101-03.) Federal courts have the power to grant declaratory relief pursuant to the  
20 Declaratory Judgment Act. 28 U.S.C. §§ 2201, 2202. This power is discretionary, and  
21 courts consider various factors in deciding whether the relief is appropriate. 28 U.S.C. §  
22 2201(a). However, a cause of action for declaratory relief does not state an independent  
23 action, but rather “merely seeks relief.” Audette v. Int’l Longshoremen’s and  
24 Warehousemen’s Union, 195 F.3d 1107, 1111 (9th Cir. 1999); see Fenton, 2017 WL  
25 1346672, at \*4 (“A ‘claim for declaratory relief is not a stand-alone claim, but rather  
26 depends upon whether or not Plaintiff states some other substantive basis for liability.”).  
27 Here, Plaintiff has failed to state any viable causes of action. Accordingly, the Court grants  
28 Defendants’ motion to dismiss Plaintiff’s claim for declaratory relief.

1 Conclusion

2 For the reasons above, the Court grants Defendants’ motion to dismiss, and the Court  
3 dismisses Plaintiff’s complaint without prejudice. In addition, the Court grants Plaintiff  
4 leave to amend. If Plaintiff wishes to proceed, she must file an amended complaint on or  
5 before **August 21, 2017**. Any first amended complaint must cure the deficiencies noted in  
6 this order and must comply with Federal Rule of Civil Procedure 8.

7 **IT IS SO ORDERED.**

8 DATED: July 24, 2017

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11 MARILYN L. HUFF, District Judge  
12 UNITED STATES DISTRICT COURT  
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