

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 DAVID ALLUM,)
5)
6 Plaintiff,)
7 vs.)
8 MORTGAGE ELECTRONIC REGISTRATION)
9 SYSTEMS, INC.; MOUNTAIN VIEW)
10 MORTGAGE COMPANY; QUICKEN LOANS)
11 INC.; QUALITY LOAN SERVICE CORP.; BAC)
12 HOME LOANS SERVICING, LP formerly known)
13 as COUNTRYWIDE HOME LOANS)
14 SERVICING, LP,)
15 Defendants.)

Case No.: 2:12-cv-00294-GMN-CWH

ORDER

14 Pending before the Court is the Motion to Dismiss (ECF No. 8) filed by Defendant
15 Quality Loan Service Corp. (“Quality Loan”), the Motion to Dismiss (ECF No. 11) filed by
16 Defendant Quicken Loans, Inc. (“Quicken Loans”) and the Motion to Dismiss (ECF No. 19)
17 filed by Defendants BAC Home Loans Servicing, LP, FKA Countrywide Home Loans
18 Servicing (“BAC Home Loans”), and Mortgage Electronic Registration Systems, Inc.
19 (“MERS”).¹ Pro Se Plaintiff, David Allum, has also filed a Motion to Remand (ECF No. 10).

20 **I. BACKGROUND**

21 In 2003 Plaintiff signed a loan note secured by the property located at 1861 Igou Ln.,²

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23 ¹ Defendant Mountain View Mortgage Company was dismissed from this action on July 30, 2012. (Order of Dismissal
24 Pursuant to Fed. R. Civ. P. 4(m), ECF No. 52.)

25 ² In his Complaint, Plaintiff alleges that he “resides at 6895 East Lake Mead Blvd., Las Vegas, Nevada 89156” and that his
“address is the Property at question in this case. APN 140-21-307-009.” (Compl., ¶1.) However, in the judicially
noticeable documents provided by Defendants and publicly recorded in Clark County, this APN is associated with the
property located at 1861 Igou Ln., Las Vegas, Nevada, 89156. Because Plaintiff does not challenge the publicly recorded
documents, the Court construes Plaintiff’s Complaint to refer to the property located at 1861 Igou Ln., APN 140-21-307-009.

1 Las Vegas, Nevada, 89156, APN 140-21-307-009 (“the property”). (2003 Deed of Trust, Ex. B
2 to MTD, ECF No. 19-2³; see Compl., 1:¶1, 2:¶7, ECF No. 1.) The Deed of Trust (“2003 Deed
3 of Trust”) named Lawyers Title of Nevada, Inc. as Trustee, and Defendant MERS as
4 trustee/beneficiary. (2003 Deed of Trust, Ex. B to MTD, ECF No. 19-2; see Compl. at 2:¶9.)

5 Plaintiff alleges that a Substitution of Trustee was recorded in Clark County in April
6 2005, signed by Linda Green, who Plaintiff claims is a “known robo-signer.” (Compl. at 2:¶10.)
7 Plaintiff also alleges that the “loan is in a GNMA PLATINUM TRUST SERIES 782529
8 TRUST (Trust)” and that Defendant Mountain View Mortgage Company “with MERS sold the
9 note to the Ginnie Mae REMIC trust without the knowledge of the borrower and Plaintiff in this
10 case.” (Compl. at 2:¶10.) Defendant Mountain View Mortgage Company was dismissed from
11 this action on July 30, 2012, pursuant to Federal Rule of Civil Procedure 4(m). (Order of
12 Dismissal, ECF No. 52.)

13 Plaintiff refinanced almost every year afterward and in May 2009 Plaintiff refinanced
14 once again, borrowing from Defendant Quicken Loans, Inc., secured by the property. (See
15 Deeds of Trust 2004, 2005, 2006, 2008, 2009, Exs. C-G to MTD, ECF Nos. 19-3–19-7; Compl.
16 at 3:¶11.) The **2009 Deed of Trust** for this loan named Defendant Quicken Loans as Lender,
17 Title Source, Inc. (“Title Source”) as Trustee, and Defendant MERS as beneficiary “solely as
18 nominee for Lender.” (2009 Deed of Trust, ECF No. 8-1; see Compl. at 3:¶12.)

19 On January 22, 2010, a **Notice of Default** was recorded in Clark County by Defendant
20 Quality Loan Service “as agent for beneficiary” for the 2009 Deed of Trust, naming Defendant
21 Quality Loan Service as “either the original trustee, the duly appointed substituted trustee, or
22 acting as agent for the trustee or beneficiary.” (Notice of Default, ECF No. 8-4; see Compl. at
23 3:¶13.)

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25
³ The Court takes judicial notice of the documents recorded in Clark County and submitted by the parties. Where multiple parties submit a single document, the Court will only cite to one.

1 On April 30, 2010, an **Assignment** of Deed of Trust was recorded in Clark County, in
2 which MERS transferred the beneficial interest in the 2009 Deed of Trust to BAC Home Loans
3 Servicing. (Assignment, ECF No. 8-2; see Compl. at 3:¶15.)

4 On June 10, 2010, a **Substitution of Trustee** was recorded in Clark County, in which
5 BAC Home Loans Servicing, as beneficiary, substituted Quality Loan Service as Trustee.
6 (Substitution of Trustee, ECF No. 8-3; see Compl. at 3:¶16.)

7 On June 15, 2010, a **Notice of Trustee's Sale** was recorded in Clark County, stating a
8 sale date of July 6, 2010. (Notice of Sale, ECF No. 8-5; see Compl. at 3:¶17.) A **Trustee's**
9 **Deed Upon Sale** was recorded in Clark County on July 16, 2010, naming BAC Home Loans
10 Servicing as the Grantee. (Trustee's Deed, ECF No. 8-6; see Compl. at 4:¶18.)

11 Plaintiff filed suit in state court, and the action was removed to this Court in February
12 2010. (Compl.) Plaintiff alleges three causes of action: (1) Quiet Title; (2) Fraud; and
13 (3) Breach of Contract. (Compl.)

14 Plaintiff asks the Court to quiet title in himself alleging that Defendants did not have
15 authority to foreclose on the property. (Compl. at 4:¶20.) He alleges fraud based on the
16 documents recorded in Clark County relating to the property, and alleges that those documents
17 "contain the dates and times of the fraudulent actions of the Defendants satisfying the particulars
18 of Fraud." (Compl. at 4:¶22.) He alleges breach of contract based on Defendants' alleged
19 failure to "notify him of the sale of the note to the Trust," in breach of his "right to know under
20 the Deed of Trust that the note was being sold, transferred or assigned to the Trust." (Compl. at
21 4:¶23.)

22 **II. DISCUSSION**

23 As discussed below, the Court will deny Plaintiff's Motion to Remand and grant
24 Defendants' Motions to Dismiss.

25 **A. Motion to Remand**

1 **1. Legal Standard**

2 Removal to federal court under diversity jurisdiction requires that the parties be
3 completely diverse and that the amount in controversy exceed \$75,000.00. 28 U.S.C. §§ 1332,
4 1441. Defendants who have been properly served must join a petition for removal, and a court
5 may allow such a defect to be cured by the later joinder of all remaining defendants prior to the
6 entry of judgment. 28 U.S.C. § 1441(b)(2), 1446(b).

7 **2. Analysis**

8 Here, the Court finds that all parties are completely diverse, that all properly served
9 parties have joined the petition for removal, and that the amount in controversy exceeds
10 \$75,000.00. Therefore, the exercise of jurisdiction is appropriate.

11 “In actions seeking declaratory or injunctive relief, it is well established that the amount
12 in controversy is measured by the value of the object of the litigation.” Hunt v. Wash. State
13 Apple Adver. Comm’n, 432 U.S. 333, 347 (1977). “In a suit to quiet title, or to remove a cloud
14 therefrom, it is not the value of the defendant’s claim which is the amount in controversy, but it
15 is the whole of the real estate to which the claim extends.” Woodside v. Ciceroni, 93 F.1, 4 (9th
16 Cir. 1899); see also Garfinkle v. Wells Fargo Bank, 483 F.2d 1074, 1076 (9th Cir. 1973)
17 (treating entire value of real property as amount in controversy in action to enjoin foreclosure
18 sale). Accordingly, Plaintiff’s Motion to Remand (ECF No. 10) will be denied.

19 **B. Motions to Dismiss**

20 **1. Legal Standard**

21 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
22 that fails to state a claim upon which relief can be granted. See North Star Int’l. v. Arizona Corp.
23 Comm’n., 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule
24 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not
25 give the defendant fair notice of a legally cognizable claim and the grounds on which it rests.

1 See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the complaint
2 is sufficient to state a claim, the Court will take all material allegations as true and construe them
3 in the light most favorable to the plaintiff. See *NL Indus., Inc. v. Kaplan*, 792 F.2d 896, 898 (9th
4 Cir. 1986).

5 The Court, however, is not required to accept as true allegations that are merely
6 conclusory, unwarranted deductions of fact, or unreasonable inferences. See *Sprewell v. Golden*
7 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
8 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a violation
9 is plausible, not just possible. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (citing *Twombly*,
10 550 U.S. at 555) (emphasis added).

11 A court may also dismiss a complaint pursuant to Federal Rule of Civil Procedure 41(b)
12 for failure to comply with Federal Rule of Civil Procedure 8(a). *Hearns v. San Bernardino*
13 *Police Dept.*, 530 F.3d 1124, 1129 (9th Cir.2008). Rule 8(a)(2) requires that a plaintiff's
14 complaint contain "a short and plain statement of the claim showing that the pleader is entitled
15 to relief." Fed. R. Civ. P. 8(a)(2). "Prolix, confusing complaints" should be dismissed because
16 "they impose unfair burdens on litigants and judges." *McHenry v. Renne*, 84 F.3d 1172, 1179
17 (9th Cir.1996). Mindful of the fact that the Supreme Court has "instructed the federal courts to
18 liberally construe the 'inartful pleading' of pro se litigants," *Eldridge v. Block*, 832 F.2d 1132,
19 1137 (9th Cir. 1987), the Court will view Plaintiff's pleadings with the appropriate degree of
20 leniency.

21 "Generally, a district court may not consider any material beyond the pleadings in ruling
22 on a Rule 12(b)(6) motion However, material which is properly submitted as part of the
23 complaint may be considered on a motion to dismiss." *Hal Roach Studios, Inc. v. Richard*
24 *Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly,
25 "documents whose contents are alleged in a complaint and whose authenticity no party

1 questions, but which are not physically attached to the pleading, may be considered in ruling on
2 a Rule 12(b)(6) motion to dismiss” without converting the motion to dismiss into a motion for
3 summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule of
4 Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*
5 *Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers
6 materials outside of the pleadings, the motion to dismiss is converted into a motion for summary
7 judgment. See *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir. 2001).

8 If the court grants a motion to dismiss, it must then decide whether to grant leave to
9 amend. The court should “freely give” leave to amend when there is no “undue delay, bad
10 faith[,] dilatory motive on the part of the movant . . . undue prejudice to the opposing party by
11 virtue of . . . the amendment, [or] futility of the amendment” Fed. R. Civ. P. 15(a); *Foman*
12 *v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear
13 that the deficiencies of the complaint cannot be cured by amendment. See *DeSoto v. Yellow*
14 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

15 **2. Analysis**

16 **a. Quiet Title**

17 Nevada statutes provide that “[a]n action may be brought by any person against another
18 who claims an estate or interest in real property, adverse to the person bringing the action, for
19 the purpose of determining such adverse claim.” Nev. Rev. Stat. § 40.010. “In a quiet title
20 action, the burden of proof rests with the plaintiff to prove good title in himself.” *Breliant v.*
21 *Preferred Equities Corp.*, 918 P.2d 314, 318 (Nev. 1996). “Moreover, there is a presumption in
22 favor of the record titleholder.” *Id.*

23 Plaintiff’s claim for quiet title fails because he has not alleged that he paid the debt owed
24 on the property, and that he was not in breach of the loan agreement. Therefore, he has not
25 sufficiently alleged good title in himself. Accordingly, this cause of action will be dismissed.

1 of the contract; and (4) that the plaintiff was damaged as a result of the breach. See Restatement
2 (Second) of Contracts § 203 (2007); Calloway v. City of Reno, 993 P.2d 1259, 1263 (Nev. 2000)
3 (“A breach of contract may be said to be a material failure of performance of a duty arising
4 under or imposed by agreement”).

5 Here, Plaintiff’s claim for breach of contract fails because his sole allegation is that
6 Defendants allegedly failed to “notify him of the sale of the note to the Trust,” in breach of his
7 “right to know under the Deed of Trust that the note was being sold, transferred or assigned to
8 the Trust.” (See Compl. at 4:¶23.) Plaintiff does not allege the existence of a valid contract or
9 that he performed or was excused from performance. Accordingly, this cause of action will be
10 dismissed.

11 **III. CONCLUSION**

12 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Remand to State Court (ECF No.
13 10) is hereby **DENIED**.

14 **IT IS FURTHER ORDERED** that Defendant Quality Loan Service Corp.’s Motion to
15 Dismiss (ECF No. 8) is hereby **GRANTED**.

16 **IT IS FURTHER ORDERED** that Defendant Quicken Loans, Inc.’s Motion to Dismiss
17 (ECF No. 11) is hereby **GRANTED**.

18 **IT IS FURTHER ORDERED** that Defendants BAC Home Loans Servicing LP, and
19 Mortgage Electronic Registration Systems, Inc.’s Motion to Dismiss (ECF No. 19) is hereby
20 **GRANTED**.


21 **IT IS FURTHER ORDERED** that Quicken Loans, Inc.’s Motion for Hearing (ECF No.
22 45) is hereby **DENIED as moot**.

23 **IT IS FURTHER ORDERED** that the Motion for Summary Judgment (ECF No. 55)
24 filed by Defendants BAC Home Loans Servicing, LP and Mortgage Electronic Registration
25 Systems, Inc., and the Motion for Summary Judgment (ECF No. 56) filed by Defendant

1 Quicken loans, Inc., are each **DENIED as moot.**

2 **IT IS FURTHER ORDERED** that Plaintiff's Complaint is dismissed with leave to
3 amend. Plaintiff shall have until October 19, 2012, to file an amended complaint consistent with
4 this Order. Failure to do so by this date will result in this case being closed.

5 DATED this 3rd day of October, 2012.

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10 Gloria M. Navarro
11 United States District Judge
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