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MEMORANDUM* OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (NOVEMBER 18, 2021)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HEIDI M. LOBSTEIN; MARGUERITE DESELMS,

Plaintiffs-Appellants,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, Erroneously Sued As US Bank National Association as Trustee, successor in interest to Bank of America, National Association as successor by merger to Lasalle Bank NA; POLICEMENS ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO; LABORERS PENSION FUND AND HEALTH AND WELFARE DEPARTMENT OF THE CONSTRUCTION AND GENERAL LABORERS DISTRICT COUNCIL OF CHICAGO AND VICINITY; IOWA PUBLIC EMPLOYEES RETIREMENT SYSTEM; ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM; VERMONT PENSION INVESTMENT COMMITTEE; WASHINGTON STATE INVESTMENT BOARD; ARKANSAS, TEACHER RETIREMENT SYSTEM; PUBLIC

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

EMPLOYEES RETIREMENT SYSTEM OF MISSISSIPPI; CITY OF TALLAHASSEE RETIREMENT SYSTEM; CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND; ALAN DAVID TIKAL, as Trustee of the KATN Revocable Living Trust,

Defendants-Appellees.

No. 20-55998

D.C. No. 2:19-cv-07615-SVW-JPR

Appeal from the United States District Court
for the Central District of California
Stephen V. Wilson, District Judge, Presiding

Submitted November 16, 2021**
San Francisco, California

Before: FERNANDEZ, SILVERMAN, and NGUYEN, Circuit Judges.

Heidi Lobstein and Marguerite Deselms (collectively, Lobstein) appeal pro se from the district court's order dismissing, with prejudice, their third amended complaint for failing to state a claim. We affirm.

The district court did not err in dismissing Lobstein's claims against U.S. Bank, National Association (US Bank) as trustee of the Washington Mutual Mortgage Pass-Through Certificates WMALT Series

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** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

2007-OC1 Trust (WMALT Trust).[1] The district court correctly dismissed Lobstein's wrongful foreclosure claim because Lobstein did not allege that a foreclosure sale had occurred. *See Perez v. Mortg. Elec. Registration Sys., Inc.*, 959 F.3d 334, 339–40 (9th Cir. 2020). The Trust Indenture Act[2] (TIA) claim was properly dismissed because Lobstein failed to allege that she "purchase[d] securities issued under an indenture." *Phelps v. Cont'l Ill. Nat'l Bank & Tr. Co. of Chi. (In re Nucorp Energy Sec. Litig.)*, 772 F.2d 1486, 1489 (9th Cir. 1985); *see also* 15 U.S.C. § 77www(a). The district court properly dismissed the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692–1692p, claim because Lobstein failed to plausibly allege[3] that US Bank was a "debt collector"[4] under the terms of that statute. *See Henson v. Santander Consumer USA Inc.*, ___ U.S. ___, ___, 137 S. Ct. 1718, 1721, 198 L.Ed.2d 177 (2017); *see also id.* at ___, 137 S. Ct. at 1721–26; *cf. Dowers v. Nationstar Mortg., LLC*, 852 F.3d 964, 971 (9th Cir. 2017). The two breach of contract claims failed because Lobstein did not adequately allege either the

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[1] US Bank is the proper defendant, not the WMALT Trust. *See* Fed. R. Civ. P. 17(b)(3); *Moeller v. Superior Court*, 947 P.2d 279, 283 n.3 (Cal. 1997). We are not persuaded by Lobstein's laundry list of purported defects in the WMALT Trust and the process by which the mortgage loan was assigned to it, which are largely irrelevant to her claims.

[2] Trust Indenture Act of 1939. 15 U.S.C. § 77aaa.

[3] *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79, 129 S. Ct. 1937, 1949–50, 173 L.Ed.2d 868 (2009).

[4] 15 U.S.C. § 1692a(6); *see also id.* § 1692f(6)(A)

mortgage terms US Bank purportedly violated[5] or her status as a third-party beneficiary of any mortgage-backed securities agreements.[6] Both the declaratory relief and conspiracy claims necessarily failed as standalone claims,[7] and Lobstein did not sufficiently allege[8] that US Bank had committed fraud or any other purported "felonies."

The district court did not abuse its discretion in dismissing the claims against US Bank with prejudice. *See Cafasso ex rel. United States v. Gen'l Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1058 (9th Cir. 2011); *see also United States v. Hinkson*, 585 F.3d 1247, 1261–63 (9th Cir. 2009) (en banc). The district court reasonably determined that further leave to amend would be futile where it had already given Lobstein three opportunities to amend, Lobstein failed to cure the deficiencies in her claims, and she reasserted claims that had previously been dismissed with prejudice. *See Lockheed Martin Corp. v. Network Sol'ns, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999); *Cafasso*, 637 F.3d at 1058.

Likewise, the district court did not err in dismissing Lobstein's claims[9] against the Pension Funds,[10]

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[5] *See Twaite v. Allstate Ins. Co.*, 264 Cal. Rptr. 598, 605 (Ct. App. 1989).

[6] *Turner v. Wells Fargo Bank NA (In re Turner)*, 859 F.3d 1145, 1149–50 (9th Cir. 2017); *see also* Cal. Civ. Code § 1559; *Goonewardene v. ADP, LLC*, 434 P.3d 124, 132–33 (Cal. 2019).

[7] *See* 28 U.S.C. § 2201(a); *Fiedler v. Clark*, 714 F.2d 77, 79 (9th Cir. 1983) (per curiam); *Julian v. Mission Comm. Hosp.*, 218 Cal. Rptr. 3d 38, 65 (Ct. App. 2017).

[8] *See Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949.

[9] Wrongful foreclosure, violation of the TIA, breach of contract, and declaratory relief.

which failed for the same reasons as did her claims against US Bank. Lobstein's assertion that the Pension Funds had transformed into her mortgage lender is not only implausible,[11] but does not remedy the fatal deficiencies in her claims. Because the Pension Funds ask us to affirm the judgment in their favor,[12] we also conclude that the district court did not abuse its discretion in dismissing Lobstein's claims against them with prejudice. The district court reasonably determined that further amendment would have been futile, and Lobstein has not elucidated how she would or could have cured her deficient claims against the Pension Funds. Similarly, the district court did not err in dismissing Lobstein's claims against Alan David Tikal with prejudice.

AFFIRMED.

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[10] Policemen's Annuity and Benefit Fund of the City of Chicago; Laborers' Pension Fund and Health and Welfare Department of the Construction and General Laborers' District Council of Chicago and Vicinity; Iowa Public Employees' Retirement System; Arkansas Public Employees' Retirement System; Vermont Pension Investment Committee; Washington State Investment Board; Arkansas Teacher Retirement System; Public Employees' Retirement System of Mississippi; City of Tallahassee Retirement System; Central States, Southeast and Southwest Areas Pension Fund.

[11] *See Iqbal*, 556 U.S. at 678, 129 S. Ct. at 1949.

[12] *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584, 119 S. Ct. 1563, 1570, 143 L.Ed.2d 760 (1999).

MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (JANUARY 4, 2022)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HEIDI M. LOBSTEIN and
MARGUERITE DESELMS,

Plaintiffs-Appellants,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, Erroneously Sued as US Bank National Association as Trustee, successor in interest to Bank of America, National Association as successor by merger to Lasalle Bank NA; ET AL.,

Defendants-Appellees.

No. 20-55998

D.C. No. 2:19-cv-07615-SVW-JPR

U.S. District Court for Central California,
Los Angeles

The judgment of this Court, entered November 18, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

By: Nixon Antonio Callejas Morales
Deputy Clerk
Ninth Circuit Rule 27-7

IN CHAMBERS ORDER DISMISSING CASE (SEPTEMBER 23, 2020)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES–GENERAL

HEIDI M. LOBSTEIN,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, ET AL.

No. 2:19-cv-07615-SVW-JPR

Before: Hon. Stephen V. WILSON, U.S. District Judge.

The Court has reviewed Plaintiff's response [81] to its notice of intent to dismiss her claims against the Pension Funds without leave to amend. The response fails to demonstrate that Plaintiff could cure the deficiencies pointed out in the Court's prior orders [44, 55, 65, 79] by substituting the Pension Funds as Defendants. Given Plaintiff's repeated failures to cure and the futility of inviting another round of briefing on these same issues, the Court dismisses Plaintiff's claims against the Pension Funds without leave to amend for the reasons stated in the Court's most recent order [79]. The action is dismissed with prejudice.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [67] AND GIVING NOTICE OF INTENTION TO DISMISS CLAIMS AGAINST NEW DEFENDANTS SUA SPONTE [66] (AUGUST 27, 2020)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES–GENERAL

HEIDI M. LOBSTEIN,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, ET AL.

No. 2:19-cv-07615-SVW-JPR

Before: Stephen V. WILSON, U.S. District Judge.

I. Introduction

Defendant U.S. Bank National Association ("Defendant" or "U.S. Bank"), as trustee for the Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1 Trust ("the Trust"), filed this motion to dismiss Plaintiff Heidi M. Lobstein's ("Plaintiff") Third Amended Complaint ("TAC") on April 21, 2020. For the reasons articulated below, Defendant's motion is GRANTED without leave to amend. The Court also gives notice of its *sua sponte* intent to dis-

miss Plaintiff's claims against additional defendants named in the TAC and gives Plaintiff 14 days to file an opposition.

II. Factual and Procedural Background

The Court has described the factual background in its prior orders, *see* Dkt. 44, 55, 65. In short, Plaintiff owns real property in Los Angeles subject to a Deed of Trust. Dkt. 65, at 2. She alleges that she is relieved of her obligations due to irregularities in the process by which her Deed of Trust was assigned to the Trust. *Id.*

This is the fourth time the Court has been asked to dismiss Plaintiff's pleadings in this case. On December 18, 2019, the Court dismissed Plaintiff's initial complaint. Dkt. 44. The Court dismissed with prejudice Plaintiff's claims for violation of the Fair Debt Collection Practices Act ("FDCPA"), as well as for Mail Fraud, Wire Fraud, Bank Fraud, and false statements to the government and in banking. *Id.* On March 17, 2020, the Court dismissed various California statutory and common law claims for lack of subject-matter jurisdiction. Dkt. 55. Most recently, on June 8, 2020, the Court dismissed Plaintiffs' claims for wrongful foreclosure and breach of contract with leave to amend, and dismissed Plaintiffs' negligence per se and FTC Act claims without leave to amend. Dkt. 65.

On June 29, 2020, Plaintiff filed her Third Amended Complaint ("TAC"). Dkt. 66. Plaintiff once again brought claims for wrongful foreclosure, breach of contract, and violation of the FDCPA. *Id.* at 1. Plaintiff asserted for the first time a cause of action under the Trust Indenture Act, 15 U.S.C. § 77aaa *et seq.* *Id.* at 42. Plaintiff has also for the first time brought

claims against several pension funds ("Pension Funds") which allegedly collected under a settlement related to mortgage-backed securities. *Id.* at 4-11.

Defendant U.S. Bank moved to dismiss or, in the alternative, to strike Plaintiff's complaint on July 13, 2020. Dkt. 67, 68. Plaintiff filed her opposition on July 27, 2020. Dkt. 72. Defendant filed its reply on August 3, 2020. Dkt. 74-75.

On August 10, 2020, the Pension Funds filed an *ex parte* application for extension of time to file responsive pleadings, representing that they had not been served but arguing that the suit against them was meritless. Dkt. 76. The Court denied the application as premature on August 12, 2020. Dkt. 77.

III. Legal Standard

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the claims stated in the complaint. *See* Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the plaintiff's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. A complaint that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678).

In reviewing a Rule 12(b)(6) motion, a court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party." *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). Thus, "[w]hile legal conclusions can provide the complaint's framework, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. When evaluating the sufficiency of a pleading under Fed. R. Civ. P. 12(b)(6), a court may consider only the allegations in the complaint and any attachments or documents incorporated by reference. *Koala v. Khosla*, 931 F.3d 887, 894 (9th Cir. 2019); *see also United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003).

A district court may act *sua sponte* to dismiss a complaint for failure to state a claim under Rule 12(b)(6) provided that the plaintiff is given an opportunity to respond. *See Reed v. Lieurance*, 863 F.3d 1196, 1207-08 (9th Cir. 2017) (quoting *Lee v. City of Los Angeles*, 250 F.3d 668, 683 n.7 (9th Cir. 2001)) ("Although '[a] trial court may dismiss a claim sua sponte under [Rule 12(b)(6)], the court must give notice of its intention to dismiss and 'afford plaintiffs an opportunity to at least submit a written memorandum in opposition to such motion.'"); *Seismic Reservoir 2020, Inc. v. Paulsson*, 785 F.3d 330, 335 (9th Cir. 2015) (internal citations and quotation marks omitted) ("[W]e have recognized that [a] trial court may dismiss a claim *sua sponte* under Fed. R. Civ. P. 12(b)(6) [provided that] the district court . . . give notice of its

sua sponte intention and provide the plaintiff with 'an opportunity to at least submit a written memorandum in opposition to such motion.'").

IV. Analysis

a. Wrongful Foreclosure

"California law does not permit preemptive actions to challenge a party's authority to pursue foreclosure before a foreclosure has taken place." *Perez v. Mortgage Electronic Registration Systems, Inc.*, 959 F.3d 334, 340 (9th Cir. 2020). In its prior Order dismissing Plaintiff's wrongful foreclosure claim, the Court pointed out this requirement. Dkt. 65, at 4. Plaintiff's TAC has not cured this defect. It includes no allegation that Plaintiff's property has been foreclosed, and includes language strongly implying the opposite. *See, e.g.*, Dkt. 66, at 37 (referring to invalidity of "future sale" of Plaintiff's property); *id.* at 42 ("[I]n the event the court permits a foreclosure sale. . . . ").

The Court therefore GRANTS the motion to dismiss Plaintiff's wrongful foreclosure claim.

Plaintiff also brings her wrongful foreclosure claim against the Pension Funds. The primary defect in Plaintiff's pleading discussed above–that it is a pre-foreclosure action–is not defendant-specific. The Court therefore raises *sua sponte* Plaintiff's failure to state a wrongful foreclosure claim against the Pension Funds and gives notice of its intention to dismiss the claim after Plaintiff is given an opportunity to respond. *See Reed*, 863 F.3d at 1207-08.

b. Trust Indenture Act

Plaintiff alleges that Defendants violated the Trust Indenture Act ("TIA") due to alleged procedural irregularities in the handling of mortgage files. Dkt. 66, at 42-45. Plaintiff states that she "falls within the class of individuals who are protected by that statute since it is their home which the statute governs as the investment. . . . " *Id.* at 43.

The Court has not been presented with authority or argument to suggest that a homeowner whose mortgage is assigned to a trust governed by the TIA could assert rights held by investors in the trust. The TIA creates rights held by investors–not consumers. *See* 15 U.S.C. § 77bbb(a) (describing purpose of TIA as protecting "the interest of *investors* in notes, bonds, debentures, evidences of indebtedness, and certificates of interest or participation therein, which are offered to the public" from certain abusive practices) (italics added); *see also* § 77bbb(b) (describing practices regulated by TIA as "injurious to capital markets, to *investors*, and to the general public") (italics added). As described by the Second Circuit, "Congress enacted the TIA in 1939 to address perceived abuses in the bond markets [including that issuers] frequently failed to provide trustees to represent bondholders' interests, and even where trustees were provided, . . . they sometimes had conflicts of interest, were not obligated contractually to take action on the bondholders' behalf, and/or lacked the power and information necessary to do so." *Retirement Bd. of the Policemen's Annuity and Ben. Fund of the City of Chicago v. Bank of New York Mellon*, 775 F.3d 154, 163-64 (2d Cir. 2014); *see also In re Nucorp Energy Secs. Litig.*, 772 F.2d 1486, 1489 (9th Cir. 1985) ("As a securities statute, [the TIA] is

designed 'to vindicate a federal policy of protecting investors.'").

Consistent with this purpose to protect investors, the subsection of the TIA that Plaintiff cites does not create rights for a homeowner whose mortgage was assigned to a trust governed by the TIA. Plaintiff cites to 15 U.S.C. § 77ooo(b), which provides that "[t]he indenture trustee shall give *to the indenture security holders* . . . notice of all defaults known to the trustee," and § 77ooo(c), which provides that "[t]he indenture trustee shall exercise care in case of default. . . ." These provisions create duties of the trustee owed to investors–not to the owner of a home subject to a mortgage.

Because the TIA does not protect the rights of a person in Plaintiff's position, the Court dismisses Plaintiff's TIA claim.

The Court also observes that this flaw in Plaintiff's TIA claim cannot be cured by proceeding against different defendants. Therefore, to the extent Plaintiff brings this same cause of action against the Pension Funds, the Court *sua sponte* dismisses these claims, although it will provide Plaintiff with an opportunity to respond to the Court's dismissal. *See Reed*, 863 F.3d at 1207-08.

c. Breach of Contract

The Court previously dismissed Plaintiff's breach of contract claim for failing to specify how Defendant's assignments or other actions breached the terms of Plaintiff's mortgage. Dkt. 65, at 6-7. Plaintiff again correctly asserts that her mortgage is an agreement. Dkt. 66, at 45. However, she still fails to allege how

any of Defendant's actions breached the terms of her mortgage.

The only relevant allegations are that Defendants "add[ed] fees, costs and charges that were neither due or owing [under the mortgage]." *Id.* at 47. But these allegations still fail to cure the defect articulated in the Court's prior Order–they do not specify the provision of the mortgage agreement which these actions allegedly breached or otherwise plausibly articulate a theory why the assessment of these fees, costs, and charges constituted a breach. Therefore, the Court again dismisses Plaintiff's breach of contract claims to the extent they are based on her mortgage agreement.

Plaintiff has articulated one new theory of breach. Plaintiff's TAC asserts that she "is the third party beneficiary under the MBS incorporat[ing] the Governing Agreements, and the Governing Agreements as a matter of law incorporate the provisions of the TIA." Dkt. 66, at 45. To the extent this breach of contract claim simply reasserts rights that Plaintiff purports to have under the TIA, the Court dismisses her breach of contract claim for the same reasons it dismisses her TIA claim.

To the extent the breach of contract claim asserts a violation of the Governing Agreement of the Trust, Plaintiff has failed to plausibly allege that she is a third-party beneficiary. Under California law, "[a] contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it." *Goonewardene v. ADP, LLC*, 6 Cal. 5th 817, 827 (2019) (quoting Cal. Civ. Code § 1559). In assessing whether a third party may assert rights under a contract, courts consider "(1) whether the third party would in fact benefit from

the contract . . . (2) whether a motivating purpose of the contracting parties was to provide a benefit to the third party, and (3) whether permitting a third party to bring its own breach of contract action against a contracting party is consistent with the objectives of the contract and the reasonable expectations of the contracting parties." *Id.* at 830.

Plaintiff's TAC is limited to conclusory assertions that she "is the third party beneficiary" of the Governing Agreement. Dkt. 66, at 45; *see also id.* at 18. Under *Iqbal* and *Twombly*, the Court must ignore precisely this kind of "conclusory allegation of law." *In re Nat'l Football League's Sunday Ticket Antitrust Litigation*, 933 F.3d 1136, 1149 (9th Cir. 2019). Therefore, to the extent Plaintiff asserts that Defendant breached her rights as a third-party beneficiary under the Governing Agreement, the Court dismisses Plaintiff's breach of contract claim.

The Court once again observes that the defects it has identified in Plaintiff's breach of contract claim would not be cured by asserting the same allegation against a different set of defendants. Therefore, the Court gives notice of its *sua sponte* intention to dismiss Plaintiff's breach of contract claims against the Pension Funds, although Plaintiff will be given an opportunity to respond. *See Reed*, 863 F.3d at 1207-08.

d. FDCPA

Plaintiff again asserts a claim for violation of the FDCPA. Dkt. 66, at 52. This claim is brought only against the Trust for which Defendant U.S. Bank serves as trustee, and not against the newly added Pension Funds. *Id.*

The Court dismissed Plaintiff's FDCPA claim against U.S. Bank with prejudice in its first Order in this case. *See* Dkt. 1, at 38 (listing FDPA claim as "Eighth Cause of Action"); Dkt. 44, at 5 ("This dismissal is with prejudice on claim . . . eight."). That, by itself, is a sufficient ground to dismiss Plaintiff's FDCPA claim. *See Hells Canyon Preservation Council v. U.S. Forest Service*, 403 F.3d 683, 686 (9th Cir. 2005) (internal citations omitted) (identifying "dismissal with prejudice" with "[f]inal judgment on the merits" for claim preclusion purposes).

Even if the Court's prior dismissal with prejudice was not an obstacle, Plaintiff's FDCPA claim would fare no better. As the Court pointed out in its prior Order, actions taken in "enforcement of a security interest" do not generally make a trustee a "debt collector" for purposes of the FDCPA. *Vien-Phuong Thi Ho v. ReconTrust Co., NA*, 858 F.3d 568, 572 (9th Cir. 2017); *see also* Dkt. 44, at 3-4. The FDCPA claim in Plaintiff's TAC is materially identical with the FDCPA claim dismissed in Plaintiff's initial Complaint. *Compare* Dkt. 1, at 38-40 *with* Dkt. 66, at 52-53. The TAC's FDCPA claim suffers from the same flaw–failure to plausibly allege that Defendants are debt collectors within the meaning of the FDCPA. Dkt. 65, at 3-4.

As the Court noted in its prior Order, 15 U.S.C. § 1692(f)(6) creates a limited exception to the general rule that a party enforcing a security interest is not a debt collector under the FDCPA. *See* Dkt. 65, at 4 n.4 (citing *Dowers v. Nationstar Mortg., LLC*, 852 F.3d 964, 971 (9th Cir. 2017)). Plaintiff's Opposition could be construed as arguing that, because "Defendants have been paid in full and have not credited those payments to the mortgage," Dkt. 66, at 53, there is

"no present right to possession of the property claimed as collateral," 15 U.S.C. § 1692(f)(6)(A); *see* Dkt. 72, at 20. However, Plaintiff's allegation that her mortgage has been paid off by a class action settlement related to mortgage-backed securities is not plausible.

Therefore, the Court again dismisses Plaintiff's FDCPA claim.

e. Other Purported Causes of Action

Plaintiff styles as causes of action two doctrines—declaratory relief and civil conspiracy—that do not create a basis for relief. Dkt. 66, at 50-51 (declaratory relief), 53-54 (civil conspiracy).

The Court already dismissed Plaintiff's purported standalone claim for declaratory relief in its most recent Order, explaining that the defects in Plaintiff's wrongful foreclosure cause of action cannot be evaded by seeking the same result under a cause of action labeled "Declaratory Relief." Dkt. 65, at 6; *see also Mayen v. Bank of America N.A.*, 2015 WL 179541, at *5 (internal citations omitted) ("[D]eclaratory relief is not a standalone claim."); 28 U.S.C. § 2201(a) (federal court may only award declaratory relief "[i]n a case of actual controversy within its jurisdiction"). Therefore, the Court again dismisses Plaintiff's claim for declaratory relief.

Plaintiff also asserts a standalone claim for civil conspiracy. Dkt. 66, at 53-54. However, no such tort is recognized under California law. *See Clapp v. City and County of San Francisco*, 2019 WL 2410508, at *8 (N.D. Cal. 2019) (quoting *Julian v. Mission Cmty. Hosp.*, 11 Cal. App. 5th 360, 390 (2017)) ("A plaintiff cannot plead a standalone California state-law claim

for civil conspiracy, because '[u]nder California law, there is no separate tort of civil conspiracy and no action for conspiracy to commit a tort unless the underlying tort is committed and damage results therefrom."). Therefore, the Court dismisses Plaintiff's claim for civil conspiracy.

f. Leave to Amend

In evaluating a request for leave to amend, we consider the following factors: "undue delay, the movant's bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, and futility." *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir. 2020) (internal citation omitted). "Leave to amend is warranted if the deficiencies can be cured with additional allegations that are 'consistent with the challenged pleading' and do not contradict the allegations in the original complaint." *United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011). "Pro se complaints are construed 'liberally' and may only be dismissed 'if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (internal citation and quotation marks omitted).

The Court has afforded Plaintiff three prior opportunities to amend her complaint, and each has failed to plead any viable cause of action. *See* Dkt. 44, 55, 65. Moreover, Plaintiff has now repeatedly failed to cure deficiencies pointed out by the Court in dismissing prior complaints. Plaintiff brings wrongful foreclosure, breach of contract, and FDCPA claims in her TAC that suffer from the same defects explained

in this Court's prior Orders. Additionally, Plaintiff re-asserted her FDCPA claim even though it was previously dismissed *with prejudice.*

While Plaintiff asserts new claims under the TIA and Governing Agreement of the Trust by seeking to benefit from rights held by investors, the Court concludes as to those claims that, because Plaintiff is not an investor, she "can prove no set of facts in support of [her] claim which would entitle [her] to relief." *Nordstrom*, 762 F.3d at 908.

Given Plaintiff's continuing failure to correct prior deficiencies, and the futility of amending the complaint as to Plaintiff's new theory, the Court dismisses Plaintiff's complaint as to U.S. Bank without leave to amend.

g. Sua Sponte Dismissal–Opportunity to Respond

As discussed above, the Court may *sua sponte* dismiss Plaintiff's claims against the Pension Funds provided it gives Plaintiff an opportunity to respond. *See Reed*, 863 F.3d at 1207-08. In the TAC, Plaintiff brought wrongful foreclosure, breach of contract, and TIA claims against the Pension Funds. *See generally* Dkt. 66. As the Court explained above, none of the defects in the TAC could be cured by replacing U.S. Bank or the Trust with a different defendant.

Therefore, the Court by this Order notifies Plaintiff of its *sua sponte* intention to dismiss Plaintiff's case against the Pensions Funds. Because Plaintiff has had three prior opportunities to amend and has repeatedly failed to cure defects triggering dismissal of prior pleadings, the Court intends to dismiss Plaintiff's claims against the Pension Funds without

leave to amend. As required by 9th Circuit precedent, *see Reed*, 863 F.3d at 1207-08, Plaintiff will be given an opportunity in a written memorandum to argue that her claims against the Pension Funds should not be dismissed.

V. Conclusion

The Court GRANTS Defendant U.S. Bank's motion to dismiss Plaintiff's TAC without leave to amend. Accordingly, U.S. Bank's motion to strike is DENIED as moot.

The Court also notifies Plaintiff of its *sua sponte* intention to dismiss her claims against the Pension Funds for failure to state a claim without leave to amend. Plaintiff may file a memorandum of no more than 8 pages in opposition to the Court's *sua sponte* dismissal of her claims against the Pension Funds within 14 days of the issuance of this Order.

Plaintiff is not permitted to raise any additional claims or to sue any additional defendants. Her opposition must be limited to discussing why her claims against the Pension Funds should not be dismissed without leave to amend. Failure to comply with this Order will result in dismissal with prejudice.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [57] (JUNE 8, 2020)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES–GENERAL

HEIDI M. LOBSTEIN,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, ET AL.

No. 2:19-cv-07615-SVW-JPR

Before: Hon. Stephen V. WILSON, U.S. District Judge.

I. Introduction

Defendant U.S. Bank National Association ("Defendant" or "US Bank"), as trustee for the Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1 Trust ("the Trust"), filed this motion to dismiss Plaintiff Heidi M. Lobstein's ("Plaintiff") Second Amended Complaint on April 21, 2020. For the reasons articulated below, Defendant's motion is GRANTED.

II. Procedural Background

Plaintiff's initial Complaint was filed in this Court on Sept. 3, 2019 against Defendant. On Dec. 18, 2019, the Court granted dismissal with prejudice on Plaintiff's claims under federal law, and declined to exercise supplemental jurisdiction over the remaining state law claims. Dkt. 44. Plaintiff then filed a First Amended Complaint on Jan. 8, 2020. Dkt. 45. The Court dismissed this Complaint for a lack of subject matter jurisdiction as well, finding that "Plaintiff's FAC includes no express cause of action that would give rise to federal question jurisdiction, nor does it affirmatively plead any other basis for jurisdiction." Dkt. 55 at 2. Plaintiff then filed a Second Amended Complaint ("SAC"), including specific jurisdictional allegations alleging the existence of diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Defendant has not contested these new jurisdictional allegations, but has moved to dismiss the Complaint for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6). Dkt. 57.

III. Factual Background

As previously discussed, Plaintiff's factual allegations concern Plaintiff's real property, located at 3852 McLaughlin Ave, Los Angeles, CA 90066, and her allegations that various irregularities in the process by which that mortgage was transferred into the Trust and securitized for sale gives rise to a variety of legal and equitable remedies. *See* Dkt. 55 at 1; Dkt. 45 at 1-2; Dkt. 56. Plaintiff's factual allegations are often confusing and largely repetitive, and her core grievance relates to certain alleged irregularities in the process by which the Deed of Trust relevant to her mortgage was assigned to the Trust after the

alleged closing date of the trust (January 25, 2007). Dkt. 56 at 2-3. Plaintiff alleges that the trust closed on January 25, 2007, and that "it is illegal to securitize a note into an already closed trust." *Id.* On this basis, she alleges that the mortgage agreement is accordingly "void" and cannot be enforced against her (even if she has defaulted on her payment obligations).[1] *Id.* at 3.

Plaintiff's SAC also alleges that a substitution of trustee was recorded in Los Angeles County on February 5, 2007, by an employee of Bank of America, National Association ("Bank of America") as successor by merger to LaSalle Bank NA as trustee for the Trust. *Id.* at 8. Plaintiff additionally alleges that the Bank of America employee in question is "a notorious robosigner" and that the mortgage is also alternatively "void" on this basis. *Id.* Plaintiff later alleges that another assignment of deed of trust, this time recorded on May 10, 2012 by JPMorgan Chase Bank as servicer for the Trust, is also a "part of a forgery and thus is void and unenforceable under Florida law." *Id.* at 10. Plaintiff also alleges that another substitution of trustee (substituting U.S. Bank National Association as trustee), recorded on May 13, 2015 is also void, because it "is a felony, perjury and a fraud perpetrated on the people, the Plaintiff and the Court." *Id.* at 11.

The Complaint includes various repetitive assertions regarding Plaintiff's standing to challenge a

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[1] Plaintiff also repeatedly references a series of exhibits which are not attached to the SAC. However, Plaintiff previously filed a large number of documents titled as "Exhibits" alongside her initial Complaint. Dkt. 1. The Court therefore assumes that each of the references to numbered exhibits incorporates by reference the exhibits in that document previously filed with the Court.

void substitution of trustee, and makes allegations citing to federal statutes concerning mail and wire fraud (the Court previously dismissed such claims with prejudice because no private right of action existed). Plaintiff finally states six causes of action, (1) wrongful foreclosure based on allegedly invalid substitutions of trustee, (2) negligence per se, (3) declaratory relief to void or cancel substitution, (4) breach of contract, (5) violation of § 5(a) of the Federal Trade Commission Act, and (6) wrongful foreclosure, on the separate basis that recovery in two separate securities class action lawsuits failed to credit Plaintiff's mortgage, "resulting in a double recovery for the Defendants and irreparable and financial harm to the Plaintiff in the sum equivalent to the $95 million dollars that was never credited to the Plaintiff." *Id.* at 41.

IV. Legal Standard

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the claims stated in the complaint. *See* Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the plaintiff's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. A complaint that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678).

In reviewing a Rule 12(b)(6) motion, a court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party." *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). Thus, "[w]hile legal conclusions can provide the complaint's framework, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. When evaluating the sufficiency of a pleading under Fed. R. Civ. P. 12(b)(6), a court may consider only the allegations in the complaint and any attachments or documents incorporated by reference. *Koala v. Khosla*, 931 F.3d 887, 894 (9th Cir. 2019); *see also United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003).

V. Analysis

Before analyzing Plaintiff's six causes of action, the Court addresses a point repeatedly raised in Plaintiff's Opposition brief regarding US Bank's role in this litigation. Plaintiff repeatedly asserts that US Bank is an "officious intermeddler" that has inserted itself into this litigation. *See* Dkt. 60 at 12, 14. US Bank's counsel has filed a Notice of Interested Parties in this case, certifying that US Bank is the trustee for the Trust, as a successor in interest to Bank of America, as successor by merger to LaSalle Bank N.A. Dkt. 29.

Under Fed. R. Civ. P. 17(b)(3), California law governs the question of whether the Trust can be sued in its own right in federal court. Under California law, "the trustee, rather than the trust, is the real

party in interest in litigation involving trust property." *Moeller v. Superior Court*, 947 P.2d 279, 283 n.3 (1997). Accordingly, US Bank is properly a party to this litigation (unlike the Trust itself) and has properly asserted a defense to Plaintiff's lawsuit.

a. Wrongful Foreclosure-Assignment into a Closed Trust

As clarified by the Ninth Circuit in a recent opinion, federal courts must "follow the decisions of the California appellate courts in holding that California law does not permit preemptive actions to challenge a party's authority to pursue foreclosure before a foreclosure has taken place." *Perez v. Mortg. Elec. Registration Sys., Inc.*, 2020 WL 2312867, at *4 (9th Cir. May 11, 2020). The issuance of a Notice of Default, absent an indication that foreclosure has taken place, does not alter the preemptive nature of such an action. *Id.* at *5. Plaintiff's SAC does not clearly allege that any foreclosure has actually occurred.[2] *See* Dkt. 56 at 25 (" . . . in the event the court permits a foreclosure sale, it will be wrongful . . . "); Dkt. 56 at 42 ("Plaintiff seeks wrongful foreclosure damages . . . in the event the property is sold at foreclosure sale.") Accordingly,

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[2] Paragraph 170 of the Complaint includes a single reference to "putting *him* through the fraudulent foreclosure." Dkt. 56 at 31 (emphasis added). However, this paragraph appears to refer to a separate factual scenario from the rest of the Complaint (it references a fraudulent inspection scheme and fraudulent charges that are not connected to the rest of the SAC) and does not appear to refer to the same individual as the Plaintiff in this case, who repeatedly refers to herself as a "she" in her briefings. *See generally* Dkt. 60. Because Plaintiff does not clearly allege that a foreclosure has occurred, the Court disregards this single inconsistent pleading.

Plaintiff cannot bring a wrongful foreclosure claim absent an allegation that the foreclosure has actually occurred.

Moreover, under California law any wrongful foreclosure claim would require Plaintiff to allege additional harm stemming from the purported void assignment, such as "(1) that the void assignment changed the borrower's payment obligations; (2) that the void assignment "interfered in any manner with [the borrower's] payment"; or (3) that the true owner of the loan—the entity that actually has the authority to foreclose—would have refrained from foreclosure under the circumstances presented." *See Cardenas v. Caliber Home Loans, Inc.*, 281 F. Supp. 3d 862, 872-73 (N.D. Cal. 2017) (discussing relevant California appellate cases and concluding that the weight of relevant authority favors requiring a plaintiff alleging wrongful foreclosure based on void assignment to allege some other harm arising from the void assignment, beyond the foreclosure).

Therefore, under present California law, Plaintiff cannot state a claim for wrongful foreclosure that challenges Defendant's authority to foreclose absent clear allegations that such a foreclosure has actually occurred. The Court GRANTS Defendant's motion to dismiss on this basis.

b. Negligence per se

Plaintiff's claim for negligence per se alleges Defendants' conduct violates various federal and state statutes, and that these statutory violations constitute a breach of Defendant's "duties imposed by law." *See* Dkt. 56 at 26-29.

Cal. Evid. Code § 669 codifies the doctrine of negligence per se based on violation of a statute or regulation. *See Lua v. So. Pac. Transp. Co.*, 6 Cal. App. 4th 1897, 1901 (1992). The statute provides that negligence of a person is presumed if he violated a statute or regulation of a public entity, if the injury resulted from an occurrence that the statute or regulation was designed to prevent, and if the person injured was within the class for whose protection the statute or regulation was adopted. *Ellsworth v. Beech Aircraft Corp.*, 37 Cal. 3d 540, 544-45 (1984).

However, negligence per se is an *evidentiary presumption* that a party failed to exercise due care if the above-listed elements are established. "Negligence per se is not an independent cause of action[,]" and it "does not establish tort liability." *Quiroz v. Seventh Ave. Ctr.*, 140 Cal. App. 4th 1256, 1285 (2006). Nor does it provide a right of action for violation of a statute. *Id.* The evidentiary presumption does not create a cause of action distinct from negligence; instead, "an underlying claim of ordinary negligence must be viable" before the presumption of negligence of § 669 can be employed. *See Hutchins v. Nationstar Mortg. LLC*, 2017 WL 2021363, at *3 (N.D. Cal. May 12, 2017). Plaintiff's standalone claim for negligence per se is not cognizable under California law, and thus the Court GRANTS US Bank's motion to dismiss on this cause of action.

c. Declaratory Relief

Plaintiff also seeks some form of declaratory relief, although the pleadings this cause of action is based upon are especially disjointed. Dkt. 56 at 29-31. Plaintiff asserts again that the Trust lacks legal authority

to foreclose because the alleged improper assignment of the Deed of Trust (or alternatively, its alleged forged status) renders it void. *Id.* Plaintiff also references several federal statutes that this Court has already concluded do not create a private right of action. *Compare* Dkt. 44 at 4-5 *with* Dkt. 56 at 30.

Regardless of precisely how the Court construes this cause of action, under the Declaratory Judgment Act, a federal court may grant declaratory relief only "[i]n a case of actual controversy within its jurisdiction." *See* 28 U.S.C. § 2201(a). Plaintiff appears to seek a declaration that the Deed of Trust on her mortgage is void, again challenging Defendant's legal authority to foreclose on Plaintiff's property. As discussed previously, Plaintiff lacks standing to preemptively challenge authority to foreclose, and cannot alternatively bring a declaratory relief action to avoid that standing issue. *See Junod v. Mortg. Elec. Registration Sys., Inc.*, 584 F. App'x 465, 468 (9th Cir. 2014) (affirming dismissal of declaratory relief claim based on same legal theories and allegations challenging validity of foreclosure). Defendant's motion to dismiss is therefore GRANTED on this cause of action.

d. Breach of Contract

Plaintiff's cause of action for breach of contract first asserts that "[a] mortgage is a contract pursuant to California Civil Code section 2920(a)." Dkt. 56 at 31. Plaintiff then restates the factual allegations discussed at length regarding Defendant's lack of legal authority to foreclose, references the previously dismissed claims regarding violation of federal wire and bank fraud statutes, and repeatedly asserts that "the

breach occurred" as a result of the various statutory violations alleged. *Id.* at 31-35.

Plaintiff is correct that under California law a mortgage agreement is a contract. Cal. Civ. Code § 2920(a). But Plaintiff has not clearly alleged a breach of the mortgage agreement she signed, only that certain events that occurred after she entered into the mortgage agreement (*i.e.*, the alleged assignment of the Deed of Trust into a closed trust or the other allegedly fraudulent actions she alleges in the SAC) now render that agreement void. Without a clear allegation indicating which portion of the stated terms of the mortgage agreement were breached by Defendant's alleged conduct, Plaintiff has not stated a breach of contract claim. Defendant's motion to dismiss is GRANTED on this cause of action.

e. Violation of § 5(a) of the Federal Trade Commission Act

No private right of action exists under § 5(a) of the Federal Trade Commission Act. *United States v. Facebook, Inc.*, 2020 WL 1975785, at *7 (D.D.C. Apr. 23, 2020) ("Section 5 of the FTC Act does not contain a private right of action"); *Kindred Studio Illustration & Design, LLC v. Elec. Commc'n Tech., LLC*, 2018 WL 6985317, at *7 (C.D. Cal. Dec. 3, 2018) ("There is no private right of action under FTC Section 5."); *O'Donnell v. Bank of America, Nat. Ass'n*, 504 Fed. App'x 566, 568 (9th Cir. 2013) ("The district court rightly dismissed the unfair competition claim premised on . . . violation of the Federal Trade Commission Act. The federal statute doesn't create a private right of action").

Plaintiff cannot assert a claim under Section 5, and Defendant's motion is accordingly GRANTED on this cause of action.

f. Wrongful Foreclosure-Recovery from Securities Class Action Lawsuits

Plaintiff asserts a second cause of action for wrongful foreclosure, alleging additionally that any future foreclosure by Defendant would be wrongful because several class action settlements between investors in the mortgage-backed securities created by the Trust (and other similar trusts organized by Washington Mutual) sued a variety of related defendants in prior lawsuits, allegedly resulting in approximately $95 million in settlement payments to those investors. *See* Dkt. 56 at 39-41.

As previously stated, Plaintiff cannot preemptively bring a wrongful foreclosure claim against Defendant under California law. The Court also notes that allegations regarding settlement of class action securities lawsuits under federal law could not possibly state a claim against Defendant on the basis of these allegations. Plaintiff has alleged that her mortgage was assigned to the Trust, not that she was an *investor* in the Trust itself. The lead plaintiffs specifically referenced by Plaintiff in the securities class actions purchased mortgage-backed securities based on asset pools created by mortgage payments by individuals like Plaintiff. *Id.* at 39-40 (alleging that the investors purchased securities "backed by pools of first lien single-family residential mortgage loans"). Any securities law claim for fraud or misrepresentation under Section 11, 12, and 15 of the Securities Act of 1933 would accrue to the *investors*, and any settlement pro-

ceeds would be distributed to those investors. Plaintiff's only connection to those lawsuits is her allegation that her mortgage was ultimately securitized and placed in such a trust—this does not create any entitlement to a portion of the settlement funds, or require that her mortgage debt be offset by the amount of recovery by the investors.

As Plaintiff herself acknowledges in her pleadings, the investors in those securities lawsuits brought claims based on alleged misrepresentations regarding the quality of the mortgages included the securities they purchased. *See* Dkt. 56 at 40 (defendants brought "claims that the defendants misrepresented the investment quality of certain mortgage-backed securities in violation of federal securities law . . . "). Partial recovery on those securities claims for fraudulent misrepresentation of the quality of securities purchased in no way requires that Defendant attribute any portion of the settlement to Plaintiff's individual mortgage agreement, which is wholly independent of those securities transactions and lawsuits.[3]

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[3] To illustrate the point in more detail, Plaintiff's mortgage was one of thousands of mortgages placed in a trust, which was then securitized and sold in tranches to investors. Plaintiff's contractual agreement to pay back the principal amount of her mortgage, plus interest, is a wholly separate agreement from the investors' purchase of mortgage-backed securities (accompanied by representations regarding the creditworthiness of the mortgagors like Plaintiff). The parties that securitized Plaintiff's mortgage ultimately settled those securities fraud claims by making payments to investors, to compensate those investors, at least in part, for the allegedly misrepresented quality of those mortgage agreements. Plaintiff's obligation to pay her mortgage arises from a wholly separate transaction from the securities sales that led to those lawsuits, and any investor recovery could not logically offset the amount due under Plaintiff's mortgage.

VI. Conclusion

The Court GRANTS Defendant's motion to dismiss on each of Plaintiff six causes of action. Because the Court's prior Orders dismissed these claims on jurisdictional grounds, Plaintiff will be granted leave to amend her claims for wrongful foreclosure (in the event a foreclosure has actually occurred) and breach of contract (provided Plaintiff can allege an actual breach of the terms of her mortgage agreement). However, because amendment would be futile on Plaintiff's claims for violation of the FTC Act (which does not include a private right of action) and negligence per se (which is not a standalone cause of action under California law), the Court denies Plaintiff leave to amend on these causes of action. Plaintiff is given 21 days to file an amended Complaint in this action. If Plaintiff fails to file an amended Complaint within 21 days, this lawsuit will be dismissed without leave to amend.

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION [46] (MARCH 17, 2020)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES–GENERAL

HEIDI M. LOBSTEIN,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, ET AL.

No. 2:19-cv-07615-SVW-JPR

Before: Hon. Stephen V. WILSON, U.S. District Judge.

Plaintiff Heidi M. Lobstein's ("Plaintiff") initial Complaint was filed in this Court on Sept. 3, 2019 against "Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1 et al." ("Defendant"). Dkt. 1. The initial Complaint concerned Plaintiff's real property, located at 3852 McLaughlin Ave, Los Angeles CA 90066, and the allegedly void status of the mortgage incurred on the real property which Plaintiff alleged gave rise to a variety of legal and equitable remedies. *Id.* On Dec. 18, 2019, this Court granted dismissal of Plaintiff's claims under federal law, and then declined supplemental jurisdiction

over the remaining state law claims. Dkt. 44. Plaintiff then filed a First Amended Complaint ("FAC") on Jan. 8, 2020. Dkt. 45. The FAC articulates eight causes of action, each of which arises under state or common law. *Id.* The factual allegations still include reference to various federal statutes, but these allegations are not included as express causes of action, and in any event were dismissed by this Court with prejudice in its prior Order. Dkt. 44 at 4-5. The FAC's factual allegations also make brief reference to violations of the United States and California constitutions, but does not include either as an express cause of action. Dkt. 45 at 19. Defendant has filed a motion to dismiss based on Fed. R. Civ. P. 12(b)(1) and 12(b)(6). Dkt. 46.

United States federal courts are courts of limited jurisdiction. *Gunn v. Minton*, 568 U.S. 251, 256 (2013). Consequently, a "federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). "[A] party seeking to invoke the district court's diversity jurisdiction always bears the burden of both pleading and proving diversity jurisdiction." *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 613–14 (9th Cir. 2016). Under Federal Rule of Civil Procedure 8(a)(1), a pleading must contain "a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support." *Harris v. Rand*, 682 F.3d 846, 850 (9th Cir. 2012) (quotations omitted).

Plaintiff's FAC includes no express cause of action that would give rise to federal question jurisdiction, nor does it affirmatively plead any other basis for jurisdiction. *See generally* Dkt. 45. Plaintiff's Opposition

asserts that "[t]he First Amended Complaint is only Federal causes of Actions", but the FAC's repeated reference to California state statutory violations completely contradicts this. *See id.* at 22-45 (articulating eight separate California statutory and common law claims). Plaintiff's Opposition also argues that "this court has jurisdiction because the subject matter [the residence in dispute] is located in this state." Dkt. 50 at 2. This is not sufficient to create federal subject matter jurisdiction in this Court. *See Shaffer v. Heitner*, 433 U.S. 186, 204-06 (1977) (in rem property-based jurisdiction relevant to *personal jurisdiction analysis* rather than subject matter jurisdiction).

Additionally, while the Complaint names as a defendant only *Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1 et al.* (represented here by U.S. Bank National Association as trustee) the FAC repeatedly references multiple "Defendants", and the Opposition makes repeated references to an entity called "SPS" which is neither defined in the Opposition nor included in the FAC. Dkt. 44; Dkt. 50. Absent any clear jurisdictional pleadings that establish whether subject matter jurisdiction exists in this Court, Plaintiff's California statutory claims and common law claims cannot be adjudicated here. The Court GRANTS Plaintiff's motion to dismiss for lack of subject matter jurisdiction. Plaintiff has 21 days to file an amended complaint that clearly articulates this Court's subject matter jurisdiction.

ORDER PARTIALLY GRANTING DEFENDANT'S MOTION TO DISMISS [26], AND DISMISSING CLAIMS FOR LACK OF SUBJECT MATTER JURISDICTION (DECEMBER 18, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES–GENERAL

HEIDI M. LOBSTEIN,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, ET AL.

No. 2:19-cv-07615-SVW-JPR

Before: Hon. Stephen V. WILSON, U.S. District Judge.

On October 9, 2019 U.S. Bank N.A. ("Defendant") filed a motion to dismiss in this lawsuit. Dkt. 26. Defendant brings this motion as successor in interest to the "Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1 et al" named in Plaintiff Heidi Lobstein's complaint, filed Sept. 3, 2019. Dkt. 1; Dkt. 26 at 2. For the reasons articulated below, Defendant's motion is GRANTED on Plaintiff's claims under federal law. Because Plaintiff fails to adequately plead this Court's jurisdiction over her Complaint, the Court then declines to exercise supple-

mental jurisdiction over Plaintiff's remaining state law claims and DISMISSES them for lack of subject matter jurisdiction.

1. Factual and Procedural Background

Plaintiff is a California citizen who alleges that on Sept. 9, 2004, she purchased real property located at 3852 McLaughlin Ave, Los Angeles CA 90066. Dkt. 1 at 4. She alleges that she obtained a loan secured by a deed of trust in 2004, which she then refinanced in 2005, and again in 2006. *Id.* at 5-6. The loan in question for the purposes of this lawsuit was obtained from Mortgage Store Financial, Inc. for $656,000, and eventually assigned to Bank of America as trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2007-OC1 Trust. Dkt.1 at 10. Plaintiff alleges that for various reasons her mortgage is now void, citing alleged "fraudulent operations", deficiencies in compliance with Federal Home Administration ("FHA") compliance programs by MortgageIt, alleged robo-signing, and an invalid assignment into a closed trust, all of which Plaintiff asserts makes her mortgage void and render alleged attempts to foreclose and seek payment by Defendant unlawful. *Id.* at 8-16.

Plaintiff asserts that Defendant's conduct violates the California Civil Code, federal law, and various common law rights, and seeks $1 million in compensatory damages and $3 million in exemplary damages. *Id.* at 20. She also asserts that Defendant's actions constitute a void foreclosure, entitling her to damages in the fair market value of the property of $3 million, and $9 million in the event of default. *Id.*

2. Legal Standard

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the claims stated in the complaint. *See* Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the plaintiff's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. A complaint that offers mere "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Id.*; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678).

In reviewing a Rule 12(b)(6) motion, a court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party." *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). Thus, "[w]hile legal conclusions can provide the complaint's framework, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679. When evaluating the sufficiency of a pleading under Fed. R. Civ. P. 12(b)(6), a court may consider only the allegations in the complaint and any attachments or documents incorporated by reference. *Koala v. Khosla*, 931 F.3d 887, 894 (9th Cir. 2019);

see also United States v. Ritchie, 342 F.3d 903, 907–08 (9th Cir. 2003).

3. Plaintiff's Federal Causes of Action

a. Violation of Fair Debt Collection Practices Act

Plaintiff alleges that Defendant's actions violated the Fair Debt Collection Practices Act ("FDCPA") because Defendants have made demands for payment which they are not entitled to recover. Dkt. 1 at 39. Because these demands were allegedly made by US mail, phone, and internet, Plaintiff asserts a right to statutory damages of $1000 for each separate violation. *Id.* Plaintiff also alleges that at the time Defendants acquired the mortgage in this action, they claimed it was in arrears, which Plaintiff alleges causes the FDCPA to apply to Defendants as debt collectors.

The FDCPA defines a "debt collector" in relevant part as:

> any person who . . . [engages] in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. . . . For the purpose of section 1692f (6) of this title, such term also includes any person who . . . [engages] in any business the principal purpose of which is the enforcement of security interests.

15 U.S.C. § 1692a(6). A "debt" is "any obligation or alleged obligation of a consumer to pay money arising out of a transaction." 15 U.S.C. § 1692a(5). Actions

taken in "enforcement of a security interest" do not generally make a trustee a "debt collector" for the purposes of the FDCPA. *Vien-Phuong Thi Ho v. Recon-Trust Co., NA*, 858 F.3d 568, 572 (9th Cir.). "For the purposes of the FDCPA, the word 'debt' is synonymous with 'money'". *Id.*

The factual allegations in Plaintiffs complaint allege that Defendants attempted to foreclose on Plaintiff's real property and cite repeatedly to the allegedly void assignment of the Deed of Trust for Plaintiff's real property. *See* Dkt. 1 at 2-3, 6, 10-11. The specific factual allegations related to violation of the FDCPA state only that "[Defendants] made demands by causing to be mailed, or mailing demands for payments for which they were not entitled to recover." *Id.* at 39. But Plaintiff's complaint does not include any factual allegations of demands for payment that are not connected to the real property and the mortgage Plaintiff asserts she is no longer required to pay. *Id.* at 9, 20, 21 (alleging a void mortgage, void foreclosure, and intent to steal equity in Plaintiff's home). These factual allegations appear solely concerned with enforcement of the security interest embodied in the Deed of Trust Plaintiff admits was initially executed and recorded against Plaintiff's real property. *Id.* at 10. On this basis, the Court concludes that Plaintiff has not adequately alleged a violation of the FDCPA, because the limited factual allegations made regarding payment of a mortgage do not plausibly support an inference that Defendant is a "debt collector" and thereby liable for statutory damages under the FDCPA.[1]

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[1] This Court does acknowledge that 15 U.S.C. § 1692(f)(6) creates a limited exception to the general rule that a non-judicial foreclosure by a trustee is not covered by the FDCPA. *See Dowers v.*

Defendant's motion is GRANTED on this cause of action.

b. Mail and Wire Fraud under 18 U.S.C. §§ 1341, 1343, Bank Fraud under 18 U.S.C. §§ 1341, 1343, and Violation of 18 U.S.C. §§ 1001, 1005

Plaintiff also alleges mail and wire fraud, bank fraud, and violation of 18 U.S.C. §§ 1001, 1005 (prohibiting false bank entries) in her Complaint. Plaintiff appears to assert these claims against "HSI Asset Loan Obligation Trust 7001-1, HIS Asset Securitization Corporation." Dkt. 1 at 40-42. This alleged Defendant is not a party to this action, and factual allegations against a third-party cannot support a claim against a separate defendant. But because Plaintiff also cites vaguely to "Defendants" in describing these causes of action, the Court will assume Plaintiff intended to assert these claims against the named defendant here.

The cited statutes create only criminal liability, and cannot be asserted by a civil plaintiff in a civil action. *Pineda v. Mortg. Elec. Registration Sys., Inc.*, 2014 WL 346997, at *2 (C.D. Cal. Jan. 29, 2014) ("Plaintiffs' sole federal claim is for mail fraud under 18 U.S.C. § 1341. However, section 1341 does not provide a private right of action."); *Edmonds v. Seavey*, 2009 WL 2949757, at *6 (S.D.N.Y. Sept. 15, 2009) ("there is no private cause of action under 18 U.S.C. § 1344".]; *Bey v. O'Malley*, 2019 WL 4954634, at *2

Nationstar Mortg., LLC, 852 F.3d 964, 971 (9th Cir. 2017). But Plaintiff has not cited this limited exception to the FDCPA or alleged a violation of its specific prohibitions, and only generally alleges that Defendants are "debt collectors" under the FDCPA. Dkt. 1 at 39.

(N.D. Cal. Oct. 8, 2019) (no private right of action under 18 U.S.C. § 1001); *Simms v. Schwab*, 2019 WL 3779886, at *3 (W.D. Wash. Aug. 9, 2019) (no private right of action under 18 U.S.C. § 1005). Defendant's motion to dismiss is GRANTED on these causes of action. Because amendment would be futile without any possible civil right of action, this dismissal is with prejudice.

4. This Court's Jurisdiction

Plaintiff's Complaint includes no clear jurisdictional allegations and fails to clearly allege the citizenship of the Defendant in this action. *See generally* Dkt. 1. Having dismissed Plaintiff's federal claims, the Court must also decide whether to exercise supplemental jurisdiction over Plaintiff's state law claims. *See* 28 U.S.C. § 1367(c). In making this determination, the Court weighs considerations of comity, judicial economy, fairness, and convenience. *See Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir.2010) (noting that "[i]n the usual case" these factors "will point toward declining jurisdiction over the remaining state-law claims" (citations omitted)). Given the early stage in this litigation, the very substantial number of state law claims that require additional consideration of California law, this Court declines to exercise supplemental jurisdiction over these claims. *See Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1101 (9th Cir. 1996) ("Where a district court dismisses a federal claim, leaving only state claims for resolution, it should decline jurisdiction over the state claims and dismiss them without prejudice.").

The Court therefore DISMISSES Plaintiff's remaining state law claims for wrongful foreclosure,

various violation of the California Civil Code, declaratory relief, breach of contract, violation of the California Business and Professions Code, and Civil Conspiracy.

5. Conclusion

Plaintiff's Complaint is DISMISSED for failure to state a claim and lack of subject matter jurisdiction. This dismissal is with prejudice on claims eight, ten, eleven, and twelve, and without prejudice on all other causes of action. Plaintiff has 21 days to file an amended complaint. Because this Court declines to exercise supplemental jurisdiction over the remaining state law claims, Plaintiff's additional motions for a preliminary injunction, for leave to file lis pendens, and motion to substitute a new plaintiff are STAYED pending the filing of an amended complaint. Dkt. 31; Dkt. 32; Dkt. 39.

CHAMBERS ORDER
(OCTOBER 1, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES–GENERAL

HEIDI M. LOBSTEIN,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, ET AL.

No. 2:19-cv-07615-SVW-JPR

Before: Hon. Stephen V. WILSON, U.S. District Judge.

IN CHAMBERS ORDER-TEXT ONLY ENTRY by Judge Stephen V. Wilson: The Court, having read and considered the Ex Parte Application to Extend Time to File Answer 16, filed by defendant, Defendants Opposition 22 to Ex Parte Application for an extension, and plaintiffs Ex Parte Application to Strike 21, GRANTS the extension, to and including October 9, 2019. The application to strike is DENIED. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (pc) TEXT ONLY ENTRY (Entered: 10/01/2019)

NEW CASE ORDER
(SEPTEMBER 11, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HEIDI M. LOBSTEIN,

Plaintiff(s),

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, ET AL.

Defendant(s),

Case No. 2:19-cv-07615-SVW-JPR

Before: Hon. Stephen V. WILSON, U.S. District Judge.

This case has been assigned to the calendar of Judge Stephen V. Wilson. The Court fully adheres to Rule 1 of the Federal Rules of Civil Procedure which requires that the Rules be "construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

Counsel should also be guided by the following special requirements:

1. The Plaintiff shall promptly serve the complaint in accordance with the Fed. R. Civ. P. 4 and file the proofs of service pursuant to Local Rule 5-3.

2. The attorney attending any proceeding before this Court must be the attorney who is primarily responsible for the conduct of the case.

3. Motions: Motions shall be filed and set for hearing in accordance with Local Rule 6-1 and Local Rules 7-4 through 7-7. Parties are advised that these Local Rules were amended effective December 1, 2016. Motions are heard on Mondays at 1:30 p.m., unless otherwise ordered by this Court. If Monday is a national holiday, this Court DOES NOT hear motions on the succeeding Tuesday. Any motions noticed for a holiday shall automatically be set to the following Monday without further notice to the parties.

A. Page Limits:

Per Local Rule 11-6, Memoranda of Points and Authorities in support of or in opposition to motions shall not exceed 25 pages. Replies, thereto, shall not exceed 12 pages. These are maximum page limits. The Table of Contents and List of Authorities do not count towards the page limits. It is the Court's preference that the pleadings be shorter. If it cannot be said briefly, then it is not a "brief."

B. Motions for Summary Judgment: Use of depositions.

Pursuant to Local Rule 32-1, no original or copy of a deposition shall be lodged in support of a Motion for Summary Judgment (or other substantive motion)

Counsel shall file the pertinent excerpts of depositions as an exhibit or supplement to said motion.

4. DISCOVERY: ALL DISCOVERY MATTERS HAVE BEEN REFERRED TO A UNITED STATES MAGISTRATE JUDGE (see initial designation in parenthesis following the case number) for the specific purpose of hearing all discovery matters. Discovery disputes of a significant nature should be brought promptly before the Magistrate Judge. The Court does not look favorably upon delay resulting from unnecessarily unresolved discovery disputes. Any discovery disputes that are not resolved three (3) weeks prior to the scheduled trial date should be brought promptly and directly to the attention of this Court. Counsel are directed to contact the clerk for the assigned Magistrate Judge to schedule the matter for hearing. The words DISCOVERY MATTER shall appear in the caption of all documents relating to discovery to insure proper routing.

Per Fed. R. Civ. P. 72(a), the decision of the Magistrate Judge shall be final and binding, subject to modification by the District Court only where it has been shown that the Magistrate Judge's order is clearly erroneous or contrary to law.

Either within fourteen (14) days of an oral ruling which the Magistrate Judge indicates will not be followed by a written ruling or within fourteen (14) days of service upon him/her of a written ruling, any party may file and serve a motion for review and reconsideration before this Court. According to Local Rule 72-2.1, the Motion must specifically designate the portions of the decision objected to and specify the such portions of the decision that are clearly erroneous of contrary to law, with points and authorities

in support thereof. A copy of these moving papers and responses, etc., shall be delivered to the Magistrate Judge's clerk for review upon the filing of said documents.

5. EX PARTE APPLICATIONS: Ex parte applications are considered by the papers and are not set for hearing. This Court only allows ex parte applications when extraordinary relief is necessary. Counsel are advised to file and serve their ex parte applications as soon as they realize that extraordinary relief is necessary. Sanctions may be imposed for misuse of ex parte applications. *See In Re: Intermagnetics America, Inc.*, 101 Bankr. 191 (C.D. Cal. 1989).

The requesting party shall notify the responding party that opposing papers must be filed not later than 3:00 p.m. on the first business day succeeding the day the ex parte application was served. If counsel choose not to oppose the ex parte application, they must inform the clerk by phone at (213) 894-2881. Counsel will be notified by the clerk of the Court's ruling.

6. TRIAL PREPARATION: This Court strives to set trial dates as early as possible and does not approve of unnecessarily protracted discovery. This Court issues an "Order Re: Trial Preparation" upon the setting of a trial date.

7. CONTINUANCES: Per Local Rule 16-9, continuances are granted only upon a showing of cause, focusing particularly upon evidence of diligent work by the party seeking delay and of prejudice that may result from the denial of a continuance. Counsel requesting a continuance MUST submit a detailed declaration as to the reason at least five (5) days

before the day set for trial or proceeding. Any continuances requested not accompanied by said declaration will be rejected without notice to the parties. This Court sets firm trial dates and will not change them without a showing of good cause.

8. STIPULATIONS: NO stipulations extending scheduling dates set by this Court are effective unless approved by this Court. All stipulations must be accompanied by a detailed declaration explaining the reason for the stipulation. Any stipulation not in compliance with this Order or the Local Rules of the Central District will automatically be rejected without notice to the parties. Stipulations shall be submitted well in advance of the relief requested. Counsel wishing to know whether or not a stipulation has been signed shall comply with Local Rule 11-4.5.

9. NOTICE: Counsel for plaintiff, or plaintiff, if appearing on his or her own behalf, is required to promptly give notice of these requirements to the opposing parties or their counsel. If this case came to this Court via a Notice for Removal, this burden falls to the removing defendant.

10.NOTICE OF REMOVAL: Any answers filed in state court must be re-filed in this Court as a supplement or exhibit to the Notice. If an answer has not been filed, said answer or responsive pleading shall be filed in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Central District. Any pending motions must be re-noticed according to Local Rule 7-4. The Complaint must be filed as both a supplement or exhibit to the Notice and as a separate docket entry after the case is opened.

11. BANKRUPTCY APPEALS: Counsel shall comply with the ORDER RE PROCEDURE TO BE FOLLOWED IN APPEAL FROM BANKRUPTCY COURT issued at the time the appeal is filed in the District Court. The matter is considered submitted upon the filing of the appellant's reply brief. No oral argument is held unless by order of this Court.

12. TRANSCRIPTS: Requests for transcripts shall be made to the Court Reporter who reported the event. Reporter information can be found on the Court's web-site at www.cacd.uscourts.gov, under Court Addresses & Directories-Western-Spring or Western-Roybal. For additional Court Reporter Information, you may contact the Court Reporter Scheduler at (213) 894-0658. Arrangements for daily transcripts shall be made not later than five (5) days prior to the hearing or trial to be transcribed. Requests for daily transcripts made on the day of the hearing/trial to be transcribed may not be honored; it shall be at the discretion of the assigned court reporter.

Counsel representing the United States or one of its agencies shall present a preauthorization purchase order when ordering transcripts.

13. E-FILING:

One mandatory chambers copy of only the following filed documents:

Civil matters:

Motions and related documents (oppositions, replies, exhibits);

Ex parte applications and related documents (oppositions and exhibits);

Joint Rule 26(f) reports;

All pretrial documents.

Criminal matters:

Motions and related documents and exhibits;

Plea agreement(s);

Sentencing memoranda

Objections to the pre-sentence investigation report.

Chambers copies shall be delivered to and placed in the Judge's courtesy box, located outside of the Clerk's office, on the 4th floor, by 5:00 p.m. on the first court date after the filing date.

All exhibits, declarations, etc. to chambers copies must be tabbed, where applicable. Blue-backs and hole punches are not required.

Chambers copies of under seal documents shall all be placed together in a manila envelope labeled "UNDER SEAL."

IT IS SO ORDERED.

/s/ Stephen V. Wilson
United States District Judge

Dated: September 11, 2019

ORDER RE APPLICATION FOR PERMISSION FOR ELECTRONIC FILING (SEPTEMBER 11, 2019)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HEIDI M. LOBSTEIN, in Individual,

Plaintiff,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, DOES 1-10, INCLUSIVE.

Defendants.

Case No. CV19-07615-SVW-JPRx

Before: Hon. Stephen V. WILSON, U.S. District Judge.

IT IS ORDERED that the Application for Permission for Electronic Filing by Plaintiff Heidi M. Lobstein is hereby:

Pursuant to Local Rule 5-4.1.1, the applicant must register to use the Court's CM/ECF System within five (5) days of being served with this order. Registration information is available at the Pro Se Litigant E-Filing web page located on the Court's website. Upon registering, the applicant will receive a CM/ECF login and password that will allow him/her to file

non-sealed documents electronically in this case only. Any documents being submitted under seal must be manually filed with the Clerk.

/s/ Stephen V. Wilson
U.S. District Judge

Dated: September 11, 2019

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC (DECEMBER 27, 2021)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

HEIDI M. LOBSTEIN; MARGUERITE DESELMS,

Plaintiffs-Appellants,

v.

WASHINGTON MUTUAL MORTGAGE PASS-THROUGH CERTIFICATES WMALT SERIES 2007-OC1, Erroneously Sued As US Bank National Association as Trustee, successor in interest to Bank of America, National Association as successor by merger to Lasalle Bank NA; POLICEMENS ANNUITY AND BENEFIT FUND OF THE CITY OF CHICAGO; LABORERS PENSION FUND AND HEALTH AND WELFARE DEPARTMENT OF THE CONSTRUCTION AND GENERAL LABORERS DISTRICT COUNCIL OF CHICAGO AND VICINITY; IOWA PUBLIC EMPLOYEES RETIREMENT SYSTEM; ARKANSAS PUBLIC EMPLOYEES RETIREMENT SYSTEM; VERMONT PENSION INVESTMENT COMMITTEE; WASHINGTON STATE INVESTMENT BOARD; ARKANSAS, TEACHER RETIREMENT SYSTEM; PUBLIC EMPLOYEES RETIREMENT SYSTEM OF MISSISSIPPI; CITY OF TALLAHASSEE

RETIREMENT SYSTEM; CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS PENSION FUND; ALAN DAVID TIKAL, as Trustee of the KATN Revocable Living Trust,

Defendants-Appellees.

No. 20-55998

D.C. No. 2:19-cv-07615-SVW-JPR, U.S. District Court for Central California, Los Angeles

Before: FERNANDEZ, SILVERMAN, and NGUYEN, Circuit Judges.

The panel has unanimously voted to deny Appellant's petition for rehearing. The petition for rehearing *en banc* was circulated to the judges of the court, and no judge requested a vote for *en banc* consideration.

The petition for rehearing and the petition for rehearing *en banc* are DENIED.