UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARY ALICE NELSON ROGERS, et. al., Plaintiffs, v. WASHINGTON MUTUAL BANK, et al., Defendants.	No. 2:21-cv-2151-JAM-KJN (PS) FINDINGS AND RECOMMENDATIONS; ANCILLARY ORDER (ECF Nos. 6, 12, 14, 20.)

On October 18, 2021, plaintiffs filed a complaint in California Superior Court alleging claims against defendants Washington Mutual Bank, Schools Financial Credit Union, JP Morgan Chase Bank, and Quality Loan Services Corp. (ECF No. 1-1 at 198-224.) Defendant Chase removed to this court and moved to dismiss.[1] (ECF Nos. 1, 6.) Plaintiff moved to remand the case, which defendants opposed. (ECF Nos. 14, 17, 23.) Shortly after, defendants Quality and SFCU entered and moved to dismiss. (ECF Nos. 14, 20.) Multiple parties requested judicial notice of certain documents, and plaintiff filed a motion to strike defendants' affirmative defenses. (ECF Nos. 7, 11, 21, 25, 26.)

For the reasons set forth below, the undersigned recommends: (I) denying plaintiffs' motion to remand; and (II) dismissing the complaint with prejudice against all parties.

[1] Plaintiffs proceed in this action without assistance of counsel; thus, this case is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 302(c)(21). See L.R. 304.

BACKGROUND[2]

Plaintiff previously resided at a house located in Sacramento County. (ECF No. 1-1 at 201 ¶ 2.) In 2007, plaintiff secured a home equity line of credit on the house with defendant Washington Mutual Bank ("WaMu"). (Id. at ¶ 3.) In 2008, WaMu was taken into receivership by the FDIC and later purchased by defendant JP Morgan Chase. (Id.; see also ECF No. 7-2, the "Purchase and Assumption Agreement" between the FDIC and Chase.) Chase notified plaintiff of this fact in 2009, and plaintiff began making mortgage payments to Chase at that time. (ECF No. 1-1 at 201 ¶ 3.) In 2017, plaintiff secured another loan on the house from defendant Schools Financial Credit Union. (ECF No. 1-1 at 203 ¶ 7; ECF No. 21 at 5-9.)

In June 2019, plaintiff ceased paying Chase on the loan. (See ECF No. 7-4.) In January 2020, Chase appointed defendant Quality as the foreclosure trustee, who recorded a notice of default and election to sell with the Sacramento County Recorder's Office. (ECF No. 1-1 at 203-04 ¶ 10; ECF No. 12-2 at Exs. 3 & 4.) Quality recorded the notice of trustee sale in September 2021, sold the home to defendant Chase in October, and delivered notice of the latter to plaintiff in December. (Id. at Exs. 5 & 6.; see also ECF No. 11 at ¶¶ 1-5, plaintiff's affidavit.)

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[2] Those facts ascertainable from the complaint are included in this background section, and are construed in the light most favorable to plaintiff—the non-moving party. Faulkner v. ADT Sec. Servs., 706 F.3d 1017, 1019 (9th Cir. 2013). However, the court is not required to accept as true "conclusory [factual] allegations that are contradicted by documents referred to in the complaint," or "legal conclusions merely because they are cast in the form of factual allegations." Paulsen v. CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009).

Additionally, when reviewing a motion to dismiss, courts are permitted to consider undisputed facts contained in judicially-noticeable documents without converting the motion to one of summary judgment. See United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003) ("A court may [] consider certain material—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment."); see also Marder v. Lopez, 450 F.3d 445, 448 (9th Cir. 2006) (judicial notice proper for exhibits "on which the [c]omplaint necessarily relies."). Here, the parties have provided a number of exhibits that are judicially noticeable, and so the court will rely upon these documents in these findings and recommendations. See Fed. R. Evid. 201. The documents include recorded notices related to the loan, Chase's purchase of WaMu, and information related to the foreclosure proceedings. See, e.g., Gamboa v. Tr. Corps, 2009 WL 656285, at *3 (N.D. Cal. Mar. 12, 2009) (taking judicial notice of recorded documents related to a foreclosure sale, including grant deed and deed of trust, as they were "part of the public record and are easily verifiable.").

Procedural Posture for 2:21-cv-2151[3]

In October, 2021, plaintiff filed the instant complaint in California Superior Court. In November, and prior to service, Chase removed to this court, moved to dismiss, and requested judicial notice. (ECF Nos. 1, 6, 7.) In December, plaintiff moved to remand and requested judicial notice. (ECF Nos. 11, 14.) Thereafter, Quality moved to dismiss and requested judicial notice. (ECF Nos. 12 and 12-2.) In January, 2022, Chase opposed remand. (ECF No. 17.) SFCU moved to dismiss (set for a March 1, 2022 hearing), requested judicial notice, and joined Chase's remand opposition. (ECF Nos. 20, 21, 23.) Plaintiff replied, seeking to strike defendant Chase's affirmative defenses under the guise of a motion for judicial notice. (ECF Nos. 25, 26.)

The court heard the motions to remand and dismiss alongside another of plaintiff's cases at a January 25, 2022 hearing. (See ECF No. 27.)

DISCUSSION

I. Defendant Chase's Removal and Plaintiff's Motion to Remand

Plaintiff seeks remand, appearing to argue Chase's notice of removal was defective and the court lacks subject matter jurisdiction. (See, generally, ECF No. 14.) Chase opposes, arguing that the complaint attempts to state federal causes of action, as well as the fact that Chase and plaintiff are completely diverse and the other defendants are nominal and fraudulently joined. Chase argues any procedural defects are cured by Quality and SFCU's post-removal consent.

The undersigned finds it has subject matter jurisdiction under either 28 U.S.C. Sections 1331, 1332, Chase's removal was proper, and consent to removal from Quality and SFCU was not required.

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[3] Plaintiff also filed an action against defendants Chase and Quality (among others) in this court, each of whom moved to dismiss in late 2019. (See 2:21-cv-1908-JAM-KJN.) For judicial economy, the undersigned heard this case alongside the 21-cv-1908 case, but issued a separate set of findings and recommendations for each, as the district judge had not consolidated or otherwise related the two actions. (See Id. at ECF No. 30.) Further, the court notes the docket in 2:21-cv-1809-JAM-AC, wherein plaintiff brought various constitutional claims against Donna Allred of the Sacramento County Recorder's Office. The magistrate judge in the 21-cv-1809 case screened plaintiff's complaint pursuant to 28 U.S.C. § 1915, provided her with two opportunities to amend, and ultimately recommended the claims be dismissed with prejudice for failure to state a claim.

Legal Standard – Removal and Remand

Under the removal statute, a defendant may remove a case to federal court if the plaintiff could have filed the action in federal court initially. 28 U.S.C. § 1441(a); Ethridge v. Harbor House Restaurant, 861 F.2d 1389, 1393 (9th Cir. 1988). The party seeking removal bears the burden of establishing federal jurisdiction. Id. A notice of removal is to contain a short and plain statement of the grounds for removal. 28 U.S.C. § 1446(a). Removal is to be noticed "within 30 days of receipt of the initial pleading," or, in cases of diversity jurisdiction, within "one year after commencement of the action." 28 U.S.C. § 1446(b), (c).

Federal courts are courts of limited jurisdiction, and so the statute is strictly construed against removal. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). District courts have federal question jurisdiction over "all civil actions that arise under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331; see also Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002) ("A case 'arises under' federal law either where federal law creates the cause of action or where the vindication of a right under state law necessarily turn[s] on some construction of federal law."). District courts also have jurisdiction to hear disputes based on state law where the amount in controversy exceeds $75,000 and there is complete diversity between the parties. 28 U.S.C. § 1332; see also GranCare, LLC v. Thrower by & through Mills, 889 F.3d 543, 548 (9th Cir. 2018) ("Complete diversity means that each plaintiff is of a different citizenship from each defendant.").

Filing a motion to remand is the proper way to challenge removal. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009). While a district court may remand a case for lack of subject-matter jurisdiction at any time, a court may only remand a case based on defect in removal procedure upon the timely filing of a motion to remand. 28 U.S.C. § 1447(c).

Analysis

Here, defendant Chase's notice of removal references 28 U.S.C. Section 1331. (See ECF No. 1 at 3.) The core of plaintiff's complaint appears to be a quiet title action and related request for injunction. (See ECF No. 1-1 at 200.) However, the complaint explicitly discusses "false debt collection" and Chase's failure to "validate the debt" pursuant to the Fair Debt Collections

Practices Act (15 U.S.C. 1692 et seq.). (See Id. at 203, 208, 215, 217.) Plaintiff stated at the hearing she intended to include reference to the FDCPA as information related to her case. A liberal interpretation of the complaint indicates plaintiff is attempting to assert claims under federal law. See Hebbe v. Pliler, 627 F.3d 338, 342, n.7 (9th Cir. 2010) (noting that pro se pleadings are to be liberally construed). The presence of, at a minimum the FDCPA claim, provides the court with jurisdiction under 28 U.S.C. Section 1331. See Caterpillar, Inc. v. Williams, 482 U.S. 386, 392 (1987); Provincial Gov't of Marinduque, 582 F.3d 1083 at 1091; see also Green v. All. Title, 2010 U.S. Dist. LEXIS 92203, at *6-8 (E.D. Cal. Sep. 2, 2010) (finding removal to be proper based on plaintiff's claim under the FDCPA, and exercising supplemental jurisdiction over plaintiff's state law claims under 28 U.S.C. Section 1367).

However, even assuming for the sake of argument plaintiff did not intend to state an FDCPA claim, Chase's notice of removal also references 28 U.S.C. section 1332. (See ECF No. 1 at 4-6.) The complaint repeatedly references a mortgage agreement, and it is clear from the judicially noticeable documents that the amount in controversy is over $75,000. (See ECF No. 1-1 at 201 ¶ 12 (discussing an amount in controversy of $139,167.69); ECF No. 7-4 at 3 (noting an alleged obligation of $120,000).) Further, Chase argues that it and plaintiff are completely diverse, with the former being at home in Ohio and the latter in California. (See, generally, ECF No. 1 at ¶¶ 10-12; ECF No. 1-1 at 201 ¶ 2). Under these facts, Chase's removal was proper under 28 U.S.C. Section 1332.

Plaintiff points out that she has named two other defendants, Quality and SFCU, who are both alleged to be citizens of California. If true, this would indicate the court would lack diversity jurisdiction. See Caterpillar Inc. v. Lewis, 519 U.S. 61, 68 (1996) (diversity removal requires complete diversity, meaning that each plaintiff must be of a different citizenship from each defendant). However, in determining whether there is complete diversity, district courts may disregard the citizenship of a non-diverse defendant who is nominal or has been fraudulently joined. Grancare, 889 F.3d at 548 (citing Chesapeake & Ohio Ry. Co. v. Cockrell, 232 U.S. 146, 152 (1914)).

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Here, and as discussed below, defendants correctly note that Quality and SFCU have *no* bearing on this dispute. Quality is merely a nominal defendant, as it was the trustee selected by Chase to record notices and conduct the foreclosure sale. See Prudential Real Estate Affiliates, Inc. v. PPR Realty, Inc., 204 F.3d 867, 873 (9th Cir. 2000) ("The paradigmatic nominal defendant is a trustee, agent, or depositary . . . [who is] joined purely as a means of facilitating collection."). Further, Quality and SFCU appear to have been fraudulently joined, as Quality has no interest in the property, and SFCU took no action against the property when Chase noted the default and decided to move the foreclosure proceedings forward. See Hunter v. Philip Morris USA, 582 F.3d 1039, 1044 (9th Cir. 2009) (noting that fraudulent joinder may be established by an "inability of the plaintiff to establish a cause of action against the non-diverse party in state court."). Thus, the diversity analysis for removal purposes remains between plaintiff and Chase—the real party to the controversy in plaintiff's quiet title action. As such, even assuming for the sake of argument plaintiff amended in order to omit the federal claims, the court also finds complete diversity exists under Section 1332. GranCare, 889 F.3d at 548.

Finally, to the extent plaintiff challenges the method and timing of defendant Chase's removal to this court, the undersigned finds there to be no issues requiring remand. Under 28 U.S.C. section 1446(b)(1), a defendant's 30 day window to remove a case to federal court does not begin to run until "formal service" has been effected. Murphy Bros. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-48 (1999). Here, Chase removed to this court on November 19, 2021, prior to it having been served by plaintiff in the state court action. (ECF No. 1.) Further, as nominal/fraudulently joined parties, there was no need for Chase to obtain consent from Quality or SFCU. Emrich v. Touche Ross & Co., 846 F.2d 1190, 1193 n.1 (9th Cir. 1988) (noting that all defendants in a state action must join in the petition for removal, except for nominal, unknown or fraudulently joined parties).

Thus, the undersigned finds removal was proper under 28 U.S.C. Section 1441, either due to the presence of a federal question or to complete diversity of the parties and amount exceeding $75,000.

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II. Defendants' Motions to Dismiss

Defendants Chase, Quality, and SFCU[4] each moved to dismiss the claims asserted against them, generally relying on Federal Rule of Civil Procedure 12(b)(6) to argue the complaint fails to state plausible facts on which relief may be granted. (See ECF Nos. 6, 12, 20.) Plaintiff did not formally oppose these motions, as she argued any substantive rulings on the merits of her case were for the state court to decide after remand (a position the undersigned has rejected). (ECF No. 14 at 9.) However, even assuming plaintiff's filings constitutes general opposition to dismissal, the court finds defendants' motions well taken, and recommends dismissal of all claims against all defendants with prejudice.

Legal Standards – Failure to State a Claim

A motion to dismiss brought under Rule 12(b)(6) challenges the sufficiency of the pleadings set forth in the complaint. Vega v. JPMorgan Chase Bank, N.A., 654 F. Supp. 2d 1104, 1109 (E.D. Cal. 2009). Under Rule 12(b)(6), a claim may be dismissed because of the plaintiff's failure to state a claim upon which relief can be granted. This generally encompasses two scenarios: where the complaint lacks a cognizable legal theory, or where it lacks "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); Mollett v. Netflix, Inc., 795 F.3d 1062, 1065 (9th Cir. 2015).

When a court considers whether a complaint states a claim upon which relief may be granted, all well-pleaded factual allegations must be accepted as true, Erickson v. Pardus, 551 U.S. 89, 94 (2007), and the complaint must be construed in the light most favorable to the non-moving party. Corrie v. Caterpillar, Inc., 503 F.3d 974, 977 (9th Cir. 2007). The court is not, however, required to accept as true "conclusory [factual] allegations that are contradicted by

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[4] SFCU's motion to dismiss was filed later and set for a hearing on March 1, 2022. (See ECF No. 20.) However, the undersigned finds the claims against SFCU suffer from the same infirmities as against Chase and Quality. Therefore, SFCU's motion is taken up alongside the others in these findings and recommendations. See Silverton v. Dep't of Treasury, 644 F.2d 1341, 1345 (9th Cir. 1981) (allowing for dismissal of claims against additional defendants where the claims and positions align with moving defendants'); Local Rule 230(g) (allowing for the court to take motions under submission without a hearing if determined that the matter may be submitted upon the record and briefs without need for additional argument).

documents referred to in the complaint," or "legal conclusions merely because they are cast in the form of factual allegations." Paulsen v. CNF Inc., 559 F.3d 1061, 1071 (9th Cir. 2009). Thus, to avoid dismissal for failure to state a claim, a complaint must contain more than "naked assertions," "labels and conclusions," or "a formulaic recitation of the elements of a cause of action." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007). Simply, the complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 570). Plausibility means pleading "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id.

Pro se pleadings are to be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342, n.7 (9th Cir. 2010) (liberal construction appropriate even post-Iqbal). Prior to dismissal, the court is to tell the plaintiff of deficiencies in the complaint and give the plaintiff an opportunity to cure them—if it appears at all possible the defects can be corrected. See Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir. 2000). However, if amendment would be futile, no leave to amend need be given. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 339 (9th Cir. 1996).

Analysis

Here, the complaint first attempts to state an action for quiet title against all defendants. (ECF No. 1-1 at 200-15.) However, the basic fact remains that in order for plaintiff to be able to assert a quiet title claim, she must have paid her mortgage. Aguilar v. Bocci, 39 Cal.App.3d 475, 477 (1974) (for a mortgagor to quiet title to a property encumbered by a debt, he or she must first pay that debt); Shimpones v. Stickney, 219 Cal. 637, 649 (1934) ("It is settled in California that a mortgagor cannot quiet his title against the mortgagee without paying the debt secured."). Despite the significant amount of boilerplate, legalese, and other irrelevant information detailed in the complaint, nowhere does the complaint allege this fact. (See, generally, ECF No. 1-1 at 200-215.) Conversely, the judicially noticeable documents demonstrate plaintiff stopped paying Chase in 2019, was notified of the default and election to sell, and is no longer the owner of the residence. (See ECF No. 7-4; ECF No. 12-2 at Exs. 3, 4, 5 & 6.) Thus, her quiet title claim against Chase (much less against the foreclosure trustee Quality and secondary lienholder SFCU)

cannot stand. See, e.g., Santos v. Ocwen Loan Servicing, LLC, 2017 WL 24869, *6 (N.D. Cal. Jan. 3, 2017) (dismissing quiet title claim against mortgagor without leave to amend because plaintiff had not paid the debt) (citing Aguilar, 39 Cal.App.3d at 477).

As for any claim under the Fair Debt Collection Practices Act, the law is clear that "[r]esidential mortgage loans fall outside of [the FDCPA's purview], and the act of foreclosing on a residential loan is outside the definition of debt collection." See, e.g., Fuentes v. Duetsche Bank, 2009 WL 1971610, at *3 (S.D. Cal. July 8, 2009) (dismissing FDCPA claim for 'failing to validate debt' against residential mortgager because the "FDCPA only applies to consumer debts or transactions[, and] residential mortgage loans fall outside of this definition."); see also Vien-Phuong Thi Ho v. ReconTrust Co., NA, 858 F.3d 568, 574 (9th Cir. 2017) (finding foreclosure trustee not a "debt collector" subject to damages under the Fair Debt Collection Practices Act); Hatch v. Collins, 225 Cal.App.3d 1104, 275 (1990) (a trustee "does not stand in a fiduciary relationship" to either the beneficiary or the creditor). Thus, to the extent the complaint attempts to state an FDCPA claim against each defendant, it is also subject to dismissal.

Ordinarily, the court is to tell the plaintiff of deficiencies in the complaint and give the plaintiff an opportunity to cure them—if it appears at all possible the defects can be corrected. See Lopez, 203 F.3d 1130-31. However, it is clear that based on the state of the law, amendment would be futile. Thus, the undersigned recommends no leave to amend be given. Cahill, 80 F.3d at 339.

Finally, the court notes plaintiff's two most recent filings, captioned "motion for judicial notice." (ECF Nos. 25, 26.) Upon reviewing the filings, it appears plaintiff is attempting to move to strike Chase's affirmative defenses. However, these were filed January 18th and 19th, and set for a hearing date of January 25, 2022. To the extent these filings are actual motions, they are denied as deficient under Local Rule 230(b) (requiring any motions to be set for a hearing at least 28 days from the date of the filing).

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ORDER

Given these recommendations, it is HEREBY ORDERED that:

1. Plaintiff's filings at ECF No. 25 and 26, to the extent they are motions to strike, are DENIED WITHOUT PREJUDICE as improperly noticed;
2. The hearing on SFCU's motion, currently set for March 1, 2022 (ECF No. 20), is VACATED, and the matter is taken under submission per Local Rule 230(g); and
3. The initial scheduling conference set for May 24, 2022 (ECF No. 5) is VACATED.

RECOMMENDATIONS

For the reasons stated above, it is HEREBY RECOMMENDED that:

1. Plaintiff's Motion to Remand (ECF No. 14) be DENIED;
2. Defendants' Motions to Dismiss (ECF No. 6, 12, 20) be GRANTED;
3. Plaintiff's complaint be DISMISSED WITH PREJUDICE; and
4. The Clerk of the Court be directed to CLOSE this case.

These findings and recommendations are submitted to the United States District Judge assigned to the case, under the provisions of 28 U.S.C. § 636(b)(l). Within fourteen (14) days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served on all parties and filed with the court within fourteen (14) days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

Dated: February 9, 2022

Kendall J. Newman

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

nels.2151

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

MARY ALICE NELSON ROGERS, ET AL.,

CASE NO: **2:21-CV-02151-JAM-KJN**

V.

WASHINGTON MUTUAL BANK, F.A., ET AL.,

Decision by the Court. This action came before the Court. The issues have been tried, heard or decided by the judge as follows:

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE COURT'S ORDER FILED ON 3/16/2022

Keith Holland
Clerk of Court

ENTERED: **March 16, 2022**

by: /s/ A. Coll
Deputy Clerk

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARY ALICE NELSON ROGERS, et. al.,

Plaintiffs,

v.

WASHINGTON MUTUAL BANK, et al.,

Defendants.

No. 2:21-cv-2151-JAM-KJN (PS)

ORDER

(ECF Nos. 6, 12, 14, 20, 30, 32, 33, 34, 35.)

On February 9, 2022, the magistrate judge filed findings and recommendations (ECF No. 30), which were served on the parties and which contained notice that any objections to the findings and recommendations were to be filed within fourteen (14) days. On February 18, 2022, plaintiff filed objections to the findings and recommendations (ECF No. 31), and on March 1, 2022, defendants Chase, Schools, and Quality filed responses (ECF Nos. 33, 34, 35). These have been considered by the court.

This court reviews de novo those portions of the proposed findings of fact to which an objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981); see also Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion of the proposed findings of fact to which no objection has been made, the court assumes its correctness and decides the matter on the applicable law. See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's

conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9th Cir. 1983). The court has reviewed the applicable legal standards and, good cause appearing, concludes that it is appropriate to adopt the findings and recommendations in full.

Alongside the objections, plaintiff filed a motion to disqualify the magistrate judge in this case. (ECF No. 32.) A party may seek recusal of a judge based on bias or prejudice. See 28 U.S.C. § 144. However, to provide adequate grounds for recusal, the prejudice suffered must result from an extrajudicial source, and a judge's previous adverse ruling alone is not sufficient for recusal. United States v. Sibla, 624 F.2d 864, 867 (9th Cir. 1980); United States v. Nelson, 718 F.2d 315, 321 (9th Cir. 1983)). Here, plaintiff's affidavit fails to allege facts to support a contention that the magistrate judge has exhibited bias or prejudice directed towards plaintiff from an extrajudicial source. Sibla, 624 F.2d at 868. Thus, plaintiff's allegation does not provide a basis for recusal, and results in denial of the motion. Liteky v. United States, 510 U.S. 540, 555 (1994) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.").

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's motion to disqualify the magistrate judge (ECF No. 32) is DENIED;
2. The findings and recommendations (ECF No. 30) are ADOPTED IN FULL;
3. Plaintiff's Motion to Remand (ECF No. 14) is DENIED;
4. Defendants' Motions to Dismiss (ECF No. 6, 12, 20) are GRANTED;
5. Plaintiff's complaint is DISMISSED WITH PREJUDICE; and
6. The Clerk of the Court is directed to CLOSE this case.

DATED: March 16, 2022

/s/ John A. Mendez
THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MARY ALICE NELSON ROGERS, et. al.,

Plaintiffs,

v.

WASHINGTON MUTUAL BANK, et al.,

Defendants.

No. 2:21-cv-2151-JAM-KJN (PS)

ORDER DENYING MOTION TO SEAL

Plaintiff, who proceeds without counsel in this action, filed this action, but it has been closed pursuant to the undersigned's findings and recommendations and the district court's order adopting and judgment. (ECF Nos. 1, 30, 37, 38.) On May 4, 2022, the court received a document entitled "judicial notice of exercise of right to set off." However, plaintiff labels each page as "special private priority not for public record under seal." Thus, the Clerk held the filing until the undersigned could review what is construed as plaintiff's request to seal the filing.

For the reasons that follow, plaintiff's request to seal the filing is denied. Further, plaintiff is advised that because her case was closed on March 16, 2022, documents filed since the closing date will be disregarded and no orders will issue in response to future frivolous filings.

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DISCUSSION

Requests to seal documents in this district are governed by E.D. Cal. L.R. ("Local Rule") 141. In brief, Local Rule 141 provides that documents may be sealed only by a written order of the court after a specific request to seal has been made. Local Rule 141(a). However, a mere request to seal is not enough, as the local rule requires "[t]he 'Request to Seal Documents' shall set forth the statutory or other authority for sealing . . . ." Local Rule 141(b).

The court starts "'with a strong presumption in favor of access to court records,'" Center for Auto Safety v. Chrysler Group, LLC, 809 F.3d 1092, 1096 (9th Cir. 2016) (quoting Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003)). "The presumption of access is 'based on the need for federal courts, although independent – indeed, particularly because they are independent – to have a measure of accountability and for the public to have confidence in the administration of justice.'" Id. (quoting United States v. Amodeo, 71 F.3d 1044, 1048 (2d Cir.1995)). A request to seal material must normally meet the high threshold of showing that "compelling reasons" support secrecy. Id. (citing Kamakana v. City and County of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006)).

Plaintiff has not identified legal authority that supports sealing of the submitted document. Instead, it appears plaintiff merely labels the document as "private . . . not for public record, under seal," which is not a compelling reason to seal. Center for Auto Safety, 809 F.3d at 1096. Given this, Local Rule 140(e)(1) requires the Clerk to return the filing to plaintiff.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's request to seal is DENIED;
2. The Clerk shall RETURN to plaintiff the document filed May 4, 2022, entitled "judicial notice of exercise of right to set off"; and
3. Plaintiff shall CEASE filing documents in this closed case. Any future filings deemed frivolous will be ignored.

Dated: May 10, 2022

nels.2151

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

FILED

JUL 5 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY A. NELSON ROGERS,

Plaintiff-Appellant,

and

MARY ALICE NELSON ROGERS FAMILY TRUST,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.; QUALITY LOAN SERVICE, INC.,

Defendants-Appellees,

and

WASHINGTON MUTUAL BANK, F.A.; SCHOOLS FINANCIAL CREDIT UNION,

Defendants.

No. 22-15469

D.C. No. 2:21-cv-02151-JAM-KJN

MEMORANDUM*

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

Appeal from the United States District Court
for the Eastern District of California
John A. Mendez, District Judge, Presiding

Submitted June 26, 2023**

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

Mary A. Nelson Rogers appeals pro se from the district court's judgment dismissing her diversity action arising out of foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's denial of a motion to remand. *Yocupicio v. PAE Grp., LLC*, 795 F.3d 1057, 1059 (9th Cir. 2015). We affirm.

The district court properly denied Rogers's motion to remand the case to state court because the requirements for diversity jurisdiction were met and the only non-diverse defendants were fraudulently joined to defeat diversity jurisdiction. *See* 28 U.S.C. § 1332(a) (setting forth requirements for diversity jurisdiction); *Rouse v. Wachovia Mortg., FSB*, 747 F.3d 707, 709 (9th Cir. 2014) (a national bank "is a citizen only of the state in which its main office is located"); *Hamilton Materials, Inc. v. Dow Chem. Corp.*, 494 F.3d 1203, 1206 (9th Cir. 2007) (exception to requirement for complete diversity exists where a non-diverse defendant is fraudulently joined); *Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313,

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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).

1318 (9th Cir. 1998) ("If the plaintiff fails to state a cause of action against a resident defendant, and the failure is obvious according to the settled rules of the state, the joinder of the resident defendant is fraudulent." (citation and internal quotation marks omitted)); *Lueras v. BAC Home Loans Servicing, LP*, 163 Cal. Rptr. 3d 804, 835-36 (Ct. App. 2013) (requirements of a quiet title claim under California law).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions are denied.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 12 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARY ALICE NELSON ROGERS,

Plaintiff-Appellant,

and

MARY ALICE NELSON ROGERS FAMILY TRUST,

Plaintiff,

v.

JPMORGAN CHASE BANK, N.A.; QUALITY LOAN SERVICE, INC.,

Defendants-Appellees,

and

WASHINGTON MUTUAL BANK, F.A.; SCHOOLS FINANCIAL CREDIT UNION,

Defendants.

No. 22-15469

D.C. No. 2:21-cv-02151-JAM-KJN
Eastern District of California,
Sacramento

ORDER

Before: CANBY, S.R. THOMAS, and CHRISTEN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Rogers's petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 32 and 35) are denied.

Rogers's motion to take judicial notice (Docket Entry No. 33) is denied.

No further filings will be entertained in this closed case.

Case No.

In The Supreme Court for the United States of America

In re: MARY ALICE NELSON ROGERS TRUST
Mary Alice Nelson-Rogers;

Petitioner,

v.

United States District Court For the Eastern District of California,
Sacramento

Respondent,

On Petition for Writ of Mandamus to the United States
District Court For the Eastern District of California,
Sacramento
Case No. 2:21-cv-02151-JAM-KJN

Case No. 22-15469

Honorable District Judge John A Mendez
Honorable Kenneth J. Newman, Magistrate Judge

Certificate of Compliance with Word Count Limitations

I, Mary Alice Nelson-Rogers, In Propria Persona, certify pursuant to Rule 33.1(h) of the Rules of this Court that this Writ of Mandamus contains 4,462 words, excluding parts of the Writ that are exempted by Rule 33.1(d), since my word processing program states the word count is 4,462 words. Thank you for your time.

Dated: February 18, 2024

Respectfully submitted,

By: Mary Alice Nelson-Rogers

Mary Alice Nelson-Rogers, Petitioner

I declare of penalty of perjury that the foregoing is true and correct.

Executed on February 18, 2024

Mary Alice Nelson-Rogers