

No. _____

In The
Supreme Court of the United States

PAMELA S. OWEN,

Petitioner,

v.

FEDERAL HOUSING FINANCE AGENCY ET AL.,

Respondents.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITIONER'S APPENDIX

PAMELA S. OWEN
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Petitioner

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19	Order of the District Court granting Respondent Sheriff Atkins' cross motion for summary judgment.

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

AUG 16 2017

FOR THE NINTH CIRCUIT

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

PAMELA S. OWEN,

Plaintiff-Appellant,

v.

CHUCK E. ATKINS, in his official capacity
as Clark County Sheriff; et al.,

Defendants-Appellees.

No. 16-35398

D.C. No. 3:15-cv-05375-BHS

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Benjamin H. Settle, District Judge, Presiding

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Pamela S. Owen appeals pro se from the district court's judgment in her 42 U.S.C. § 1983 action alleging federal and state law claims arising out of foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Lacey v. Maricopa County*, 693 F.3d 896, 911 (9th Cir. 2012)

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

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

(dismissal for failure to state a claim); *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011) (cross-motions for summary judgment). We affirm.

The district court properly dismissed Owen's § 1983 claims against Federal Home Loan Mortgage Corporation and MTC Financial, Inc. because Owen failed to allege facts sufficient to show that these defendants acted under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988) (to state a claim under § 1983 a plaintiff must show that the alleged deprivation was committed by a person acting under color of state law); *see also Apao v. Bank of N.Y.*, 324 F.3d 1091, 1094-95 (9th Cir. 2003) (non-judicial foreclosure was not state action and therefore did not implicate due process); *Franklin v. Fox*, 312 F.3d 423, 444-45 (9th Cir. 2002) (a private individual acts under color of state law only when there is significant state involvement in the action).

The district court properly granted summary judgment on Owen's § 1983 due process claim against Atkins because Owen failed to raise a genuine dispute of material fact as to whether Atkins violated her constitutional or statutory rights. *See West*, 487 U.S. at 48 ("To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.").

The district court did not abuse its discretion by dismissing Owen's Washington Consumer Protection Act ("CPA") claim with prejudice after Owen failed to comply with the district court's order to file an amended complaint despite being warned of the consequence for failing to file it and receiving an extension to do so. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (setting forth standard of review and listing factors to be considered in dismissing a case as a sanction for failure to comply with a court order requiring submission of an amended complaint). Because we affirm the district court's dismissal of Owen's CPA claim as a sanction for failure to comply with a court order, we do not consider the district court's interlocutory orders regarding Owen's CPA claim. *See Al-Torki v. Kaempfen*, 78 F.3d 1381, 1386 (9th Cir. 1996) ("[I]nterlocutory orders, generally appealable after a final judgment, are not appealable after a dismissal for failure to prosecute[.]").

We reject as meritless Owen's contention that the district court was required to determine whether qualified immunity applied.

We do not consider arguments or facts that were not presented to the district court, or matters not specifically and distinctly raised and argued in the opening brief. *See Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999).

AFFIRMED.

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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 PAMELA S. OWEN,

9 Plaintiff,

10 v.

11 CHUCK E. ATKINS, et al.,

12 Defendants.

CASE NO. C15-5375 BHS

ORDER DENYING PLAINTIFF'S
MOTION FOR STAY,
GRANTING DEFENDANTS'
MOTIONS TO DISMISS, AND
GRANTING PLAINTIFF LEAVE
TO AMEND HER CPA CLAIM

13
14 This matter comes before the Court on Defendants MTC Financial, Inc., doing
15 business as Trustee Corps ("MTC"), and Bishop Marshall & Weibel, PS's ("BMW")
16 motions to dismiss (Dkts. 11 & 21); and Plaintiff Pamela Owen's ("Owen") motion to
17 stay proceedings pending outcome of state court of appeals (Dkt. 25). The Court has
18 considered the pleadings filed in support of and in opposition to the motions and the
19 remainder of the file and hereby rules as follows:

20 **I. PROCEDURAL HISTORY**

21 On May 7, 2015, Owens filed a complaint in Clark County Superior Court for the
22 State of Washington against Defendants Chuck E. Atkins, in his official capacity as Clark

1 County Sheriff; Federal Housing Finance Agency; Federal Home Loan Mortgage
 2 Corporation ("Freddie Mac"); MTC; and BMW. Dkt. 2-3. Owen asserts a cause of
 3 action for violation of Washington's Consumer Protection Act, RCW Chapter 19.86
 4 ("CPA"), and a cause of action for violation of her federal rights under 42 U.S.C. § 1983.
 5 *Id.*

6 On June 18, 2015, MTC filed a motion to dismiss. Dkt. 11. On July 13, 2015,
 7 Owen responded. Dkt. 13. On July 17, 2015, MTC replied. Dkt. 17.

8 On August 7, 2015, BMW filed a motion to dismiss. Dkt. 21. On August 11,
 9 2015, Owen responded. Dkt. 23. On September 3, 2015, BMW replied. Dkt. 32.

10 On August 19, 2015, Owen filed a motion to stay proceedings pending the
 11 outcome in the state court of appeals. Dkt. 25. On August 24, 2015, MTC responded.
 12 Dkt. 28. On August 31, 2015, BMW responded. Dkt. 30. On September 3, 2015, Owen
 13 replied. Dkts. 33 & 34.

14 II. FACTUAL BACKGROUND

15 Owen alleges that she owns property in Vancouver, Washington. On June 16,
 16 2014, MTC sent Owen a notice of delinquent payment and notice of foreclosure sale.
 17 Dkt. 2-3, Exh. 3. The notice provides that Owen had been delinquent in payments since
 18 September 2009. *Id.* On January 16, 2015, MTC held a foreclosure sale, and Freddie
 19 Mac purchased the property. *Id.*, Exh. 13. On March 3, 2015, Freddie Mac filed a
 20 complaint in state court for an unlawful detainer action against Owen and all other
 21 occupants of the property in question. *Id.* On April 3, 2015, the state court issued a writ
 22 of restitution to restore possession of the property to Freddie Mac. *Id.*, Exh. 18. Owens

1 alleges that Sheriff Atkins attempted to serve the writ sometime after it had expired. *Id.*,
2 ¶ 6.11.

3 III. DISCUSSION

4 A. Motion to Stay

5 The power to stay proceedings is “incidental to the power inherent in every court
6 to control the disposition of the causes on its docket with economy of time and effort for
7 itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936).
8 A stay may be appropriate “pending resolution of independent proceedings which bear
9 upon the case. This rule applies whether the separate proceedings are judicial,
10 administrative, or arbitral in character[.]” *Leyva v. Certified Grocers of Cal., Ltd.*, 593
11 F.2d 857, 863–64 (9th Cir.), *cert. denied*, 444 U.S. 827 (1979). A stay is appropriate
12 when it will serve the interests of judicial economy by allowing for development of
13 factual and legal issues, and when weighing of the hardships favors the granting of a stay.
14 *See, e.g., Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1112 (9th Cir. 2005). The Ninth
15 Circuit, however, has cautioned that “if there is even a fair possibility that the stay will
16 work damage to someone else, the party seeking the stay must make out a clear case of
17 hardship or inequity.” *Id.*

18 In this case, Owen moves for a stay pending the outcome of her appeal pending in
19 the Washington Court of Appeals. Dkt. 25. Owen, however, fails to show how the
20 outcome of that appeal will have any bearing on her claims against MTC or BMW.
21 Owen’s appeal challenges the constitutionality of Washington’s unlawful detainer action
22 when issued *ex parte*. Dkt. 24-5. As explained below, no matter the outcome of Owen’s

1 appeal, it would have no bearing on either of Owen's claims against MTC or BMW.

2 Therefore, the Court denies Owen's motion to stay.

3 **B. Motion to Dismiss**

4 Motions to dismiss brought under Rule 12(b)(6) may be based on either the lack of
5 a cognizable legal theory or the absence of sufficient facts alleged under such a theory.

6 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Material
7 allegations are taken as admitted and the complaint is construed in the plaintiff's favor.

8 *Keniston v. Roberts*, 717 F.2d 1295, 1301 (9th Cir. 1983). To survive a motion to
9 dismiss, the complaint does not require detailed factual allegations but must provide the
10 grounds for entitlement to relief and not merely a "formulaic recitation" of the elements
11 of a cause of action. *Twombly*, 127 S. Ct. at 1965. Plaintiffs must allege "enough facts to
12 state a claim to relief that is plausible on its face." *Id.* at 1974. Unless it is absolutely
13 clear that no amendment can cure the defect, a pro se litigant is entitled to notice of the
14 complaint's deficiencies and an opportunity to amend prior to dismissal of the action.
15 *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995).

16 In this case, MTC and BMW move to dismiss Owen's civil rights claim and CPA
17 claim. With regard to Owen's civil rights claim, she bases the claim on the allegation of
18 Sheriff Atkins delivering an improperly issued writ. Dkt. 2-3, ¶¶ 6.10-6.14. Owen's
19 claim cannot withstand MTC's motion to dismiss because MTC did not participate in the
20 unlawful detainer action. In fact, Owen fails to contradict this fact and asserts only that
21 MTC "did not have legal authority to conduct a nonjudicial foreclosure sale of [Owen's]
22 primary residence." Dkt. 23 at 12. First, MTC's participation in the foreclosure sale is

1 too remote from Sheriff Atkins delivering the writ to impose liability on MTC. *Martinez*
2 *v. State of Cal.*, 444 U.S. 277, 285 (1980) (injury “too remote a consequence” of alleged
3 actions for § 1983 liability to apply). Second, “the state’s statutory authorization of self-
4 help provisions is not sufficient to convert private conduct into state action.” *Apao v.*
5 *Bank of New York*, 324 F.3d 1091, 1094 (9th Cir. 2003) (citing *Flagg Bros., Inc. v.*
6 *Brooks*, 436 U.S. 149, 164-165 (1978)). Similar to *Apao*, the contracted right to conduct
7 a nonjudicial foreclosure does not convert MTC’s conduct into action under color of law.
8 Therefore, the Court grants MTC’s motion to dismiss Owen’s civil rights claim. The
9 Court also finds that no amendment will cure Owen’s civil rights claim against MTC and
10 dismisses the claim with prejudice and without leave to amend.

11 With regard to Owen’s civil rights claim against BMW, the claim is also subject to
12 dismissal. The Ninth Circuit has “repeatedly held that a privately-retained attorney does
13 not act under color of state law for purposes of actions brought under the Civil Rights
14 Act.” *Briley v. State of Cal.*, 564 F.2d 849, 855 (9th Cir. 1977). While some precedent
15 exists to support a cause of action against Freddie Mac, there is no precedent to support a
16 cause of action against Freddie Mac’s attorneys in the unlawful detainer action.
17 Therefore, the Court grants BMW’s motion on this claim and dismisses Owen’s claim
18 with prejudice and without leave to amend.

19 With regard to Owen’s CPA claim, Owen fails to allege sufficient facts to support
20 the claim. Owen’s claim against BMW is based on Owen’s contention that serving the
21 complaint on her without filing the complaint in state court was somehow improper and,
22 even more of a stretch, somehow constitutes a CPA violation. Owen clearly fails to state

1 facts that support every element of a CPA claim. *See Hangman Ridge Training Stables,*
2 *Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784–85 (1986) (listing five elements of CPA
3 claim). Therefore, the Court grants BMW’s motion to dismiss Owen’s CPA claim.

4 With regard to Owen’s CPA claim against MTC, Owen fails to state a claim. Her
5 claim is based on one fact and one case: (1) Owen asserts that Mortgage Electronic
6 Registration Services (“MERS”) was the original trustee on her loan and (2) the
7 Washington Supreme Court has held that MERS is not a valid trustee under
8 Washington’s Deed of Trust Act. *Bain v. Metro. Mortgage Grp., Inc.*, 175 Wn.2d 83
9 (2012). *Bain*, however, does not establish a complete CPA violation based on the mere
10 presence of MERS because a plaintiff must establish all the elements of a CPA claim,
11 including injury. *See, e.g., id.* at 118 (“there are many different [injury] scenarios, such
12 as when homeowners need to deal with the holder of the note to resolve disputes or to
13 take advantage of legal protections, where the homeowner does need to know more and
14 can be injured by ignorance. Further, if there have been misrepresentations, fraud, or
15 irregularities in the proceedings, and if the homeowner borrower cannot locate the party
16 accountable and with authority to correct the irregularity, there certainly could be injury
17 under the CPA.”). In this case, Owen asserts numerous factual allegations involving
18 Freddie Mac and MERS (Dkt. 2-3, ¶¶ 5.1–5.40), but fails to allege sufficient facts against
19 MTC on every element of her CPA claim. Therefore, the Court grants MTC’s motion to
20 dismiss.

21 Finally, “[a] pro se litigant must be given leave to amend his or her complaint
22 unless it is ‘absolutely clear that the deficiencies of the complaint could not be cured by

1 amendment.”” *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987). Although it seems
2 highly unlikely, it is not “absolutely clear” that Owen will be unable to cure the
3 deficiencies in her CPA claim. Therefore, the Court grants Owen leave to amend her
4 CPA claim and only her CPA claim against BMW and MTC. Any other amendment,
5 without a motion for leave to amend in accordance with the local rules, will be
6 inoperative.

7 IV. ORDER

8 Therefore, it is hereby **ORDERED** that Owen’s motion to stay proceedings
9 pending outcome of state court of appeals (Dkt. 25) is **DENIED**; MTC and BMW’s
10 motions to dismiss (Dkts. 11 & 21) are **GRANTED**; and Owen is **GRANTED** leave to
11 amend her CPA claim against MTC and BMW.

12 Dated this 6th day of October, 2015.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 PAMELA S. OWEN,

9 Plaintiff,

10 v.

11 CHUCK E. ATKINS, et al.,

12 Defendants.

CASE NO. C15-5375 BHS

ORDER GRANTING
DEFENDANTS' MOTION TO
DISMISS AND GRANTING
PLAINTIFF LEAVE TO AMEND

13
14 This matter comes before the Court on Defendants Federal Home Loan Mortgage
15 Corporation ("FHFA") and Federal Housing Finance Agency's ("Freddie Mac")
16 (collectively "Federal Defendants") motion to dismiss (Dkt. 40). The Court has
17 considered the pleadings filed in support of and in opposition to the motion and the
18 remainder of the file and hereby grants the motion for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On May 7, 2015, Plaintiff Pamela Owen ("Owen") filed a complaint in Clark
21 County Superior Court for the State of Washington against Defendants Chuck E. Atkins,
22 in his official capacity as Clark County Sheriff; FHFA; Freddie Mac; MTC Financial,

1 Inc., doing business as Trustee Corps (“MTC”); and Bishop Marshall & Weibel, PS’s
2 (“BMW”). Dkt. 2-3. Owen asserts a cause of action for violation of Washington’s
3 Consumer Protection Act, RCW Chapter 19.86 (“CPA”), and a cause of action for
4 violation of her federal rights under 42 U.S.C. § 1983. *Id.*

5 On June 18, 2015, MTC filed a motion to dismiss. Dkt. 11. On August 7, 2015,
6 BMW filed a motion to dismiss. Dkt. 21. On October 6, 2015, the Court granted both
7 motions. Dkt. 37.

8 On October 14, 2015, the Federal Defendants filed a motion to dismiss. Dkt. 40.
9 On November 5, 2015, Owen responded. Dkt. 43. On November 13, 2015, the Federal
10 Defendants replied. Dkt. 45.

11 II. FACTUAL BACKGROUND

12 Owen alleges that she owns property in Vancouver, Washington. On June 16,
13 2014, MTC sent Owen a notice of delinquent payment and notice of foreclosure sale.
14 Dkt. 2-3, Exh. 3. The notice provides that Owen had been delinquent in payments since
15 September 2009. *Id.* On January 16, 2015, MTC held a foreclosure sale, and Freddie
16 Mac purchased the property. *Id.*, Exh. 13. On March 3, 2015, Freddie Mac filed a
17 complaint in state court for an unlawful detainer action against Owen and all other
18 occupants of the property in question. *Id.* On April 3, 2015, the state court issued a writ
19 of restitution to restore possession of the property to Freddie Mac. *Id.*, Exh. 18. Owens
20 alleges that Sheriff Atkins attempted to serve the writ sometime after it had expired. *Id.*,
21 ¶ 6.11.

22

III. DISCUSSION

A. Service

In order for the Court to exercise jurisdiction over a defendant, the defendant must be served properly. *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). The plaintiff has the burden of showing that service of process was sufficient. *Wells v. City of Portland*, 102 F.R.D. 796, 799 (D. Or. 1984). To serve the United States, the plaintiff must deliver a copy of the summons and complaint to the United States Attorney for the district in which the action is brought and send by registered or certified mail a copy to the Attorney General of the United States. Fed. R. Civ. P. 4(i). To serve an agency of the United States, the plaintiff must serve both the United States and the agency by registered or certified mail. *Id.* A plaintiff serving a local government must either deliver a copy of the summons and complaint to the government's chief executive officer or accomplish service under the state's law. Fed. R. Civ. P. 4(j)(2). A plaintiff must submit an affidavit asserting that service was accomplished, and must effect service within 120 days after the complaint is filed. Fed. R. Civ. P. 4(l), 4(m).

In this case, FHFA moves to dismiss for failure to properly serve. Instead of submitting evidence that she served FHFA, Owen argues that FHFA is a private actor and not subject to these service requirements. Dkt. 43, ¶ 3.8. Owen is incorrect. FHFA is "an independent agency of the Federal Government." 12 U.S.C. § 4511(a). As such, Owen must serve FHFA as set forth in the rules of procedure. Because Owen has failed to do so or submit evidence that she has done so, the Court grants FHFA's motion to

1 dismiss for lack of jurisdiction. Owen's claims against FHFA are dismissed without
2 prejudice.

3 **B. Failure to State a Claim**

4 Motions to dismiss brought under Rule 12(b)(6) may be based on either the lack of
5 a cognizable legal theory or the absence of sufficient facts alleged under such a theory.
6 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Material
7 allegations are taken as admitted and the complaint is construed in the plaintiff's favor.
8 *Keniston v. Roberts*, 717 F.2d 1295, 1301 (9th Cir. 1983). To survive a motion to
9 dismiss, the complaint does not require detailed factual allegations but must provide the
10 grounds for entitlement to relief and not merely a "formulaic recitation" of the elements
11 of a cause of action. *Twombly*, 127 S. Ct. at 1965. Plaintiffs must allege "enough facts to
12 state a claim to relief that is plausible on its face." *Id.* at 1974.

13 **1. CPA**

14 The Court has already concluded that Owen has failed to state a valid CPA claim
15 against other defendants. Dkt. 37 at 5–6. Similarly, Owen's claim against Freddie Mac
16 is based on one fact and one case: (1) Owen asserts that Mortgage Electronic Registration
17 Services ("MERS") was the original trustee on her loan and (2) the Washington Supreme
18 Court has held that MERS is not a valid trustee under Washington's Deed of Trust Act.
19 *Bain v. Metro. Mortgage Grp., Inc.*, 175 Wn.2d 83 (2012). *Bain*, however, does not
20 establish a complete CPA violation based on the mere presence of MERS in the
21 transaction because a plaintiff must establish all the elements of a CPA claim, including
22 injury. *See, e.g., id.* at 118 ("there are many different [injury] scenarios, such as when

1 homeowners need to deal with the holder of the note to resolve disputes or to take
2 advantage of legal protections, where the homeowner does need to know more and can be
3 injured by ignorance. Further, if there have been misrepresentations, fraud, or
4 irregularities in the proceedings, and if the homeowner borrower cannot locate the party
5 accountable and with authority to correct the irregularity, there certainly could be injury
6 under the CPA.”). Therefore, the Court grants Freddie Mac’s motion to dismiss Owen’s
7 CPA claim for failing to assert sufficient allegations on each element of the claim.

8 **2. Section 1983**

9 In order to state a claim under 42 U.S.C. § 1983, a plaintiff must allege: (1) the
10 violation of a federal constitutional or statutory right; and (2) the violation was
11 committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S.
12 42, 48 (1988); *Jones v. Williams*, 297 F.3d 930, 934 (9th Cir. 2002).

13 In this case, Owens asserts that her due process rights were violated when Freddie
14 Mac instituted the unlawful detainer action. Freddie Mac argues that it is a private actor
15 and did not act under color of state law for purposes of section 1983. The Court agrees
16 with Freddie Mac because courts, including the Ninth Circuit, have consistently held that
17 self-help foreclosure procedures and enforcement actions are not state actions. *See Apao*
18 *v. Bank of New York*, 324 F.3d 1091, 1094 (9th Cir. 2003) (collecting cases). Therefore,
19 the Court grants Freddie Mac’s motion to dismiss Owen’s section 1983 claim.

20 **3. Remedy**

21 Unless it is absolutely clear that no amendment can cure the defect, a pro se
22 litigant is entitled to notice of the complaint’s deficiencies and an opportunity to amend

1 prior to dismissal of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.
2 1995).

3 In this case, the Court concludes that Owen is entitled to amend her complaint in
4 part. With regard to Owen's CPA claim, the Court has given her notice of her
5 deficiencies, and it is not "absolutely clear" that no amendment can cure the pleading.
6 However, the Court concludes that it is absolutely clear that Owen's section 1983 claim
7 against Freddie Mac is based on the lack of a cognizable legal theory and may not be
8 cured by any amendment. Therefore, the Court grants Owen leave to amend her
9 complaint as to the CPA claim.

10 IV. ORDER

11 Therefore, it is hereby **ORDERED** that the Federal Defendants' motion to dismiss
12 (Dkt. 40) is **GRANTED**. Owen's claims against FHFA are **DISMISSED without**
13 **prejudice** for lack of jurisdiction, and the Clerk shall terminate FHFA. Owen's section
14 1983 claim against Freddie Mac is **DISMISSED with prejudice**. Owen's CPA claim
15 against Freddie Mac is **DISMISSED without prejudice** and Owen is granted leave to
16 amend her complaint. Owen must file an amended complaint no later than January 8,
17 2016. Failure to file an amended complaint or otherwise respond will result in
18 **DISMISSAL** of Owen's claims against Freddie Mac, MTC and BWM.

19 Dated this 16th day of December, 2015.

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22 BENJAMIN H. SETTLE
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAMELA S. OWEN,

Plaintiff,

v.

CHUCK E. ATKINS, et al.,

Defendants.

CASE NO. C15-5375 BHS

ORDER DENYING PLAINTIFF'S
MOTION AND DISMISSING
DEFENDANTS

This matter comes before the Court on Plaintiff Pamela S. Owen's ("Owen") motion for judicial notice (Dkt. 53).

On October 6, 2015, the Court granted Defendants MTC Financial, Inc., doing business as Trustee Corps ("MTC"), and Bishop Marshall & Weibel, PS's ("BMW") motions to dismiss. Dkt. 37. The Court also granted Owen leave to amend her Washington Consumer Protection Act ("CPA") claim against these defendants. *Id.* Owen did not amend her complaint.

On December 16, 2015, the Court granted Defendants Federal Home Loan Mortgage Corporation ("FHFA") and Federal Housing Finance Agency's ("Freddie

1 Mac”) motion to dismiss. Dkt. 49. The Court also granted Owen leave to amend her
2 CPA claim against Freddie Mac. *Id.* Although Owen filed a motion for reconsideration
3 that the Court denied, Owen has not filed an amended complaint.

4 On January 31, 2016, Owen filed the instant motion asserting that a tax document
5 proves her claim of an unlawful conspiracy to foreclose her house. Dkt. 53 at 3. The
6 Court has dismissed Owen’s conspiracy claims with prejudice. Thus, the instant motion
7 is essentially a motion for reconsideration that the Court **DENIES**.

8 With regard to Owen’s CPA claim, the Court has repeatedly granted her leave to
9 file an amended complaint and she has failed to do so. Therefore, the Court **DISMISSES**
10 Owen’s CPA claim and the Clerk shall terminate MTC, BMW, and Freddie Mac.

11 **IT IS SO ORDERED.**

12 Dated this 9th day of February, 2016.

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15 BENJAMIN H. SETTLE
16 United States District Judge
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PAMELA S. OWEN,

Plaintiff,

v.

FEDERAL HOUSING FINANCE
AGENCY, et al.,

Defendant.

CASE NO. C15-5375 BHS

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff Pamela Owen's ("Owen") motion for summary judgment (Dkt. 55) and Defendant Chuck Atkins's ("Atkins") cross-motion for summary judgment (Dkt. 59). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby denies Owen's motion and grants Atkins's motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On May 7, 2015, Owen filed a complaint in Clark County Superior Court for the State of Washington against numerous defendants, including Atkins in his official

1 capacity as Clark County Sheriff. Dkt. 2-3. Owen asserts a cause of action against
2 Atkins for violation of her federal rights under 42 U.S.C. § 1983. *Id.*

3 On February 15, 2016, Owen filed a motion for summary judgment. Dkt. 55. On
4 February 25, 2016, Atkins responded and filed a cross-motion for summary judgment.
5 Dkt. 57. On March 1, 2016, Owen replied. Dkt. 60. Atkins did not file a reply.

6 II. FACTUAL BACKGROUND

7 While this case arises from the foreclosure of Owen's residence, the facts relevant
8 to Atkins involve an unlawful detainer action initiated against Owen in state court. On
9 April 2, 2015, Federal Home Loan Mortgage Corporation ("Freddie Mac") filed a
10 complaint for unlawful detainer in Clark County Superior Court for the State of
11 Washington alleging that Owen and others were wrongfully occupying a premise owned
12 by Freddie Mac. Dkt. 58 at 4–6. On April 3, 2015, the state court issued (1) an order of
13 default concluding that Owen failed to timely respond to the complaint, (2) a judgment in
14 favor of Freddie Mac, and (3) a writ of restitution directing the sheriff to deliver
15 possession of the property to Freddie Mac. Dkt. 58 at 9–16.

16 On May 1, 2015, the sheriff's office received the writ, and, on May 5, 2015,
17 posted a notice on the premises informing the residents that they must vacate the
18 premises by May 8, 2015 or face forceful eviction. *Id.* at 18–19. Prior to the eviction,
19 however, Freddie Mac's attorney directed the sheriff to cancel the action. *Id.* at 23.

III. DISCUSSION

A. Summary Judgment Standard

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply “some metaphysical doubt”). *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The Court must consider the substantive evidentiary burden that the nonmoving party must meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically

1 attested by that party contradict facts specifically attested by the moving party. The
2 nonmoving party may not merely state that it will discredit the moving party's evidence
3 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
4 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
5 nonspecific statements in affidavits are not sufficient, and missing facts will not be
6 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

7 **B. 42 U.S.C. § 1983**

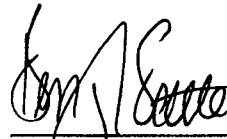
8 Section 1983 is a procedural device for enforcing constitutional provisions and
9 federal statutes; the section does not create or afford substantive rights. *Crumpton v.*
10 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). In order to state a claim under section 1983,
11 a plaintiff must demonstrate that (1) the conduct complained of was committed by a
12 person acting under color of state law and that (2) the conduct deprived a person of a
13 right, privilege, or immunity secured by the Constitution or by the laws of the United
14 States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by*
15 *Daniels v. Williams*, 474 U.S. 327 (1986).

16 In this case, Owen fails to show that any conduct deprived her of a right secured
17 by federal law. While due process generally requires notice before deprivation of
18 property, Owen was not deprived of her property rights based on the ex parte unlawful
19 detainer action because Freddie Mac cancelled the forceful eviction. Therefore, Owen has
20 not only failed to establish that she is entitled to summary judgment but also has failed to
21 show that questions of material fact exist to overcome Atkins's motion for summary
22 judgment.

1 **IV. ORDER**

2 Therefore, it is hereby **ORDERED** that Owen's motion for summary judgment
3 (Dkt. 55) is **DENIED** and Atkins's motion for summary judgment (Dkt. 57) is
4 **GRANTED**. The Clerk shall close this case.

5 Dated this 13th day of April, 2016.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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