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7
8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10
11 PASKENTA BAND OF NOMLAKI)
INDIANS; and PASKENTA ENTERPRISES)
12 CORPORATION,)

13 Plaintiffs,)

14 vs.)

15 INES CROSBY; JOHN CROSBY; LESLIE)
LOHSE; LARRY LOHSE; TED PATA;)
16 JUAN PATA; CHRIS PATA; SHERRY)
MYERS; FRANK JAMES; UMPQUA)
17 BANK; UMPQUA HOLDINGS)
CORPORATION; GARTH MOORE,)
18 GARTH MOORE INSURANCE AND)
FINANCIAL SERVICES, INC.;)
19 ASSOCIATED PENSION CONSULTANTS,)
INC.; HANESS & ASSOCIATES, LLC;)
20 ROBERT M. HANESS; THE PATRIOT)
GOLD & SILVER EXCHANGE, INC.; and)
21 NORMAN R. RYAN,)

22 Defendants.)

23 QUICKEN LOANS, INC.,)

24 Nominal Defendant.)

Case No. 2:15-CV-00538-GEB-CMK

**QUICKEN LOANS, INC.'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO DISMISS**

Date: July 13, 2015
Time: 9:00 a.m.
Courtroom: 10
Judge: Hon. Garland E. Burrell, Jr.
Magistrate Judge: Craig M. Kellison
Complaint Filed: March 10, 2015
First Amended
Complaint Filed: April 17, 2015

1 I. INTRODUCTION

2 Quicken Loans, Inc. (“Quicken”) brings this short and simple motion to dismiss.

3 The 188-page First Amended Complaint (“FAC”) filed by Paskenta Band of Nomlaki Indians
4 and Paskenta Enterprises Corporation (the “Tribe”) alleges, among many other things, that defendant
5 John Crosby (“Crosby”) converted \$838,434.14 in cash from the Tribe to purchase real property
6 known as the “Deer Hollow Property.” The FAC further alleges that Crosby thereafter obtained a
7 \$417,000 loan from Quicken that was secured by a deed of trust to the Deer Hollow Property.

8 Quicken is explicitly identified as a “Nominal Defendant” to this case. None of the 763
9 charging allegations accuses Quicken of any wrongful conduct. And none of the Tribe’s 35 claims
10 for relief identifies Quicken as a defendant. Despite this lack of any allegations or claims for relief
11 against Quicken, the Tribe’s “Demand for Judgment” requests, among many other things, a
12 declaration that Quicken’s deed of trust be declared “null and void.”

13 This is obviously a problem, and Quicken brings this motion to dismiss because there are no
14 grounds to invalidate its lien or to otherwise hold it hostage in this case as a disinterested bystander.

15 II. ALLEGATIONS IN THE FIRST AMENDED COMPLAINT

16 The allegations set forth below are accepted as true for purposes of this motion. *Navarro v.*
17 *Block*, 250 F.3d 729, 732 (9th Cir. 2001)

18 In or around 2012, and without proper authorization from the Tribe, Crosby withdrew
19 \$838,434.14 of the Tribe’s money to purchase a luxury home located at 7857 Deer Hollow Court,
20 Redding, California (the “Deer Hollow Property”). FAC at ¶ 318. Four months later, Crosby took
21 out a \$200,000 line of credit with Cornerstone Bank that was secured by a first deed of trust to the
22 Deer Hollow Property (the “Cornerstone Deed of Trust”). FAC at ¶ 321. Six months later, Crosby
23 received a \$417,000 loan from Quicken that was secured by a deed of trust to the Deer Hollow
24 Property (the “Quicken Deed of Trust”). FAC at ¶ 322. As part of this transaction, Cornerstone
25 subordinated the Cornerstone Deed of Trust to the Quicken Deed of Trust. *Id.*

26 Various defendants are defined as the “RICO Defendants,” the “Abettor Defendants,” or,
27 collectively, the “Defendants.” FAC at ¶ 19. In contrast, the Tribe identifies Quicken as a “Nominal
28 Defendant” and alleges that

1 Because the Tribe's moneys were unlawfully converted and otherwise illegally taken
2 by Mr. Crosby to purchase the Deer Hollow Property, the Tribe is the rightful owner
3 of the Deer Hollow Property and title to the house should be in their names. Quicken
is named as a Nominal Defendant for the purpose of providing the Tribe the ability to
receive complete relief as to the Deer Hollow Property.

4 FAC at ¶ 56.

5 None of the allegations in the FAC accuses Quicken of any wrongdoing, and none of the 35
6 claims for relief identifies Quicken as a defendant.

7 The Demand for Relief requests, in part, "[a] declaration that the Tribe is the lawful owner of
8 any and all property, real or personal, . . . purchased using money converted from the Tribe,
9 including without limitation (i) the Deer Hollow Property." FAC at 185:23-26. Despite the lack of a
10 single factual allegation or claim for relief against Quicken, the Demand for Relief also requests "[a]
11 declaration that any purported encumbrance of any property purchased with money converted from
12 the Tribe is null and void, including without limitation any security interest claimed in the Deer
13 Hollow Property." FAC at 186:4-6.

14 Quicken brings this motion to dismiss because there are no factual or legal bases to declare
15 the Quicken Deed of Trust "null and void."

16 III. LAW AND ARGUMENT

17 A. Standards applicable to Rule 12(b)(6) motions.

18 The standards governing motions to dismiss under Rule 12(b)(6) were succinctly stated in
19 *Daubert v. City of Lindsay*, No. 1:14-CV-00068, 2014 WL 3938762 (E.D. Cal. Aug. 11, 2014):

20 In reviewing a complaint under Rule 12(b)(6), all of the complaint's factual
21 allegations are taken as true, and the facts are construed in the light most favorable to
22 the non-moving party. *Marceau v. Blackfeet Hous. Auth.*, 540 F.3d 916, 919 (9th
23 Cir.2008); *Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir.1997). The court must also
24 assume that general allegations embrace the necessary, specific facts to support the
25 claim. *Smith v. Pacific Prop. & Dev. Corp.*, 358 F.3d 1097, 1106 (9th Cir.2004).
26 However, the court is not required "to accept as true allegations that are merely
27 conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead
28 Scis. Sec. Litig.*, 536 F.3d 1049, 1056-57 (9th Cir.2008); *Sprewell v. Golden State
Warriors*, 266 F.3d 979, 988 (9th Cir.2001). Although they may provide the
framework of a complaint, legal conclusions are not accepted as true and
"[t]hreadbare recitals of elements of a cause of action, supported by mere conclusory
statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50,
173 L.Ed.2d 868 (2009).

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1 **B. The FAC does not state any facts or claims against Quicken.**

2 Quicken must be dismissed from this case for the very simple reason that the charging
3 allegations and claims for relief are not directed against it. *Balistreri v. Pacifica Police Dept.*, 901
4 F.2d 696, 699 (9th Cir.1988) (dismissal is proper where there is no cognizable legal theory or an
5 absence of sufficient facts alleged to support a cognizable legal theory).

6 Further, the Tribe's request for a declaration that the Quicken Deed of Trust is "null and
7 void" is unsupportable as a matter of law. FAC at 186:4-6. The Tribe appears to be seeking a
8 constructive trust upon the Deer Hollow Property based on the allegation that Crosby purchased the
9 property with money he converted from the Tribe. FAC at 56 & 318; Cal. Civ. Code § 2224 ("One
10 who gains a thing by fraud . . . or other wrongful act, is . . . an involuntary trustee of the thing
11 gained, for the benefit of the person who would otherwise have had it."); *Haskel Eng'g & Supply Co.*
12 *v. Hartford Acc. & Indem. Co.*, 78 Cal.App.3d 371, 375 (1978) (a constructive trust extends to
13 property acquired with money that was wrongfully acquired).

14 But even if the Tribe is successful with this theory, the Tribe cannot invalidate the Quicken
15 Deed of Trust that Crosby placed upon the Deer Hollow Property after he purchased it. *Church v.*
16 *Bailey*, 90 Cal.App.2d 501, 503-05 (1949) (where employee embezzled money from employer and
17 then purchased property with embezzled funds, employer was entitled to a judgment decreeing him
18 the owner of the property "subject to existing encumbrances" [emphasis added]). Thus, the most the
19 Tribe can recover is (1) title to the Deer Hollow Property subject to the Quicken Deed of Trust and
20 (2) a money judgment against Crosby for the \$417,000.00 that was loaned to him by Quicken.

21 **IV. CONCLUSION**

22 For all of the reasons set forth above, Quicken Loans, Inc. respectfully requests that it be
23 dismissed from this action.

24 Date: May 15, 2015

BOUTIN JONES INC.

25 By: /s/Michael J. Kuzmich
26 Michael J. Kuzmich
27 Attorneys for Nominal Defendant
28 Quicken Loans, Inc.

CASE TITLE: *Paskenta Bank of Nomlaki Indians v. Ines Crosby, et al.*
COURT/CASE NO: Eastern District of California Case No. 2:15-cv-00538-GEB-CMK

PROOF OF SERVICE

I am employed in the County of Sacramento; my business address is 555 Capitol Mall, Suite 1500, Sacramento, California 95814. I am over the age of eighteen years and not a party to the foregoing action.

On May 15, 2015, I served the within:

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO DISMISS**

VIA U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At Boutin Jones Inc., mail placed in that designated area is given the correct amount of postage and is deposited that same day, in the ordinary course of business, in a United States mailbox in the City of Sacramento, California.

VIA E-MAIL: Based on a Court order or agreement of the parties to accept service by e-mail, I attached the above-described document(s) to an e-mail message, and invoked the send command to transmit the e-mail message to the person(s) at the following e-mail address(es). I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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SERVICE LIST

Paskenta Band of Nomlaki Indians v. Ines Crosby, et al.
 Eastern District of California Case No. 2:15-cv-00538-GEB-CMK

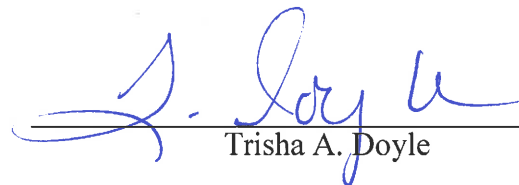
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SERVICE LIST

Paskenta Band of Nomlaki Indians v. Ines Crosby, et al.
Eastern District of California Case No. 2:15-cv-00538-GEB-CMK

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14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is a true and correct statement and that this Certificate was executed on May 15, 2015

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Trisha A. Doyle