

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 24-cv-01033-CNS-TPO

RACHEL EVANS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,

Defendant.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Timothy P. O'Hara, United States Magistrate Judge.

Before the Court is Defendant United States Department of Housing and Urban Development's ("HUD's") Motion to Dismiss Amended Complaint. ECF 36. Defendant's Motion was referred to this Court for recommendation by District Judge Sweeney. ECF 37 & 64.¹ On November 4, 2024, the Court set a final deadline for Plaintiff Rachel Evans, proceeding *pro se*, to respond to Defendant's Motion to Dismiss. ECF 66 (setting November 15, 2024). On November 21, 2024, Plaintiff filed "Plaintiff's Comprehensive Opposition to Motion to Dismiss and Notice of Systemic Procedural Violations" [ECF 68], which the Court accepts as timely filed. The Court held a Status Conference on this matter on December 9, 2024 and heard arguments from both Parties on the Defendant's Motion to Dismiss. *See* ECF 70² and 72.

¹ The Motion originally was referred to Magistrate Judge Susan Prose. ECF 37. The Motion was reassigned to this Court upon my appointment to the bench. ECF 64.

² As part of the Minute Order setting the case for a Status Conference, the Court alerted the parties that it would hear "the Plaintiff's oral argument to the legal arguments raised in the Defendant's Motion to Dismiss." ECF 70.

The Court has carefully considered the Motion to Dismiss [ECF 36], Plaintiff's Opposition [ECF 68], the arguments presented at the hearing, the entire case file, and the applicable case law in issuing this Report and Recommendation. Based upon the record herein, and Plaintiff's lack of standing to bring the present lawsuit under Federal Rule of Civil Procedure 12(b)(1), the Court respectfully RECOMMENDS the motion be GRANTED and Plaintiff's case be dismissed without prejudice.³

FACTUAL BACKGROUND

The Court takes the following facts from the First Amended Complaint [ECF 7] ("FAC") and presumes they are true for the purposes of this Recommendation.⁴

Plaintiff owned a home in Grand Junction, Colorado. ECF 7 at p. 1.⁵ In 2018, Plaintiff obtained a mortgage loan from Amerisave Mortgage, which was serviced by Dovenmuehle Mortgage, Inc. ("Mortgage Servicer") and subsequently sold to the Colorado Housing Finance Authority (CHFA or "Lender"). *Id.* at p. 2. As conceded by Plaintiff on December 9, 2024 during the Status Conference, HUD never owned or serviced the mortgage loan on her home and played no role in the foreclosure, eviction, or sale of her home. However, Plaintiff's mortgage loan was federally insured under HUD's Federal Housing Administration ("FHA") single-family-mortgage-insurance program, which is a federal program insuring mortgage loans made by qualified lenders

³ Because the Court recommends dismissal under Rule 12(b)(1), the Court need not reach Defendant's Administrative Procedures Act argument or the merits of the lawsuit under Rule 12(b)(6). *See Rivera v. Maldonado*, No. 21-cv-01119-CMA-NYW, 2022 WL 870596, at *4 (D. Colo. Mar. 11, 2022) ("Article III standing cannot be assumed; the court must resolve issues of standing before it may reach the merits of an issue.") (citing *Colo. Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537, 543 (10th Cir. 2016)).

⁴ *See Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009) (citing *Moore v. Guthrie*, 438 F.3d 1036, 1039 (10th Cir. 2006); *see also Boulter v. Noble Energy*, 521 F. Supp. 3d 1077, 1082 (D. Colo. 2021) (citing *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995)).

⁵ For numbering purposes, the Court uses the page numbers designated by ECF and not the page numbers of the filings themselves.

to borrowers who are purchasing a primary residence. *See* 12 U.S.C §§ 1708-1709. FHA regulations require participating lenders to “engage in loss mitigation actions” prior to initiating foreclosure proceedings to provide an alternative to foreclosure. *See* 12 U.S.C. § 1715u(a).

During the COVID-19 pandemic, Plaintiff fell behind on her mortgage payments. *See generally* ECF 7 at pp. 8-11. Plaintiff represented at the Hearing that Lender initiated two foreclosure proceedings in Mesa County that were vacated before she sought HUD’s assistance and loan counseling.

In March 2022, Plaintiff began working with a HUD counselor, who helped her submit two loss mitigation applications to Lender, one in July 2022 and another in August 2022. *Id.* at p. 8. Plaintiff asserts that Lender was in communication with her HUD counselor until November 2022, after which Lender became unresponsive to her HUD counselor’s inquiries. *Id.* at pp. 8-9.

According to Plaintiff, on January 11, 2023, Lender, not HUD, foreclosed on and sold the property without giving Plaintiff prior notice. *Id.* at p. 9. In April of 2023, that foreclosure was vacated. *See id.* Lender, not HUD, locked her out of the property from February 2023 until April 2023, before evicting her from the home. *Id.* During this lockout period, Plaintiff claims the property maintenance company, Cyprex, not HUD, stole over \$5,000 worth of her unspecified, personal property from a shed located on the property. *Id.*

In March 2023, an individual from the HUD Office of Inspector General (OIG), Ms. Kalie Groves, contacted Plaintiff and relayed the actions Lender was taking to foreclose on the property. *Id.* Ms. Groves also informed Plaintiff that Lender was removing her from COVID relief options but that HUD could not intervene because her loan was not in forbearance. *Id.* at p. 10. Between March 12, 2023, and April 23, 2024, Plaintiff made “numerous requests for assistance” to HUD,

HUD OIG, and “other HUD offices and officials,” but her contact attempts went ignored. *Id.* at p. 10.

On March 12, 2024, after reinstituting the foreclosure action in Mesa County, a Mesa County Court once again authorized the foreclosure of Plaintiff’s home. *See* ECF 36 at p. 5. On May 6, 2024, the State of Colorado issued a “Writ of Restitution,” ordering the Sheriff of Mesa County to evict Ms. Evans. *See id.* at p. 5. Plaintiff was evicted from the property on June 7, 2024. *See* ECF 24 (Plaintiff Letter).

Prior to her eviction, on March 11, 2024, Plaintiff filed this lawsuit in Mesa County (Colo.) Combined Court. *See* ECF 3 at p. 1 (referencing Mesa County Case No. 2024CV21). Plaintiff’s original complaint named four Defendants: CHFA, Dovenmuehle Mortgage, Inc., Janeway Law Firm, and HUD. *See id.* In the Complaint, Plaintiff alleged various violations of housing statutes, regulations, and protocols and that her mortgage servicers’ implementation of COVID-19 mortgage relief programs was fraudulent. *Id.* The clear intent of the original Complaint [ECF 3] was to “set an example for Lenders who use Government Programs to Defraud Borrowers by revoking their ability to service Mortgages again.” *Id.* at p. 60. By filing the FAC, Plaintiff sought to stop the eviction process prior to being removed from her home. *See* ECF 7 at p. 23.

Plaintiff’s FAC alleges that CHFA and Dovenmuehle Mortgage engaged in unfair and deceptive lending practices, which defrauded her of her home. *See id.* at pp. 2 and 5. While Lender, Dovenmuehle Mortgage, Inc., and Janeway Law Firm were previously named in Plaintiff’s initial Complaint [*See* ECF 3], only HUD was listed as a Defendant in the FAC. Plaintiff alleges that HUD, as the federal insurer of her mortgage, had legal obligations to investigate Lender and Mortgage Servicer, to intervene in her foreclosure proceedings, and to prevent her eviction. ECF

7 at pp. 11-13 and 16-18. Plaintiff alleges that HUD's failure to act cost her the property.⁶ *Id.* at pp. 12-14.

Plaintiff brings the following claims against HUD: (1) failure to investigate in violation of the Administrative Procedures Act under 5 U.S.C. § 706(2)(A), (2) violations of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (3) breach of HUD regulations and protocol,⁷ and (4) general violations of Colorado law.⁸ *Id.* at pp. 19-21.

Plaintiff requests the following relief: (1) to stop eviction proceedings and vacate the foreclosure, (2) submit the mortgage to the Mortgagee Review Board and "Mesa County foreclosures"⁹ for an investigation, (3) provide legal counsel "pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act," (4) provide an expert witness to proffer testimony and to investigate HUD corruption, (5) return her personal property, and (6) other unspecified "remedies and accountability." *Id.* at pp. 23-24.

LEGAL STANDARD

I. Treatment of a Pro Se Plaintiff's Complaint

A pro se plaintiff's "pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers." *Garrett v. Selby Connor Maddux & Janer*,

⁶ Plaintiff clarified at the Status Conference that she believes HUD failed to protect her and failed to stop the abusive acts of CHFA and Dovenmuehle Mortgage.

⁷ To support her claims, Plaintiff cites Chapters 1-11 in HUD Handbook 4060.1 Rev2, 5 U.S.C. 706(2)(A) (scope of review under the APA for agency actions that are arbitrary, capricious, or an abuse of discretion), and 24 CFR § 1.7 (applying to conduct of investigations for violations of nondiscrimination in HUD's federally assisted programs).

⁸ Plaintiff's Colorado State law cause of action alleges that her Lender and Servicer violated Colorado laws, such as the Colorado Consumer Protection Act, C.R.S. § 6-1-101 et seq. and the Colorado Foreclosure Protection Act. Claim IV makes no reference to Defendant HUD nor allegations that HUD violated Colorado state laws. *See* ECF 7 at p. 21.

⁹ The Court interprets this as a demand to submit all foreclosures that occurred in Mesa County, not just Plaintiff's, for investigation.

425 F.3d 836, 840 (10th Cir. 2005) (quoting *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991)). “Th[e] court, however, will not supply additional factual allegations to round out a plaintiff’s complaint or construct a legal theory on the plaintiff’s behalf.” *Smith v. United States*, 561 F.3d 1090, 1096 (10th Cir. 2009) (quoting *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997)). The Tenth Circuit has interpreted this rule to mean that if a court “can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, [it] should do so despite the plaintiff’s failure to cite proper legal authority, [their] confusion of various legal theories, [their] poor syntax and sentence construction, or [their] unfamiliarity with pleading requirements.” *Diversey v. Schmidly*, 738 F.3d 1196, 1199 (10th Cir. 2013) (quoting *Hall*, 935 F.2d at 1110). However, it is not “the proper function of the district court to assume the role of advocate for the pro se litigant.” *Garrett*, 425 F.3d at 840 (quoting *Hall*, 935 F.2d at 1110). The Court applies this standard in assessing Plaintiff’s FAC, Plaintiff’s Opposition, and her oral argument presented before the Court.

II. Subject Matter Jurisdiction

As a threshold matter, the Court must first consider whether Plaintiff has sufficiently alleged subject-matter jurisdiction. “Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute . . . which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994) (citations omitted). “Federal courts operate only in the presence rather than the absence of statutory authority.” *Castaneda v. I.N.S.*, 23 F.3d 1576, 1580 (10th Cir. 1994) (quoting *Wyeth Lab v. United States District Court*, 851 F.2d 321, 324 (10th Cir. 1988) (citations omitted)). The Court must “presume no jurisdiction exists absent an adequate showing by the party invoking federal jurisdiction.” *United States ex rel. Hafter D.O. v. Spectrum Emergency Care, Inc.*, 190 F.3d 1156,

1160 (10th Cir. 1999) (citing *United States v. ex rel. Precision Co. v. Koch Indus., Inc.*, 971 F.2d 548, 551 (10th Cir. 1992)). ““Mere conclusory allegations of jurisdiction are not enough.”” *Id.* (citing *Penteco Corp. Ltd. Partnership v. Union Gas Sys. Inc.*, 929 F.2d 1519, 1521 (10th Cir. 1991)). If a plaintiff fails to meet their burden to allege subject-matter jurisdiction, the Court cannot reach the merits of the claims.

III. Fed. R. Civ. P. 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) empowers a court to dismiss a Complaint for lack of “subject-matter jurisdiction.” Fed. R. Civ. P. 12(b)(1). “Dismissal under Rule 12(b)(1) is not a judgment on the merits of a plaintiff’s case, but only a determination that the court lacks authority to adjudicate the matter.” *Walker v. Knapic*, No. 20-cv-02179-RBJ-MEH, 2021 WL 4311821, at *1 (D. Colo. Aug. 30, 2021) (citing *Castaneda*, 23 F.3d at 1580). Courts “are duty bound to examine facts and law in every lawsuit before them to ensure that they possess subject matter jurisdiction.” *Wilderness Soc. v. Kane Cnty.*, 632 F.3d 1162, 1179 n.3 (10th Cir. 2011) (Gorsuch, J., concurring). A court lacking jurisdiction must dismiss a case when it “becomes apparent that jurisdiction is lacking.” *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974) (citation omitted). Even if the parties do not raise the question of lack of jurisdiction, “it is the duty of the federal court to determine the matter sua sponte.” *Id.* (citing *Atlas Life Insurance Co., v. W.I. Southern, Inc.*, 306 U.S. 563 (1939); *Continental Mining and Milling Co. v. Migliaccio*, 16 F.R.D. 217 (D.C. Utah Aug. 31, 1954)).

Rule 12(b)(1) challenges are generally presented in one of two forms: “[t]he moving party may (1) facially attack the complaint’s allegations as to the existence of subject-matter jurisdiction, or (2) go beyond allegations contained in the complaint by presenting evidence to challenge the factual basis upon which subject-matter jurisdiction rests.” *Merrill Lynch Bus. Fin. Servs., Inc. v.*

Nudell, 363 F.3d 1072, 1074 (10th Cir. 2004) (quoting *Maestas v. Lujan*, 351 F.3d 1001, 1013 (10th Cir. 2003)). When reviewing a facial attack on subject-matter jurisdiction, the Court “presume[s] all of the allegations contained in the [] complaint to be true.” *Ruiz v. McDonnell*, 299 F.3d 1173, 1180 (10th Cir. 2002) (citing *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995)).

ANALYSIS

I. Defendant’s Argument

Defendant first argues that Plaintiff lacks standing to bring all her claims, specifically that Plaintiff fails to allege traceability and redressability, linking her injury—the loss of her property—to discrete actions or inactions by HUD. ECF 36 at pp. 10-11. Since Defendant brings a facial attack [ECF 36 at 7], the Court accepts Plaintiff’s allegations as true and considers whether there is authority to adjudicate the matter. *See Ruiz*, 299 F.3d at 1180. Defendant’s Motion to Dismiss also attacks Plaintiff’s FAC on the merits. Specifically, Defendant argues that Plaintiff’s first claim under the Administrative Procedures Act, 5 U.S.C. § 501 *et seq.* (“APA”), should be dismissed because Plaintiff complains of discretionary decisions over which this Court lacks authority to adjudicate.¹⁰ ECF 36 at p. 11-15. Plaintiff does not respond to this argument. *See generally* ECF 68. Defendant also argues that Plaintiff’s second, third, and fourth claims are subject to Fed. R. Civ. P. 12(b)(6) dismissal for failure to state a claim upon which relief could be granted. *See* ECF 36 at pp. 13-15. Plaintiff also does not respond to these arguments. *See generally* ECF 68.

¹⁰ “[A]n agency’s decision not to take enforcement action should be presumed immune from judicial review under §701(a)(2).”

II. Plaintiff's Response

Plaintiff disagrees with Defendant's arguments that the Court lacks subject matter jurisdiction but fails to present any factual or legal support. Without further elaboration, Plaintiff cites 28 U.S.C. § 1331 (Federal Question Jurisdiction) and 42 U.S.C. § 1983 (Civil action for deprivation of rights) as "clear bas[e]s for federal court intervention." *See* ECF 68 at p. 3. Plaintiff lists "standing and constitutional claims," but offers only brief conclusory statements in support: "direct and immediate harm demonstrated," "substantive constitutional rights violations," and "ongoing property rights deprivation." *Id.*

At the Hearing, the Court addressed Plaintiff's failure to respond to Defendant's Motion to Dismiss and offered an additional opportunity for Plaintiff to rebut the Defendant's arguments for dismissal for lack of standing. The Court asked Plaintiff whether HUD played a role in her eviction proceedings, and Plaintiff candidly admitted that it did not. Plaintiff's only argument regarding traceability was that HUD failed to protect her and failed to stop the abusive acts of her mortgage provider and servicer.

III. Jurisdiction and Standing

Because jurisdiction is a threshold inquiry, the Court first considers Defendant's argument that all Plaintiff's claims should be dismissed for lack of jurisdiction. *See United States v. Springer*, 875 F.3d 968, 973 (10th Cir. 2017) ("Jurisdiction is a threshold question that a federal court must address before reaching the merits . . ." (quoting *Payton v. U.S. Dep't of Agric.*, 337 F.3d 1163, 1167 (10th Cir. 2003) (internal quotation marks omitted)); *Citizen Ctr. v. Gessler*, 770 F.3d 900, 906 (10th Cir. 2014) (citing *WildEarth Guardians v. Pub. Serv. Co. of Colo.*, 690 F.3d 1174, 1182 (10th Cir. 2012) (standing is jurisdictional)). As a question of subject-matter jurisdiction, standing provides a basis for a Rule 12(b)(1) dismissal.

Article III of the Constitution limits federal courts to consider “Cases” and “Controversies.” “If a dispute is not a proper case or controversy, the courts have no business deciding it, or expounding the law in the course of doing so.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006). A plaintiff “must show that she has suffered, or will suffer, an injury that is ‘concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Murthy v. Missouri*, 603 U.S. 43, 57 (2024) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013) (internal quotations omitted)); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61 (1992). “The party invoking federal jurisdiction bears the burden of establishing” the elements of standing. *Lujan*, 504 U.S. at 561 (1992) (citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 231 (1990); *Warth v. Seldin*, 422 U.S. 490, 508 (1975)). A plaintiff must allege constitutional standing to bring each of their claims. *See DaimlerChrysler Corp.*, 547 U.S. at 352 (2006) (citing *Allen v. Wright*, 468 U.S. 737, 750 (1984) (“[A] plaintiff must demonstrate standing for each claim he seeks to press.”)).

At this motion-to-dismiss stage, Plaintiff must plead sufficient facts, taken as true, to make standing plausible. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Each claim must be supported by an injury that may be remedied by a favorable judgment granting the requested relief. *See DaimlerChrysler Corp.*, 547 U.S. at 352-53.

Plaintiff’s written response does not address Defendant’s arguments on traceability or redressability and only lists conclusory statements of injury. *See* ECF 68 at p. 3. While the Court cannot construct legal arguments on Plaintiff’s behalf, the Court construes the alleged injury to be the eviction from her home. The Defendant does not dispute that Plaintiff suffered an injury. *See* ECF 36 at p. 7 (Defendant’s Motion to Dismiss focuses argument on traceability and

redressability). Therefore, the Court considers whether Plaintiff has sufficiently alleged that losing her home is traceable to HUD's alleged wrongdoing and redressable by a favorable ruling from this Court granting her requested relief.

A) Traceability

Defendant argues that Plaintiff's injuries cannot be traced to HUD. *See Id.* at p. 10. A plaintiff invoking jurisdiction must show their injury is “‘fairly . . . trace[able] to the challenged action of the defendant, and not . . . the result [of] the independent action of some third party not before the court.’” *Lujan*, 504 U.S. at 560 (citing *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976)). The traceability standard requires a plaintiff to draw a sufficient causal connection, and not a “highly attenuated chain of possibilities,” between the defendant's supposed misbehavior and the harm. *See Clapper*, 568 U.S. at 410 (citations omitted). In assessing traceability for standing, the Tenth Circuit has held the requirement to be less demanding than “the concept of ‘proximate cause.’” *Nova Health Systems v. Gandy*, 416 F.3d 1149, 1156 (10th Cir. 2005) (citing *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1273 (11th Cir. 2003)). Yet Article III requires a plaintiff to allege a “substantial likelihood that the defendant's conduct caused plaintiff's injury in fact.” *Id.* (citations omitted). “[A]t the motion to dismiss stage, a plaintiff can satisfy the ‘fairly traceable’ requirement by advancing allegations which, if proven, allow for the conclusion that the challenged conduct is a ‘but for’ cause of the injury.” *Santa Fe All. For Pub. Health & Safety v. City of Santa Fe, New Mexico*, 993 F.3d 802 (10th Cir. 2021) (citations omitted).

When a plaintiff brings a claim asserting an “injury aris[ing] from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*,” as Plaintiff does here, traceability and redressability are typically “‘substantially more difficult’ to establish.” *Lujan*, 504

U.S. at 562 (citations omitted). When an injury is caused by discretionary actions of independent third parties not before the Court, it is not feasible for the Court to enter a judgment that will remedy the injury, thus failing to meet Article III’s “case” or “controversy” requirement. *See id.* at 561-563. In this instance, the dispositive question is whether HUD’s inactions were the ultimate cause of Plaintiff’s injury.

The Court agrees with the Defendant’s position that Plaintiff fails to allege her injury is fairly traceable to HUD. While she alleges that HUD provided counseling services to her, the Plaintiff has not alleged a “substantial likelihood” that it was HUD’s failure to act that caused her injury. Instead, her FAC confirms that HUD played an advisory role in assisting her as she sought mitigation options. HUD served as a liaison between Ms. Evans and her lender and assisted her in several ways: notifying Plaintiff of the lapses in COVID-relief measures, submitting applications, and communicating with CHFA and Dovenmuehle Mortgage Inc. While Plaintiff lists a myriad of actions she believes HUD should have taken, she does not explain how these actions would have changed her unfortunate outcome. *See id.* at pp. 17-18. Plaintiff alleges various misconduct from third parties not before the Court, and Plaintiff rests her legal theory on the grounds that HUD, as a federal agency bound by the APA, should have acted to prevent these third parties’ discretionary actions. Such claims, at this stage, must be supported by sufficient factual allegations, which taken as true, support the conclusion that “but for” HUD’s role, Plaintiff would not have lost her home. No such factual support exists here.

The bulk of Plaintiff’s FAC details allegedly fraudulent behavior by her lender and mortgage servicer in mishandling her COVID-19 mortgage relief options. *See generally* ECF 7. Plaintiff points to “Lender [b]ehavior that warranted HUD intervention,” including withholding COVID-19 modification for her mortgage loan terms, removing her from relief options, refusing

to work with her, and eventually foreclosing on her home. *Id.* at pp. 2-5. These are all allegations of independent, discretionary decisions made by third parties—her lender and servicer—over which HUD had no control.

Plaintiff does not adequately allege, beyond conclusory accusations, that HUD’s failures to investigate, intervene, provide legal counsel, or otherwise act against her lender and servicer caused her to lose her home. Such conclusory accusations are not well-pleaded allegations upon which her claim for relief can be supported. *See Brooks v. Mentor Worldwide, LLC*, 985 F.3d 1272, 1281 (10th Cir. 2021) (quoting *Khalik v. United Air Lines*, 671 F.3d 1188, 1193 (10th Cir. 2012) (“Conclusory allegations are ‘not entitled to the assumption of truth.’”); *see also Iqbal*, 550 U.S. at 570. In a similar situation, District Judge Timothy J. Kelly in the District of Columbia found that there was insufficient information pleaded to allow the Court to conclude that a third party would have acted differently had HUD provided additional scrutiny. *See Texas Low Income Housing Information Service v. Carson*, 427 F. Supp.3d 43, 59 (D. D.C. Dec. 3, 2019). By contrast, plaintiffs who have survived Rule 12(b)(1) motions “have supported their allegations with ‘substantial evidence’ that left ‘little doubt as to causation and the likelihood of redress.’” *Id.* (citations omitted).

Plaintiff has not met her burden to establish traceability. Since Plaintiff’s FAC does not fairly trace HUD’s inactions to her injuries, the Court respectfully agrees with Defendant’s arguments that Plaintiff lacks standing to bring her claims against HUD. Although failure to establish any one element of standing requires dismissal under Article III’s “case” or “controversy” requirement, the Court continues to discuss redressability.

B) Redressability

Defendant further argues that Plaintiff does not adequately allege redressability. *See* ECF 36 at p. 11. In assessing the redressability requirement for constitutional standing, the Court must consider the “relationship between ‘the judicial relief requested’ and the ‘injury’ suffered.” *California v. Texas*, 593 U.S. 659, 671 (2021) (citing *Allen*, 468 U.S. at 753). A plaintiff must also “demonstrate a substantial likelihood that the relief requested will redress [their] injury in fact.” *Nova Health Systems*, 416 F.3d at 1158 (citing *Ash Creek Mining Co. v. Lujan*, 969 F.2d 868, 875 (10th Cir. 1992)). Although Plaintiff need not establish that all injuries would be redressed, a plaintiff must show that a favorable judgment will “relieve [at least one] discrete injury.” *Id.* (citing *Larson v. Valente*, 456 U.S. 228, 243 n. 15 (1982)). Further, a plaintiff requesting “forward-looking relief ... must face a real and immediate threat of repeated injury.” *Murthy*, 603 U.S. at 58 (2024) (citations omitted).

Defendant argues that redressability is deficient because Plaintiff is seeking forward-looking relief, but (1) she no longer has a mortgage, and (2) even if this civil matter resulted in changes to HUD’s oversight of lenders and servicers, Plaintiff does not allege she faces a real and immediate threat of repeated injury. ECF 36 at p. 11. In this instance, for forward-looking relief, Plaintiff must allege a substantial possibility that she will get a mortgage in the immediate future insured by HUD through FHA. Otherwise, her claims are not redressable by the sought after relief, and thus, must be dismissed for lack of standing. Plaintiff does not respond to this argument in writing. *See generally* ECF 68. At the Status Conference, Plaintiff only voiced vague ideas relating to redress: she hoped the lawsuit would address HUD’s complicity with the improper conduct of mortgage lenders and servicers.

The Court finds that Plaintiff's FAC fails to meet her burden to show redressability. Plaintiff requests the following relief from HUD: to stop eviction proceedings and vacate the foreclosure, submit the mortgage to the Mortgagee Review Board for investigations, to assign legal counsel under the Dodd Frank Reform Act, to appoint an expert witness, to return her personal property, and other unspecified remedies and accountability. *See* ECF 7 at pp. 23-24. For her injury to be redressable, though, Plaintiff here must allege that, if this Court were to grant the above-requested relief, such relief would remedy the harm of losing her home in a foreclosure proceeding or that such relief would likely prevent a repeat, future injury. *See Murthy*, 602 U.S. at 58. Unfortunately for Plaintiff, the foreclosure and eviction proceedings have already occurred and were finalized. As a result, Plaintiff's first request for relief is impossible for this Court to grant. *See* ECF 24. The Court could not order HUD to enforce a judgment to stop eviction proceedings or vacate her foreclosure because HUD does not have the ability to stop the eviction nor to undo the foreclosure.

Outstanding questions regarding Plaintiff's other requested relief abound. For example, even if an investigation were to be ordered by the Court and launched by HUD, Plaintiff fails to allege that the property would or could be returned to her. Plaintiff conceded that she does not have a mortgage currently and she is not in the process of obtaining a new mortgage. And even if the Dodd Frank Reform Act provided a statutory right to legal counsel, the record does not support that retaining counsel would return the property to her or guarantee that she would be better situated in a related future proceeding. For the same reasons, even if an expert witness could be appointed, there is no indication that such a measure would address her injury at this point. And finally, even if a judgment in this civil matter were to result in changes to HUD's policies and

handling of lenders and servicers, Plaintiff has not alleged a substantial likelihood of a repeat injury to support standing for forward-looking relief.

Therefore, the Court agrees with Defendant's arguments that Plaintiff also lacks standing because she fails to allege traceability and redressability. The lack of constitutional standing precludes this Court from hearing the merits of her claims.

IV. Dismissal Without Prejudice

Because the Court recommends dismissing all of Plaintiff's claims against HUD under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction, in the Tenth Circuit, the dismissal must be without prejudice. *See Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1216 (10th Cir. 2006) (citations omitted); *see also* Fed. R. Civ. P. 41(b) (specifically excluding dismissals for "lack of jurisdiction"). A case dismissed for lack of jurisdiction "is not an adjudication of the merits and therefore ... must be without prejudice." *Martinez v. Richardson*, 472 F.2d 1121, 1126 (10th Cir. 1973) (citations omitted). Because standing is a jurisdictional issue, "dismissal with prejudice for lack of standing is inappropriate." *Brereton*, 434 F.3d at 1216 (citation omitted).

CONCLUSION

For the reasons set forth above, under Fed. R. Civ. P. 12(b)(1), the court respectfully **RECOMMENDS** that Defendant's Motion to Dismiss [ECF 36] be **GRANTED**, and that Plaintiff's FAC [ECF 7] be **DISMISSED WITHOUT PREJUDICE**.¹¹ Lacking jurisdiction, the

¹¹ Within fourteen days after service of a copy of this Recommendation, any party may serve and file written objections to the Magistrate Judge's proposed findings and recommendations with the Clerk of the United States District Court for the District of Colorado. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *Griego v. Padilla (In re Griego)*, 64 F.3d 580, 583 (10th Cir. 1995). A general objection that does not put the district court on notice of the basis for the objection will not preserve the objection for *de novo* review. "[A] party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for *de novo* review by the district court or for appellate review." *United States v. 2121 East 30th Street*, 73 F.3d 1057, 1060 (10th Cir. 1996). Failure to make timely objections may bar *de novo* review by the District Judge

Court does not reach the merits of Plaintiff's claims or Defendant's arguments for dismissal under the APA or for failure to state a claim under Fed. R. Civ. P. 12(b)(6).

DATED at Denver, Colorado, this 9th day of January, 2025.

BY THE COURT:

A handwritten signature in black ink, appearing to read "T. P. O'Hara", with a horizontal line underneath.

Timothy P. O'Hara
United States Magistrate Judge

of the Magistrate Judge's proposed findings and recommendations and will result in a waiver of the right to appeal from a judgment of the district court based on the proposed findings and recommendations of the Magistrate Judge. *See Vega v. Suthers*, 195 F.3d 573, 579-80 (10th Cir. 1999) (holding that the district court's decision to review Magistrate Judge's recommendation *de novo* despite lack of an objection does not preclude application of "firm waiver rule"); *Int'l Surplus Lines Ins. Co. v. Wyo. Coal Refining Sys., Inc.*, 52 F.3d 901, 904 (10th Cir. 1995) (finding that cross-claimant waived right to appeal certain portions of Magistrate Judge's order by failing to object to those portions) *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (finding that plaintiffs waived their right to appeal certain portions of Magistrate Judge's orders by failing to object to those portions); *Ayala v. United States*, 980 F.2d 1342, 1352 (10th Cir. 1992) (finding that plaintiffs waived their right to appeal the Magistrate Judge's ruling by failing to file objections). *But see, Morales-Fernandez v. INS*, 418 F.3d 1116, 1122 (10th Cir. 2005) (holding that firm waiver rule does not apply when the interests of justice require review).