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NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DIANA M. MARLEY,	)	Case No. CV 13-02320 DDP (Ex)
	)	
Plaintiff,	)	<b>ORDER GRANTING DEFENDANTS' MOTION</b>
	)	<b>TO DISMISS</b>
v.	)	
	)	[Dkt. No. 7.]
JP MORGAN CHASE BANK;	)	
CALIFORNIA RECONVEYANCE	)	
COMPANY,	)	
	)	
Defendants.	)	
	)	
_____	)	

Presently before the court is Defendants JPMorgan Chase Bank, N.A. ("JPMorgan") and California Reconveyance Company ("CRC")'s Motion

1 to Dismiss. Having considered the parties' submissions,<sup>1</sup> the court  
2 adopts the following order.

3 **I. Background**

4 Plaintiff Diana Marley is a California resident. (Compl. ¶ 12.)  
5 Defendant JPMorgan Chase Bank ("JPMorgan") is a California  
6 corporation and a national banking association, which claims to be  
7 the owner and/or creditor of Plaintiff's mortgage and promissory  
8 note. (Id. ¶ 13.) Defendant California Reconveyance Company("CRC")  
9 is a California corporation, which is alleged to be a trustee of  
10 Plaintiff's deed of trust. (Id. ¶ 14.)

11 Plaintiff contends she owns 2049 Carfax Avenue, Long Beach, CA  
12 90815<sup>2</sup> ("Subject Property"). (Id. ¶ 2.) On December 8, 2006,  
13 Plaintiff "conducted a consumer transaction, including but not  
14 limited to a Note and Deed of Trust," with Washington Mutual Bank,  
15 F.A. listed as the lender. (Id. ¶ 20; See Exh. A, Deed of Trust.)  
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17 <sup>1</sup> Defendants' Motion was originally set to be heard on June  
18 17, 2013, meaning that under Local Rule 7-9, Plaintiff's Opposition  
19 was due on May 27, 2013. On June 20, 2013, Plaintiff filed a  
20 motion for enlargement of time. The court issued a minute order  
21 stating that Defendants Opposition was due on July 22, 2013, and  
22 Plaintiff's reply due on July 29, 2013. The court corrected this  
23 order on July 9, 2013, stating that Plaintiff's Opposition was due  
24 on July 22, 2013, and Defendants' Reply was due on July 29, 2013.  
25 On July 26, 2013, Plaintiff filed an Opposition of 32 pages in  
26 length, not including exhibits. Plaintiff's Opposition was not  
27 filed within the deadline and the court need not consider it under  
28 L.R. 7-12. Additionally, the memorandum in opposition exceeded the  
maximum length of 25 pages as established by L.R. 11-6.  
Nonetheless, the court will consider the opposition because there  
is a "strong policy underlying the Federal Rules of Civil Procedure  
favoring decisions on the merits." Eitel v. McCool, 782 F.2d 1470,  
1472 (9th Cir. 1986).

<sup>2</sup> The Complaint also refers to a different address: 5045 W.  
Chicago Circle South. (16.) However, the exhibits to the Complaint  
use the Carfax address. See, e.g. Exh. A (Deed of Trust). Based  
on those documents, the court believes that the property at the  
Carfax address is the only property in question.

1 That Deed of Trust indicates that "Borrower owes Lender Five hundred  
2 sixty thousand and 00/100 (\$560,000) plus interest." (Compl., Exh.  
3 A, at (E).) In March 2007, Plaintiff's "consumer transaction" was  
4 sold to Washington Mutual Asset Corporation. (Id. ¶ 21.) On March  
5 7, 2007, it was sold into the secondary market through securitization  
6 to WMALT 2007-OA3. (Id. ¶ 21.) Washington Mutual collapsed and was  
7 purchased by JPMorgan. (Id. ¶ 23). However, Plaintiff alleges that  
8 JPMorgan's purchase did not include the consumer account of the  
9 Plaintiff. (Id. ¶ 23.)

10 Plaintiff seeks to quiet title to the Subject Property.  
11 Throughout her Complaint she asserts that she has not defaulted on  
12 the Subject Loan. (See, e.g., id. ¶ 10.) She also alleges claims  
13 against Defendants under the following causes of action: (1) Truth in  
14 Lending Act ("TILA"), 15 U.S.C. § 1641(g), (2) Fair Debt Collection  
15 Practices Act ("FDCPA"), 15 U.S.C. § 1692a(6), (3) Real Estate  
16 Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605, (4) Rosenthal  
17 Act, Cal. Civ. Code § 1788, et seq., (5) breach of contract, and (6)  
18 California Civil Code §§ 2943, 2924h(g).

## 19 **II. Judicial Notice**

20 Defendants request that the court take judicial notice of nine  
21 documents that are matters of public record: (1) A Grant Deed  
22 recorded with the Los Angeles County Recorder's Office as instrument  
23 number 00-0926192, (2) A Grant Deed recorded with the Los Angeles  
24 County Recorder's Office as instrument number 03 3242821, (3) A deed  
25 of Trust recorded with the Los Angeles County Recorder's Office as  
26 instrument number 20070025378, (4) A true and correct copy of the  
27 Purchase and Assumption Agreement (the "P & A Agreement") whereby  
28 Defendant acquired certain assets of Washington Mutual Bank, F.A.

1 from the FDIC acting as receiver, including the Loan, available for  
2 retrieval at  
3 [http://www.fdic.gov/about/freedom/Washington\\_Mutual\\_P\\_and\\_A.pdf](http://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf).

4 (5) An Assignment of Deed of Trust recorded with the Los Angeles  
5 County Recorder's Office as instrument number 20101666887, (6) A  
6 Notice of Default recorded with the Los Angeles County Recorder's  
7 Office as instrument number 20100065667, (7) A Notice of Trustee's  
8 Sale recorded with the Los Angeles County Recorder's Office as  
9 instrument number 20110274655, (8) A Notice of Rescission recorded  
10 with the Los Angeles County Recorder's Office as instrument number  
11 20121463523, (9) A Notice of Trustee's Sale recorded with the Los  
12 Angeles County Recorder's Office as instrument number 20121463524,  
13 (10) A Notice of Default recorded with the Los Angeles County  
14 Recorder's Office as instrument number 20122031379, (11) A Notice of  
15 Default recorded with the Los Angeles County Recorder's Office as  
16 instrument number 20130336402.

17 Under Federal Rule of Evidence 201, a court may take judicial  
18 notice of "matters of public record." Mack v. South Bay Beer  
19 Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986). Documents (1)-(3) and  
20 (5)-(11) are public records of the Orange County Recorder's Office  
21 such that their authenticity is capable of accurate and ready  
22 determination by resort to sources whose accuracy cannot reasonably  
23 be questioned.

24 Furthermore, it is appropriate to take judicial notice of  
25 information obtained from governmental websites, rendering it  
26 "capable of accurate and ready determination by resort to sources  
27 whose accuracy cannot reasonably be questioned." Fed. R. Evid.  
28 201(b); Paralyzed Veterans of America v. McPherson, 2008 WL 4183981,

1 \*5-\*6 (N.D. Cal., Sept. 9, 2008) (collecting cases). Document (4) is  
2 available at a government website and therefore appropriate for  
3 judicial notice.

4 Consequently, this court GRANTS Defendants' unopposed request  
5 for judicial notice of Documents (1)-(11).

### 6 **III. LEGAL STANDARD**

7 A complaint will survive a motion to dismiss when it contains  
8 "sufficient factual matter, accepted as true, to state a claim to  
9 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
10 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
11 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
12 "accept as true all allegations of material fact and must construe  
13 those facts in the light most favorable to the plaintiff." Resnick  
14 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint  
15 need not include "detailed factual allegations," it must offer "more  
16 than an unadorned, the-defendant-unlawfully-harmed-me accusation."  
17 Iqbal, 556 U.S. at 678. Conclusory allegations or allegations that  
18 are no more than a statement of a legal conclusion "are not entitled  
19 to the assumption of truth." Id. at 679. In other words, a pleading  
20 that merely offers "labels and conclusions," a "formulaic recitation  
21 of the elements," or "naked assertions" will not be sufficient to  
22 state a claim upon which relief can be granted. Id. at 678  
23 (citations and internal quotation marks omitted).

24 "When there are well-pleaded factual allegations, a court should  
25 assume their veracity and then determine whether they plausibly give  
26 rise to an entitlement to relief." Id. at 679. Plaintiffs must  
27 allege "plausible grounds to infer" that their claims rise "above the  
28 speculative level." Twombly, 550 U.S. at 555. "Determining whether a

1 complaint states a plausible claim for relief" is a "context-specific  
2 task that requires the reviewing court to draw on its judicial  
3 experience and common sense." Iqbal, 556 U.S. at 679.

#### 4 **IV. DISCUSSION**

##### 5 A. Quiet Title

6 To maintain an action to quiet title a plaintiff's complaint  
7 must be verified and must include (1) a description of the property  
8 including both its legal description and its street address or common  
9 designation; (2) the title of plaintiff as to which determination is  
10 sought and the basis of the title; (3) the adverse claims to the  
11 title of the plaintiff against which a determination is sought; (4)  
12 the date as of which a determination is sought and, if other than the  
13 date the complaint is filed, a statement why the determination is  
14 sought as of that date; and (5) a prayer for determination of  
15 plaintiff's title against the adverse claims. See Cal. Code Civ.  
16 Pro. § 761.020. The purpose of a quiet title action is to settle all  
17 conflicting claims to the property and to declare each interest or  
18 estate to which the parties are entitled. Newman v. Cornelius, 3  
19 Cal.App.3d 279, 284 (1970). In addition to the required elements for  
20 a quiet title action, a borrower cannot quiet title to a Property  
21 without discharging any debt owed. Miller v. Provost, 26 Cal.  
22 App.4th 1703 (1994) (holding: a mortgagor of real property cannot,  
23 without paying his debt, quiet his title against the mortgagee); see  
24 also Aguilar v. Bocci, 39 Cal.App.3d 475 (1974) ("The cloud upon  
25 [one's] title persists until the debt is paid").

26 Plaintiff appears to assert that she does not owe a debt to any  
27 defendant. (Compl. ¶¶ 3, 11; Opp. at 18-19.) However, by her own  
28 admission, there is a cloud on her title. (Opp. at 18-19.)

1 Additionally, Plaintiff has not offered any explanation as to the  
2 public documents provided by Defendants indicating that she is in  
3 default for over \$90,000. (RJN Doc. 9.) She asserts in a conclusory  
4 fashion that "[b]ased on defendants' own proffered documents, and the  
5 evidence appearing in the county recorder's office the documents  
6 appearing contains erroneous claims of ownership by a party not  
7 making such claim." (Opp. at 18.)

8 For the above-mentioned reasons, the court DISMISSES this claim  
9 with prejudice.

10 B. TILA

11 Congress enacted TILA "to assure a meaningful disclosure of  
12 credit terms so that the consumer will be able to compare more  
13 readily the various credit terms available to him and avoid the  
14 uninformed use of credit, and to protect the consumer against  
15 inaccurate and unfair credit billing and credit card practices." 15  
16 U.S.C. § 1601(a). Accordingly, TILA "requires creditors to provide  
17 borrowers with clear and accurate disclosures of terms dealing with  
18 things like finance charges, annual percentage rates of interest, and  
19 the borrower's rights." Beach v. Ocwen Fed. Bank, 523 U.S. 410, 412  
20 (1998).

21 TILA provides that an "action [for damages] . . . may be brought  
22 in any United States district court, or in any other court of  
23 competent jurisdiction, within one year from the date of the  
24 occurrence of the violation." 15 U.S.C. § 1640(e). The Ninth  
25 Circuit has held that the one-year window for filing a TILA damages  
26 claim generally "runs from the date of consummation of the  
27 transaction." King v. California, 784 F.2d 910, 915 (9th Cir. 1986).

28 Here, Plaintiff alleges that Defendants violated TILA by failing

1 to provide a disclosure that the Subject Loan was transferred to a  
2 different entity. (Compl. ¶ 50.) The latest alleged violation  
3 occurred, if at all, on or about November 18, 2010, more than two  
4 years prior to the date on which Plaintiff initiated this action.  
5 (RJN Doc. 5.) Accordingly, Plaintiff's claim is time barred.

6 In some cases, the doctrine of equitable tolling suspends the  
7 applicable limitations period "until the borrower discovers or had  
8 reasonable opportunity to discover the fraud or nondisclosures that  
9 form the basis of the TILA action." King, 784 F.2d at 915. Courts  
10 must consider the applicability of equitable tolling whenever a  
11 complaint, liberally construed, alleges facts showing the "potential  
12 applicability of the equitable tolling doctrine." Cervantes v. City  
13 of San Diego, 5 F.3d 1273, 1277 (9th Cir. 1993).

14 Where a borrower does not allege that she was somehow prevented  
15 from comparing her loan documents with TILA's disclosure requirements  
16 within the limitation period, equitable tolling is not available.  
17 See Hubbard v. Fidelity Fed. Bank, 91 F.3d 75, 79 (9th Cir. 1996);  
18 Feliciano v. Wash. Mut. Bank, F.A., No. 09-CV-01304, 2009 WL 2390842,  
19 at \*4 (E.D. Cal. August 3, 2009). Here, Plaintiff has not alleged  
20 any facts that would warrant equitable tolling of her claim. The  
21 claim is therefore DISMISSED with prejudice.

22 C. FDCPA

23 The FDCPA seeks to curtail abusive collection practices by debt  
24 collectors. 15 U.S.C. § 1692. The term "debt collector," and thus  
25 the FDCPA, does not apply, however, to mortgage holders, mortgage  
26 loan servicers, or foreclosure activities. Usher v. Greenpoint  
27 Mortgage Funding, Inc., No. CIV S-10-0952 LKK DAD, 2010 WL 4983468 at  
28 \*7 (E.D. Cal. Dec. 2, 2010); Lobato v. Acqura Loan Servs., No.



1 11cv2601 WDH, 2012 WL 607624 at \*5 (S.D. Cal. Feb. 23, 2012). The  
2 debt referred to by Plaintiff as being collected by Defendants is the  
3 Notice of Trustee Sale, dated 12/08/2006. (Compl., Exh. B.) Thus,  
4 the only debt involved appears to be a home loan taken out by  
5 Plaintiff. "However, the law is clear that foreclosing on a property  
6 pursuant to a deed of trust is not a debt collection within the  
7 meaning of the RFDCPA or the FDCA." Gamboa v. Tr. Corps, 09-0007 SC,  
8 2009 WL 656285 (N.D. Cal. Mar. 12, 2009). See also Hamilton v. Bank  
9 of Blue Valley, 746 F.Supp. 2d 1160, 1176-77 (E.D. Cal. 2010).

10 Accordingly, Plaintiff's FDCPA claim is DISMISSED with prejudice.

11 D. Rosenthal Act

12 Liability under the Rosenthal Fair Debt Collection Practices Act  
13 can exist only where a "debt collector" is engaged in "debt  
14 collection." Cal. Civ. Code § 1788.2(c). Although "the mere  
15 allegation that a defendant foreclosed on a deed of trust does not  
16 implicate the Rosenthal Act," a remedy may be available "[w]here the  
17 claim arises out of debt collection activities 'beyond the scope of  
18 the ordinary foreclosure process.'" Austero v. Aurora Loan Servs.,  
19 Inc., No. C-11-00490, 2011 WL 1585530, at \*9 (N.D. Cal. Apr. 27,  
20 2011) (quoting Walters v. Fidelity Mortgage of Cal., Inc., 730 F.  
21 Supp. 2d 1185, 1203 (E.D. Cal. 2010)).

22 Here, however, Plaintiff has not alleged sufficient facts to  
23 support a claim beyond the scope of the ordinary foreclosure process.  
24 Her Complaint contains only conclusory statements that appear to stem  
25 largely from her wrongful foreclosure claim. In her Opposition, on  
26 the other hand, she contends that Defendants violated the RFDCPA by  
27 making "misrepresentations to credit agencies concerning consumers'  
28 credit history." (Opp. at 23.)

1           Accordingly, because Plaintiff might be able to adequately  
2 plead an RFDCPA claim, the court dismisses her fifth cause of action  
3 with leave to amend. The court notes, however, that Plaintiff must  
4 allege sufficiently relevant and specific facts, if she chooses to  
5 amend this claim.

6           E. RESPA

7           The Real Estate Settlement Procedures Act ("RESPA") defines a  
8 Qualified Written Request ("QWR") as "a statement of the reasons for  
9 the belief of the borrower, to the extent applicable, that the  
10 account is in error, or provides sufficient detail to the servicer  
11 regarding other information sought by the borrower." 12 U.S.C. §  
12 2605(e)(1)(B). Under RESPA, mortgage loan servicers must respond to  
13 QWRs from a borrower or an agent of the borrower. 12 U.S.C. §  
14 2605(e)(1)(A). "[A] QWR must address the servicing of the loan, and  
15 not its validity." Consumer Solutions REO, LLC v. Hillery, 658  
16 F.Supp. 2d 1002, 1014 (N.D.Cal. 2009).

17           Here, Plaintiffs submitted a QWR dated January 16, 2013.  
18 (Compl. Exh. C.) Defendants responded to the QWR. (Compl. ¶ 31 and  
19 Exh. D.) The court does not agree with Defendants that the QWR  
20 addresses only the validity of the loan and not of the servicing of  
21 the loan; the QWR does address the validity of the loan, but it also  
22 requests information relevant to the loan's servicing (including  
23 payments to interest, principal, escrow advances, and expenses).  
24 However, it appears that the deficiency of Defendants' response as  
25 alleged in the Complaint concerns the validity of the loan. (Compl.  
26 ¶ 64 ("Defendants did not respond within 20 days to Plaintiff's  
27 request for the name of the owner and holder of the alleged Note . .  
28 . . [D]efendants provided a mere duplicate copy of the publicly

1 recorded Note from the Los Angeles County Recorders' office.".)  
2 Because this deficiency addresses the validity of the loan, and not  
3 the servicing of the loan, Plaintiff has not stated a claim under  
4 this cause of action.

5 For these reasons, the court DISMISSES this claim with leave to  
6 amend.

7 F. Breach of Contract

8 To state a claim for breach of contract, a plaintiff must allege  
9 "(1) the contract, (2) plaintiff's performance or excuse for  
10 nonperformance, (3) defendant's breach, and (4) damage to plaintiff  
11 therefrom." Wall St. Network, Ltd. v. New York Times Co., 164 Cal.  
12 App. 4th 1171, 1178 (2008). Here, Plaintiff does not establish her  
13 full performance under the Deed of Trust or any excuse for  
14 nonperformance. Judicially noticeable documents establish she was in  
15 default of over \$90,000 on the Subject Loan, but she provides no  
16 excuse for this failure to perform. (RJN Docs. 9-11.) Additionally,  
17 judicially noticeable documents indicate that Defendants gave notice  
18 to Plaintiff of Default and Trustee Sale. (RJN Docs. 6-7 and 9-11.)  
19 Plaintiff therefore has not established a breach by Defendants.

20 For these reasons, the court GRANTS with prejudice the unopposed  
21 motion to dismiss this claim.

22 G. Cal. Civ. Code § 2943, 2924h(G)

23 Plaintiff does not oppose the dismissal of the claim under Cal.  
24 Civ. Code § 2943, and the court agrees with Defendants that it is not  
25 clear how the provision relates to Plaintiff's Complaint.  
26 Accordingly, that claim is DISMISSED.

27 Under California Civil Code § 2943, a beneficiary must respond  
28 to a written demand within 21 days of receipt and provide a "true,

1 correct, and complete copy of the note or other evidence of  
2 indebtedness with any modification thereto, and a beneficiary  
3 statement." Here, judicially noticeable documents establish that the  
4 beneficiary under the Subject Loan was not Defendants but U.S. Bank,  
5 National Association, as of November 17, 2010. Accordingly,  
6 Defendants cannot be liable for any alleged untimely response. The  
7 claim under this section is also DISMISSED with prejudice.

8 **V. Conclusion**

9 For the reasons stated above, the court GRANTS the motion to  
10 dismiss in its entirety. Plaintiff has leave to amend her claims  
11 under the Rosenthal Act and RESPA. Any amended complaint shall be  
12 filed within 14 days of this order.

13 IT IS SO ORDERED.

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16 Dated: August 27, 2013

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DEAN D. PREGERSON  
United States District Judge

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