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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANNETTE BRITTON CORDERO,	)	Case No. CV 13-02591 DDP (MRWx)
	)	
Plaintiff,	)	
	)	<b>ORDER DENYING PLAINTIFF'S MOTION</b>
v.	)	<b>TO REMAND AND GRANTING</b>
	)	<b>DEFENDANT'S MOTION TO DISMISS</b>
BANK OF AMERICA,	)	
	)	
Defendant.	)	[Dkt. Nos. 11, 12, 15]
	)	
_____	)	

Presently before the court is Plaintiff's Motion to Remand and Defendant Bank of America's Motion to Dismiss. Having considered the submissions of the parties, the court denies Plaintiff's Motion to Remand, grants Defendant's Motion to Dismiss, and adopts the following order.

**I. Background**

On March 15, 2006, Angela Britton Del Rio (Ms. Del Rio) and her late husband executed a \$650,000 promissory note in favor of Instant Capital Funding Group, Inc. for the purchase of property at 17031 Paulette Place, Granada Hills, California. (First Amended Complaint ¶¶ 8-9.) The loan was secured by a Deed of

1 Trust listing Mortgage Electronic Registration Systems, Inc.  
2 ("MERS") as nominee and beneficiary. (FAC ¶9) On September 22,  
3 2010, MERS executed an Assignment ("the Assignment") of all  
4 beneficial interest in the Deed to Defendant's predecessor in  
5 interest. (FAC ¶¶ 2, 12-13.)

6 The FAC alleges a First Cause of Action for cancellation of  
7 the Assignment under California Civil Code Section 3412 and a  
8 Second Cause of Action for unfair business practices pursuant to  
9 California Business & Professions Code Section 17200.<sup>1</sup> The crux of  
10 Plaintiff's complaint is that the Assignment is invalid, and no  
11 transfer of any interest in the Deed to Bank of America ever  
12 occurred. (FAC ¶ 16.) Defendant now moves to dismiss the FAC.

## 13 **II. Legal Standard**

14 Under 28 U.S.C. § 1441, a court has removal jurisdiction  
15 pursuant to 28 U.S.C. § 1332(a) when there is complete diversity  
16 of citizenship and the amount in controversy exceeds \$75,000.  
17 Where the complaint does not include a particular damages figure,  
18 the removing defendant must demonstrate, by a preponderance of the  
19 evidence, that the amount in controversy exceeds \$75,000. Sanchez  
20 v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir.1996); see  
21 Gaus, 980 F.2d at 567 (finding that the party seeking removal  
22 bears the burden of establishing federal jurisdiction if the  
23 complaint leaves the amount in controversy unclear or ambiguous).

24 A complaint will survive a motion to dismiss when it contains  
25 "sufficient factual matter, accepted as true, to state a claim to  
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27 <sup>1</sup> Plaintiff's Request to Voluntarily Dismiss Plaintiff's Third  
28 Cause of Action for violations of California Civil Code Sections  
2923.5 and 2924 is granted.

1 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
2 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
3 570 (2007)). When considering a Rule 12(b)(6) motion, a court  
4 must "accept as true all allegations of material fact and must  
5 construe those facts in the light most favorable to the  
6 plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000).  
7 Although a complaint need not include "detailed factual  
8 allegations," it must offer "more than an unadorned, the-  
9 defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at  
10 678. Conclusory allegations or allegations that are no more than  
11 a statement of a legal conclusion "are not entitled to the  
12 assumption of truth." Id. at 679. In other words, a pleading that  
13 merely offers "labels and conclusions," a "formulaic recitation of  
14 the elements," or "naked assertions" will not be sufficient to  
15 state a claim upon which relief can be granted. Id. at 678  
16 (citations and internal quotation marks omitted).

17 "When there are well-pleaded factual allegations, a court  
18 should assume their veracity and then determine whether they  
19 plausibly give rise to an entitlement of relief." Id. at 679.  
20 Plaintiffs must allege "plausible grounds to infer" that their  
21 claims rise "above the speculative level." Twombly, 550 U.S. at  
22 555. "Determining whether a complaint states a plausible claim for  
23 relief" is a "context-specific task that requires the reviewing  
24 court to draw on its judicial experience and common sense."  
25 Iqbal, 556 U.S. at 679.

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1 **III. Discussion**

2 A. Amount in Controversy

3 Plaintiff argues that the \$75,000 threshold for diversity  
4 jurisdiction is not met because she does not seek rescission of  
5 her \$650,000 loan. (Remand Mot. at 2-4.) Though Plaintiff cites  
6 to Ramirez v. U.S. Bank N.A. and Gaspar v. Wachovia Bank, neither  
7 case supports Plaintiff's position. In Ramirez, the court  
8 remanded where the Plaintiff amended his complaint to clarify that  
9 he was seeking postponement of a foreclosure sale and \$65,000 in  
10 compensatory damages. Ramirez v. U.S. Bank N.A., No. C-12-0851  
11 MEJ, 2012 WL 2838798 at \*2 (N.D. Cal. Jul. 10, 2012). In Gaspar,  
12 the plaintiff sought only a loan modification and unspecified  
13 damages. Gaspar v. Wachovia Bank, No. C 10-3597 SBA, 2011 WL  
14 577416 at \*4 (N.D. Cal. Feb. 9, 2011). Here, in contrast,  
15 Plaintiff seeks to cancel the Assignment of the Deed to Bank of  
16 American and establish that Defendant has no interest whatsoever  
17 in the Deed. While the exact value of the property is unclear,  
18 the loan amount was \$650,000, and Plaintiff was over \$79,000 in  
19 arrears by September 2010. (FAC Exs. A, C.) The court is  
20 therefore satisfied that the jurisdictional minimum is met.  
21 Plaintiff's Motion to Remand is DENIED.

22 B. Cancellation of Written Instrument

23 Under California Civil Code Section 3412, a person may seek  
24 to cancel a written instrument if there is a "reasonable  
25 apprehension that if left outstanding it may cause serious injury  
26 to [that] person[,] against whom it is void or voidable." Cal.  
27 Civ. Code § 3412; Nguyen v. Bank of America Nat'l Ass'n, No. 11-  
28 CV-3318-LHK, 2011 WL 5574917 at \* 5 (N.D. Cal. Nov. 15, 2011).

1 The Assignment, however, is an agreement between MERS and  
2 Defendant. Plaintiff is neither a party to nor a beneficiary of  
3 that agreement. Even if there were some flaw in MERS' assignment  
4 of the Deed to Defendant, the Assignment would not change  
5 Plaintiff's debt obligation, and therefore would not harm  
6 Plaintiff. Flores v. GMAC Mortgage, LLC, No. C. 12-794 SI, 2013  
7 WL 2049388 at \*3 (N.D. Cal. May 14, 2013). Absent some allegation  
8 of specific harm or serious injury to Plaintiff, she lacks  
9 standing to challenge MERS' Assignment of the Deed to Defendant.<sup>2</sup>  
10 Tatola v. HSBC Bank USA, No. C-11-3994 MMC, 2011 WL 5025072 at \*3  
11 (N.D. Cal. Oct. 21, 2011) (dismissing Section 3412 claim); See  
12 also Steele v. First Magnus Fin, Corp., No. 12-cv-5054-RS, 2013 WL  
13 4039976 at \*2 (N.D. Cal. Aug. 7, 2013); Soberanis v. MERS, No. 13-  
14 CV-1296-H, 2013 WL 4046458 at \*7 (S.D. Cal. Aug. 8, 2013).

15 C. Unfair Competition

16 California's unfair competition law (UCL) proscribes business  
17 practices that are unlawful, fraudulent, or unfair. Cal. Bus. &  
18 Profs. Code § 7200; Davis v. HSBC Bank Nevada, N.A., 691 F.3d  
19 1152, 1168-69 (9th Cir. 2012). To state a claim under the UCL, a  
20 plaintiff must allege (1) economic injury that (2) resulted from  
21 the alleged improper practice. Cal. Bus. & Prof. Code § 17204;  
22 Kwikset Corp. v. Superior Court, 51 Cal.4th 310, 322 (2011).

23 Here, Plaintiff contends that she has been harmed because the  
24 title to her home has been clouded and because she has spent funds  
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26 <sup>2</sup> While the FAC does make some vague reference to clouded  
27 title upon Plaintiff's property, such allegations appear to refer  
28 to Plaintiff's withdrawn cause of action under California Civil  
Code Sections 2923.5 and 29324, which centered upon a Notice of  
Default and Notice of Trustee's sale. (FAC ¶ 20.)


1 on attorneys' fees. (FAC ¶ 43.) Potential clouds on title,  
2 however, do not constitute a loss of money or property, as is  
3 required to establish economic injury under the UCL. Hunt v. U.S.  
4 Bank, Nat'l Ass'n, No. EDCV 12-2171-VAP, 2013 WL 1398964 at \*9  
5 (C.D. Cal. Apr. 3, 2013); Gyene v. Steward Fin., Inc., No. CV 12-  
6 4355 DSF, 2013 WL 146191 at \*4 (C.D. Cal. Jan. 11, 2013); Phong  
7 Tran v. Bank of America, N.A., No. 12-4504 PSG, 2013 WL 2368048 at  
8 \*4 (N.D. Cal. May 29, 2013). Nor are Plaintiff's legal expenses  
9 sufficient to confer standing under the UCL. Thompson v.  
10 Residential Credit Solutions, Inc., No. CIV 2:11-2261 WBS, 2012 WL  
11 260357 at \*5 (E.D. Cal. Jan. 26, 2012) ("Under Plaintiff's  
12 reasoning, a private plaintiff bringing a UCL claim automatically  
13 would have standing merely by filing suit." (quotation and  
14 citation omitted). Absent any injury in fact, Plaintiff's UCL  
15 claim must be dismissed.

16 **IV. Conclusion**

17 For the reasons stated above, Plaintiff's Motion to Remand is  
18 DENIED and Defendant's Motion to Dismiss is GRANTED. Because  
19 amendment would be futile, Plaintiff's claims are dismissed with  
20 prejudice.

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23 IT IS SO ORDERED.

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26 Dated: August 28, 2013

  
27 DEAN D. PREGERSON  
28 United States District Judge