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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WALTER AGUERO,
Plaintiff,

v.

MORTGAGEIT, INC., et al.,

Defendants.

1:09-CV-0640 OWW SMS

MEMORANDUM DECISION RE
MORTGAGEIT, INC.'S MOTION TO
DISMISS (DOC. 8).

I. INTRODUCTION

Before the court for decision is Defendant MortgageIT, Inc.'s motion to dismiss Plaintiff Walter Aguero's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Doc. 8. On February 12, 2009, Plaintiff filed a complaint in the Superior Court of the State of California, County of Kern, alleging seven causes of action.¹ Doc. 2. On April, 9, 2009, Defendant removed the action to federal court pursuant to 28 U.S.C. §§ 1331, 1441 based on a federal question. *Id.*

Plaintiff failed to file any opposition or statement of non-

¹ (1) For declaratory relief; (2) to set aside the notice of trustee's sale and notice of default; (3) for cancellation of instruments; (4) to quiet title to real property; (5) for an accounting; (6) for injunctive relief; and (7) for damages.

1 opposition in response to the motion to dismiss. Defendant filed
2 a reply indicating Plaintiff's failure to respond and requesting
3 that Plaintiff's complaint be dismissed in its entirety. Doc.
4 15.

6 II. LEGAL STANDARD

7 A. Rule 12(b)(6) Motion to Dismiss

8 A motion to dismiss brought under Federal Rule of Civil
9 Procedure 12(b)(6) "tests the legal sufficiency of a claim."
10 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To survive
11 a motion to dismiss, a complaint must "contain sufficient factual
12 matter, accepted as true, to 'state a claim to relief that is
13 plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937,
14 1949 (May 18, 2009) (quoting *Bell Atl. Corp v. Twombly*, 550 U.S.
15 544, 570 (2007)).

17 A claim has facial plausibility when the plaintiff
18 pleads factual content that allows the court to draw
19 the reasonable inference that the defendant is liable
20 for the misconduct alleged. The plausibility standard
21 is not akin to a "probability requirement," but it asks
22 for more than a sheer possibility that defendant has
acted unlawfully. Where a complaint pleads facts that
are "merely consistent with" a defendant's liability,
it "stops short of the line between possibility and
plausibility of 'entitlement to relief.'"

23 *Id.* (citing *Twombly*, 550 U.S. 556-57). Dismissal also can be
24 based on the lack of a cognizable legal theory. *Balistreri v.*
25 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

27 In deciding whether to grant a motion to dismiss, the court
28 "accept [s] all factual allegations of the complaint as true and

1 draw[s] all reasonable inferences" in the light most favorable to
2 the nonmoving party. *Rodriguez v. Panayiotou*, 314 F.3d 979, 983
3 (9th Cir. 2002). A court is not, however, "required to accept as
4 true allegations that are merely conclusory, unwarranted
5 deductions of fact, or unreasonable inferences." *Manufactured*
6 *Home Cmtys. Inc. v. City of San Jose*, 420 F.3d 1022, 1035 (9th
7 Cir. 2005) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d
8 979, 988 (9th Cir. 2001)).
9

10 11 12 III. BACKGROUND

13 On February 13, 2006, Plaintiff financed the purchase of a
14 residential property located at 4506 Idlerock Avenue,
15 Bakersfield, California ("Subject Property") through a deed of
16 trust and promissory note with Defendant lender in the amount of
17 \$343,200.00 ("Subject Loan"). Doc. 2 at 3-5. Plaintiff later
18 defaulted on the Subject Loan. *Id.* at 7. On September 5, 2008,
19 a notice of default and election to sell under deed of trust,
20 Instrument No. 0208141855, was recorded in the Office of the
21 County Recorder of Kern County. *Id.* On December 10, 2008, a
22 notice of trustee's sale, Instrument No. 0208191009, was also
23 recorded. *Id.*
24

25 Plaintiff alleges that Defendant engaged in wrongful conduct
26 related to its loan practices, including failing to explain the
27 consequences of obtaining a loan and failing to provide copies of
28

1 all of the necessary documents. *Id.* at 16-18. Plaintiff also
2 alleges that defendants NDEX West LLC, North American Title
3 Company, Inc., and Alliance Title Company, Inc.² improperly
4 initiated non-judicial foreclosure proceedings on the Subject
5 Property. *Id.* at 20.
6

7 IV. ANALYSIS

8 A. Statutory Violations.

9
10 Defendant moves to dismiss the first cause of action for
11 declaratory relief on the grounds that: (1) the Subject Loan is
12 not governed by California Civil Code § 1632 or § 4970; (2) and
13 Plaintiff's Truth in Lending Act ("TILA"), Federal Reserve
14 Regulation Z ("Reg Z"), Home Ownership and Equity Protection Act
15 ("HOEPA"), and Federal Trade Commission Act ("FTCA") claims are
16 both factually deficient and time-barred.
17

18 1. California Civil Code § 1632.

19
20 Plaintiff alleges that because of a language barrier and
21 Defendant's failure to provide a copy of "the contract or
22 agreement in Spanish," which was "the language in which the
23 contract or agreement was negotiated," the "Promissory Note and
24 Deed of Trust is [] voidable and subject to statutory rescission
25 and damages" pursuant to California Civil code § 1632." Doc. 2
26 at 17.
27

28 ² Only defendant MortgageIT is a party to this motion. *See* Doc. 8 at 1.

1 The Subject Loan is not governed by California Civil Code §
2 1632, which applies to "loan[s] or extension[s] of credit secured
3 *other than by real property,*" because the Subject Loan is a
4 mortgage loan secured by an interest in real property. Cal. Civ.
5 Code § 1632(b)(2)(emphasis added); Doc. 2. at 3. Although the
6 statute does cover some forms of home loans, including loans
7 subject to the Industrial Loan Law, loans subject to the
8 California Finance Lenders Law, reverse mortgages, and loans
9 negotiated by real estate brokers, Plaintiff does not allege
10 facts that suggest the application of any of these exceptions.
11 *See* Cal. Civ. Code § 1632(b)(2)-(c).
12

13 Defendant's motion to dismiss the California Civil Code
14 § 1632 claim is GRANTED.
15

16
17 2. California's Predatory Lending Law.

18 Plaintiff alleges that Defendant failed to disclose "a yield
19 spread premium (YSP) provisions, the cost of which was to be paid
20 by Plaintiff as added points and fees in connection with their
21 residual mortgage loan...in violation of California's Predatory
22 Lending Law, as set forth in [California] Financial Code, §
23 4970." Doc. 2 at 6.
24

25 California's predatory lending laws prohibit specific acts
26 in connection with "covered loans." Cal. Fin. Code § 4973. A
27 "Covered loan" is:
28

1 A consumer loan in which the original principal balance
2 of the loan does not exceed the most current conforming
3 loan limit for a single-family first mortgage loan
4 established by the Federal National Mortgage
Association in the case of a mortgage or deed of trust,
and where one of the following conditions are met:

5 (1) For a mortgage or deed of trust, the annual
6 percentage rate at consummation of the transaction will
7 exceed by more than eight percentage points the yield
8 on Treasury securities having comparable periods of
maturity on the 15th day of the month immediately
preceding the month in which the application for the
extension of credit is received by the creditor.

9 (2) The total points and fees payable by the consumer
10 at or before closing for a mortgage or deed of trust
11 will exceed 6 percent of the total loan amount.

12 Cal. Fin. Code § 4970(b). The most current conforming loan
13 limit for a single family mortgage loan established by the
14 Federal National Mortgage Association is \$417,000.00³ Plaintiff
15 alleges that the principal of his loan is \$343,200.00, but does
16 not allege either that the annual percentage rate at consummation
17 of the transaction exceeded the Treasury securities rate by more
18 than eight percentage points or that the total points and fees
19 paid by the consumer at or before closing exceeded six percent of
20 the total loan amount. See Doc. 2 at 17.⁴

22 Defendant's motion to dismiss the California Civil Code §
23 4970 claim is GRANTED.

24 ³ See Fannie Mae, About Fannie Mae: Loan Limits, available at:
25 <http://www.fanniemae.com/aboutfm/loanlimits.jhtml> (last visited August 7,
2009.)

26 ⁴ Defendant cites, *De Los Santos v. World Capital Financial*, 2009 U.S.
27 Dist. LEXIS 22913, at *9 (C.D. Cal. Mar. 9, 2009) for the proposition that the
28 conforming loan limit is \$250,000. Based on this, erroneous figure, Defendant
argues that because Plaintiff alleges that the principal of his loan is
\$343,200.00, § 4970(b) does not apply. It is not clear where the De Los
Santos court obtained the \$250,000 figure, as no source is cited.

1 3. Plaintiff's TILA, Regulation Z, HOEPA, and Federal
2 Trade Commission Act Claims.

3 Plaintiff alleges that Defendant "engaged in deceptive loan
4 practices ... in knowing violation of [HOEPA, TILA, Reg Z, and
5 the FTCA]." Doc. 2 at 6. However, the complaint does not
6 explain how Defendant violated HOEPA, TILA, Reg Z, or the FTCA;
7 Plaintiff merely alleges that "[t]he full details of these
8 violations are presently unknown to Plaintiff, however, when
9 these facts are ascertained through discovery and investigation,
10 this complaint will be amended with leave of court to allege
11 those facts." *Id.* This is insufficient. *See, e.g., Martinez v.*
12 *Quality Loan Serv. Corp.*, 2009 U.S. Dist. LEXIS 21920, at * 13-14
13 (C.D. Cal. Feb. 10, 2009) (finding that allegations of
14 "unspecified acts violating unspecified provisions of the federal
15 law," including assertions that "the specifics of [violations]
16 are unknown, but which are subject to discovery and with respect
17 to which the specifics will be alleged by amendment to this
18 complaint when ascertained," were insufficient to state claims
19 for TILA, HOEPA, and FTCA violations); *Barsekian v. First Am.*
20 *Loanstar Trustee Servs.*, 2009 U.S. Dist. LEXIS 2884, at *3-4
21 (C.D. Cal. Jan. 6, 2009) (dismissing plaintiff's claim for
22 "predatory lending practices" because she "failed to provide a
23 single allegation of practices by [defendant] that could be
24 deemed predatory").
25
26

27 Plaintiff's damages claims under HOEPA and TILA are also
28

1 time-barred, as damages under either statute are subject to a
2 one-year statute of limitation. 15 U.S.C. § 1640(e); *see Fonua*
3 *v. First Allied Funding*, 2009 U.S. Dist. LEXIS 30195, at *11
4 (N.D. Cal. Mar. 27, 2009) (acknowledging that “[c]laims under
5 HOEPA are governed by TILA’s one year statute of limitations” and
6 thus dismissing plaintiff’s HOEPA claim under this one-year
7 limitation period). Plaintiff alleges that he entered into the
8 Subject Loan with Defendant on February 13, 2006, but his
9 complaint was not filed until three years later, on February 13,
10 2009. Doc. 2 at 13, 16. Because “the limitations period starts
11 at the consummation of the transaction,” Plaintiff’s damages
12 claims under HOEPA and TILA were brought after the one-year
13 statute of limitations. *Rosales v. Downey S&L Ass’n, F.A.*, 2009
14 U.S. Dist. LEXIS 15923, at *18 (S.D. Cal. Mar. 2, 2009) (quoting
15 *King v. California*, 784 F.2d 910, 915 (9th Cir. 1986)).
16 Plaintiff does not allege that he is entitled to equitable
17 tolling, Plaintiff’s damages claims under HOEPA and TILA are
18 time-barred.
19
20

21 In addition to damages, rescission may be available under
22 HOEPA and TILA in some circumstances. 15 U.S.C. § 1635; 12
23 C.F.R. § 226.23. To the extent rescission may apply here, any
24 such claim is also time-barred. The consumer’s right to
25 rescission is absolute only for a period of three days after the
26 loan is consummated, 15 U.S.C. § 1635(a); 12 C.F.R. §
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1 226.23(a)(3), unless the lender fails to provide "material
2 disclosures" at the closing, in which case the period is extended
3 to three years, 15 U.S.C. § 1635(f); 12 C.F.R. § 226.23(a)(3)
4 There are no allegations in the complaint that the lender failed
5 to make "material disclosures." Therefore, the three-day
6 limitations period applies. As Plaintiff did not initiate this
7 lawsuit within that time period, any rescission action is time
8 barred.
9

10 Reg Z, 12 C.F.R. § 226.4(c)(2), interprets TILA by defining
11 terms such as "finance charge." Claims brought under Reg Z are
12 subject to TILA's statute of limitations. *See, e.g., Diessner v.*
13 *Mortgage Elec. Registration Sys.*, 618 F. Supp. 2d 1184, 11990-91
14 (2009). Therefore, Plaintiff's Reg Z claims are also time-
15 barred.
16

17 Finally, Plaintiffs' FTCA claim fails because there is no
18 private right of action under that statute. "[P]rotection
19 against unfair trade practices afforded by the [FTCA] vests
20 initial remedial power solely in the Federal Trade Commission."
21 *Carlson v. Coca-Cola Co.*, 483 F.2d 279, 280 (9th Cir. 1973).
22

23 Defendant's motion to dismiss the TILA, HOEPA, Reg Z, and
24 FTCA claims is GRANTED.

25 4. Declaratory Relief Claim.

26 Actions for declaratory relief are only permitted where
27 there is an "actual controversy relating to the legal rights and
28

1 duties of the respective parties." Cal. Civ. Proc. Code § 1060.
2 "The fundamental basis of declaratory relief is the existence of
3 an *actual, present controversy* over a proper subject." *City of*
4 *Cotati v. Cashman*, 29 Cal. 4th 69, 79 (9th Cir. 2002) (citations
5 omitted) (emphasis in the original). Given the court's ruling on
6 the motion, specifically the finding that Defendant has no
7 liability to Plaintiff, declaratory relief is improper.
8

9 Defendant's motion to dismiss the entire first cause of
10 action for declaratory relief is GRANTED.
11

12
13 B. Second Cause Of Action To Set Aside The Notice of Trustee's
Sale And Notice of Default.

14 Defendant moves to dismiss the second cause of action (to
15 set aside the notice of trustee's sale and notice of default) on
16 the grounds that: (1) it lacks foundation; and (2) it misstates
17 the law in regards to proper procedure for a non-judicial
18 foreclosure.
19

20 Plaintiff alleges that Defendant failed to give him notice
21 of default and election to sell and notice of trustee's sale in
22 violation of California Civil Code § 2924, and that, as a result,
23 "all provisions contained in those documents which purport to
24 authorize the commencement of a non-judicial foreclosure are
25 unenforceable." Doc. 2 at 7-8. Plaintiff further alleges that
26 although Defendant "represented to Plaintiff that it is in
27 possession of the *original* Promissory Note," it actually does not
28

1 have possession of the original note and “[a]s a result, the non-
2 judicial foreclosure...is void and in violation of statute and
3 therefore cannot be the basis of a statutory non-judicial
4 foreclosure pursuant to Civil Code § 2924.” *Id.* at 9 (emphasis
5 in the original).

6
7 Plaintiff bases the second cause of action on alleged
8 “predatory lending practices by defendant.” *Id.* at 8.

9 Plaintiff’s statutory predatory lending claims have been
10 dismissed. Therefore, predatory lending cannot form the basis
11 for his claim to aside the notice of default and notice of
12 trustee’s sale.

13 Additionally, Plaintiff requests that the notice of default
14 and election to sell under deed of trust and notice of trustee’s
15 sale be found “void and unenforceable” because Defendant does not
16 possess the original promissory note. This is directly contrary
17 to legal authority. It is well-established that non-judicial
18 foreclosures can be commenced without producing the original
19 promissory note. Non-judicial foreclosure under deeds of trust
20 is governed by California Civil Code section 2924, *et seq.*
21 Section 2924(a)(1) provides that a “trustee, mortgagee or
22 beneficiary or any of their authorized agents” may conduct the
23 foreclosure process. California courts have held that the Civil
24 Code Provisions “cover every aspect” of the foreclosure process,
25 *I.E. Assoc. v Safeco Title Ins. Co.*, 39 Cal. 3d 281, 285 (1985),
26
27
28

1 and are "intended to be exhaustive," *Moeller v. Lien*, 25 Cal.
2 App. 4th 822, 834 (1994). There is no requirement that the party
3 initiating foreclosure be in possession of the original note.
4 *See, e.g., Candelo v. NDEX West, LLC*, 2008 WL 5382259, at *4
5 (E.D. Cal. Dec. 23, 2008) ("No Requirement exists under statutory
6 framework to produce the original note to initiate non-judicial
7 foreclosure."); *Putkkuri v. ReconTrust Co.*, 2009 WL 32567, *2
8 (S.D. Cal. Jan 5, 2009) ("Production of the original note is not
9 required to proceed with a non-judicial foreclosure."); *see also*
10 *Vargas v. Reconstruction Co.*, 2008 U.S. Dist. LEXIS 100115, at
11 *8-9 (E.D. Cal. Dec. 1, 2008).

12
13 Defendant's motion to dismiss the second cause of action is
14 GRANTED WIHTOUT LEAVE TO AMEND
15

16
17 C. Third Cause Of Action To Cancel The Deed Of Trust And
18 Promissory Note For The Subject Loan.

19 Defendant moves to dismiss the third cause of action for
20 cancellation of all instruments on the grounds that: (1)
21 Plaintiff fails to allege any basis to justify cancellation; and
22 (2) alternatively, if this cause of action is liberally construed
23 as based on fraud, Plaintiff fails to meet the heightened
24 pleading standard required by Federal Rule of Civil Procedure
25 9(b).
26

27 Cancellation of an instrument may be ordered when "there is
28 a reasonable apprehension that if left outstanding it may cause

1 serious injury to a person against whom it is void or voidable."
2 Cal. Civ. Code § 3412. Mental incapacity, illegality, duress,
3 undue influence, fraud, mistake, and forgery are grounds for
4 finding an instrument void or voidable. See Cal. Civ. Code §§ 40
5 (incapacity), 1569 (duress), 1575 (undue influence); *Stevenson v.*
6 *Baum*, 65 Cal. App. 4th 159, 164 (1998) (fraud); *Bland v. Kelly*,
7 69 Cal. App. 2d 116, 119 (1945) (mistake); *Schiavon v. Arnaudo*
8 *Bros.*, 84 Cal. App. 4th 374, 378 (2000) (forgery).

10 Here, Plaintiff alleges that the instruments "were the
11 product of multiple violations," "the progeny of multiple
12 violations of law," and "derived through a process of predatory
13 lending practices." Doc. 2 at 22. The complaint alleges none of
14 the bases for a finding of voidability. Even if Plaintiff's
15 allegations are liberally construed as stating a claim for fraud,
16 the allegations do not meet the heightened pleading standards
17 required for such allegations under Federal Rule of Civil
18 Procedure 9(b) ("a party must state with particularity the
19 circumstances constituting fraud"). See also *Swartz v. KPMG LLP*,
20 476 F.3d 756, 764 (9th Cir. 2007) ("the complaint must specify
21 such facts as the times, dates, places, benefits received, and
22 other details of the alleged fraudulent activity") (citations
23 omitted). "[W]here several defendants are sued in connection
24 with an alleged fraudulent scheme," a plaintiff must
25 "differentiate [his] allegations" and "inform each defendant
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1 separately of the allegations surrounding his alleged
2 participation in the fraud." *Id.* at 764-65 (citations omitted).
3 "[A] plaintiff must, at a minimum, identif[y] the role of [each]
4 defendant[] in the alleged fraudulent scheme." *Id.* at 765.

5 Here, most allegations are directed at defendants
6 collectively, such as that "MORTGAGEIT/MERS...have engaged in
7 deceptive loan practices," and that "[Defendants ownership claims
8 as to the property are] the product of a defective, deceptive and
9 void transaction." Doc. 2 at 18, 22. The conclusory assertions
10 do not satisfy Rule 9(b).

11 Defendant's motion to dismiss the third cause of action is
12 GRANTED.
13

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15
16 D. Fourth Cause of Action to Quiet Title.

17 Defendant moves to dismiss the fourth cause of action to
18 quiet title to real property, on the grounds that: (1)
19 Plaintiff's allegations are insufficient to state a quiet title
20 claim; and (2) the claim lacks foundation.

21 "[A] mortgagor of real property cannot, without paying his
22 debt, quiet his title against the mortgagee." *Miller v. Provost*,
23 26 Cal. App. 4th 1703, 1707 (1994) (citations omitted). Here,
24 Plaintiff defaulted on the Subject Loan, and does not allege that
25 he has since paid (or even offered to pay) the outstanding
26 balance. *See* Doc. 2 at 19.
27
28

1 Additionally, to the extent that the fourth cause of action
2 is based on fraud, *see id.* at 10 (“...product of a defective,
3 deceptive, and void transaction”), Plaintiff does not comply with
4 the heightened pleading standard set forth in Rule 9(b).

5 Defendant’s motion to dismiss the fourth cause of action is
6 GRANTED.
7

8
9 E. Fifth Cause of Action For An Accounting.

10 Plaintiff alleges that he “has previously requested from
11 [Defendant] and has yet to receive [] a detailed accounting
12 calculation and summary of the payoff balance they are demanding,
13 including the unpaid principal balance, accrued interest, unpaid
14 interest, daily interest charges and all other fees, costs or
15 expenses comprising the payoff sum.” Doc. 2 at 23. He claims
16 that he “is legally entitled to such an accounting, yet
17 [Defendant has] refused to provide one in a timely manner in
18 compliance with California Civil Code § 2943.” *Id.*

19 Accounting actions are equitable in nature and appropriate
20 when “the accounts are so complicated that an ordinary legal
21 action demanding a fixed sum is impracticable.” *Civic W. Corp.*
22 *v. Zila Indus., Inc.*, 66 Cal. App. 3d 1, 14 (1977) (citations
23 omitted). Normally, an accounting is appropriate where plaintiff
24 seeks recovery in an amount that is unliquidated and
25 unascertained, and that cannot be determined without an
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1 accounting. *St. James Church v. Superior Court*, 135 Cal. App. 2d
2 352, 359 (1955) (internal citations omitted). Here, Plaintiff is
3 simply demanding a payoff amount or an explanation of the payoff
4 balance on his mortgage. He is not seeking recovery of the
5 payoff balance, nor recovery of any amount for which an
6 accounting is necessary. There is no basis for an equitable
7 accounting claim. To the extent Plaintiff may be entitled to a
8 statement of his payoff balance, any such right arises under
9 different law.
10

11 Defendant's motion to dismiss the fifth cause of action is
12 GRANTED.
13

14 F. Sixth Cause of Action for Injunctive Relief.
15

16 Defendant moves to dismiss the sixth cause of action for
17 injunctive relief on the grounds that: (1) it is not a valid
18 cause of action; and (2) injunctive relief is an inappropriate
19 remedy since there is no threat of continuing misconduct and
20 Plaintiff has an adequate remedy at law.

21 Plaintiff alleges that Defendant is "currently threatening
22 to, and unless temporarily and permanently enjoined, will deprive
23 Plaintiff of the title to and ultimately the right of peaceful
24 possession of [his] family residence" and that "[u]nless
25 [Defendant is] enjoined from enforcing their void loan documents,
26 Plaintiff will suffer irreparable harm." Doc. 2 at 10.
27

28 Plaintiff further alleges that it is "appropriate that prior to

1 that occurrence, [Defendant] should be preliminarily enjoined
2 from any further actions to conclude a non-judicial foreclosure."

3 *Id.*

4 "Injunctive relief is a remedy and not, in itself, a cause
5 of action, and a cause of action must exist before injunctive
6 relief may be granted." *Camp v. Board of Supervisors*, 123 Cal.
7 App. 3d 334, 356 (1981) (quoting *Shell Oil Co. v. Richter*, 52
8 Cal. App. 2d 164, 168 (1942)). Injunctive relief is unavailable
9 unless "pecuniary compensation would not afford adequate relief."
10 Cal. Civ. Proc. Code § 526. Additionally, "it is not a remedy
11 designed to right completed wrongs," but is available to "prevent
12 threatened injury." *Gafcon, Inc. v. Ponsor & Assocs.*, 98 Cal.
13 App. 4th 1388, 1403 n.6 (2002) (citations omitted). "Unless
14 there is a showing that the challenged action is being continued
15 or repeated, an injunction should be denied." *Id.*

16 Here, as all of the substantive allegations have been
17 dismissed, Plaintiff cannot obtain injunctive relief.

18 Defendant's motion to dismiss the sixth cause of action is
19 GRANTED.

20
21
22
23 G. Seventh Cause of Action for Damages.

24 Defendant moves to dismiss the seventh cause of action for
25 damages on the grounds that it does not state a valid cause of
26 action.
27

28 Plaintiff alleges that "[a]s a consequence of the multiple

1 violations of statute ... [Defendant is] liable to Plaintiff for
2 damages suffered by [him], including general damages,
3 compensatory damages, damages for bad faith foreclosure for
4 attempting to assert a right to foreclose non-judicially through
5 the use of defective and voidable debt instruments, and for
6 statutory damages as provided by law." Doc. 2 at 24-25.
7

8 A request for Damages cannot form the basis of a separate
9 cause of action. *See Lee v. First Franklin Fin. Corp.* , 2009 WL
10 1371740, at *2 (E.D. Cal. May 15, 2009) ("Injunctive relief, like
11 damages, is a remedy requested by [a party], not a separate cause
12 of action."). Because all of the substantive allegations have
13 been dismissed, Defendant's motion to dismiss the seventh cause
14 of action is GRANTED.
15

16 17 V. CONCLUSION

18 For the reasons set forth above Defendant's motion to
19 dismiss is GRANTED in its entirety without prejudice, except as
20 to claims that have been dismissed with prejudice. Plaintiff has
21 not requested leave to amend.
22

23 SO ORDERED

24 DATED: August 10, 2009

25 /s/ Oliver W. Wanger
26 Oliver W. Wanger
27 United States District Judge.
28