

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MATTHEW ARVIZU,

Plaintiff,

v.

GMAC MORTGAGE, LLC, et al.,

Defendants.

1:10-cv-00990-OWW-JLT

MEMORANDUM DECISION REGARDING  
DEFENDANTS' MOTION TO DISMISS  
(Doc. 6)

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I. INTRODUCTION.

Plaintiff Matthew Arvizu ("Plaintiff") proceeds with an action asserting eighteen causes of action against various Defendants involved in transactions related to a loan secured by Plaintiff's real property.

Defendants removed this action to federal court on June 3, 2010. (Doc. 1). Defendants filed a motion to dismiss Plaintiff's complaint on June 10, 2010. (Doc. 6).

Plaintiff filed opposition to the motion to dismiss on July 20, 2010. (Doc. 23). Defendants filed a reply on August 19, 2010. (Doc. 33).

26  
27  
28

II. FACTUAL BACKGROUND.

On or about November 21, 2006, Plaintiff purchased a residence ("the Property") using funds acquired through a loan from Defendant Greenpoint. (Complaint at 7). The terms of the loan were

1 memorialized in a promissory note, which was secured by a Deed of  
2 Trust, and Adjustable Rate Note, and Interim Interest Addendum to  
3 Note; these documents were recorded in Kern County on or about  
4 December 6, 2006. (Complaint at 7-8). The Deed of Trust  
5 identified Defendant MERS as a beneficiary as nominee for  
6 Greenpoint, Greenpoint as the servicer, and Marin Conveyancing  
7 Corp. as the Trustee. (Complaint at 8).

8 The Deed of Trust appears to have been executed on November  
9 21, 2006; however, the Uniform Residential Loan Application was  
10 completed on November 27, 2006. (Complaint at 8). Plaintiff  
11 contends that Greenpoint manipulated the lending process to the  
12 detriment of Plaintiff. (Complaint at 8). Plaintiff alleges he  
13 did not receive the required documents and disclosure upon  
14 consummation of the lease. (Complaint at 8).

15 On or about March 17, 2009, a Notice of Default on the  
16 Property was recorded. The notice was signed by Maria DeBelen on  
17 behalf of "ETS Services LLC as Agent for Beneficiary." (Complaint  
18 at 8). Plaintiff alleges that he never received the Notice of  
19 Default. (Complaint at 18). Also on March 17, 2009, GMAC recorded  
20 a Substitution of Trustee purporting to designate ETS and Executive  
21 Trustee Services as Trustee under the Deed of Trust; in this  
22 document, MERS identified itself as the present beneficiary under  
23 the Deed of Trust. (Complaint at 17).

24 On or about June 19, 2009, ETS and Executive recorded a Notice  
25 of Trustee's Sale, stating a foreclosure sale date of July 15,  
26 2009. (Complaint at 17). Following the sale, ETS and Executive  
27 executed a Trustee's Deed Upon Sale which stated that GMAC, as  
28 foreclosing beneficiary, acquired title to the Property as grantee

1 pursuant to the foreclosure sale. (Complaint at 18). Plaintiff  
2 alleges that GMAC is not and was not the holder of the Note, and  
3 that GMAC had no right to initiate foreclosure under the Deed of  
4 Trust. (Complaint at 18). Plaintiff alleges that Defendants engage  
5 in a pattern and practice of unlawfully foreclosing on properties.

6 After learning of the foreclosure proceedings, Plaintiff sent  
7 GMAC a "Qualified Written Request" pursuant to 12 U.S.C.  
8 2605(e) (1) (B); GMAC failed to respond. (Complaint at 19).

### 9 **III. LEGAL STANDARD.**

#### 10 **A. Rule 12(b) (6)**

11 Dismissal under Rule 12(b) (6) is appropriate where the  
12 complaint lacks sufficient facts to support a cognizable legal  
13 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th  
14 Cir.1990). To sufficiently state a claim to relief and survive a  
15 12(b) (6) motion, the pleading "does not need detailed factual  
16 allegations" but the "[f]actual allegations must be enough to raise  
17 a right to relief above the speculative level." *Bell Atl. Corp. v.*  
18 *Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007).  
19 Mere "labels and conclusions" or a "formulaic recitation of the  
20 elements of a cause of action will not do." *Id.* Rather, there must  
21 be "enough facts to state a claim to relief that is plausible on  
22 its face." *Id.* at 570. In other words, the "complaint must contain  
23 sufficient factual matter, accepted as true, to state a claim to  
24 relief that is plausible on its face." *Ashcroft v. Iqbal*, --- U.S.  
25 ----, ----, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (internal  
26 quotation marks omitted).

27 The Ninth Circuit has summarized the governing standard, in  
28 light of *Twombly* and *Iqbal*, as follows: "In sum, for a complaint to

1 survive a motion to dismiss, the nonconclusory factual content, and  
2 reasonable inferences from that content, must be plausibly  
3 suggestive of a claim entitling the plaintiff to relief." *Moss v.*  
4 *U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.2009) (internal  
5 quotation marks omitted). Apart from factual insufficiency, a  
6 complaint is also subject to dismissal under Rule 12(b)(6) where it  
7 lacks a cognizable legal theory, *Balistreri*, 901 F.2d at 699, or  
8 where the allegations on their face "show that relief is barred"  
9 for some legal reason, *Jones v. Bock*, 549 U.S. 199, 215, 127 S.Ct.  
10 910, 166 L.Ed.2d 798 (2007).

11 In deciding whether to grant a motion to dismiss, the court  
12 must accept as true all "well-pleaded factual allegations" in the  
13 pleading under attack. *Iqbal*, 129 S.Ct. at 1950. A court is not,  
14 however, "required to accept as true allegations that are merely  
15 conclusory, unwarranted deductions of fact, or unreasonable  
16 inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988  
17 (9th Cir.2001). "When ruling on a Rule 12(b)(6) motion to dismiss,  
18 if a district court considers evidence outside the pleadings, it  
19 must normally convert the 12(b)(6) motion into a Rule 56 motion for  
20 summary judgment, and it must give the nonmoving party an  
21 opportunity to respond." *United States v. Ritchie*, 342 F.3d 903,  
22 907 (9th Cir.2003). "A court may, however, consider certain  
23 materials-documents attached to the complaint, documents  
24 incorporated by reference in the complaint, or matters of judicial  
25 notice-without converting the motion to dismiss into a motion for  
26 summary judgment." *Id.* at 908.

27 ///

28 ///

1           **B. Rule 9(b)**

2           Rule 9(b) imposes an elevated pleading standard with respect  
3 to certain claims. Rule 9(b) provides:

4           In alleging fraud or mistake, a party must state with  
5           particularity the circumstances constituting fraud or  
6           mistake. Malice, intent, knowledge, and other conditions  
7           of a person's mind may be alleged generally.

8           "To comply with Rule 9(b), allegations of fraud must be specific  
9           enough to give defendants notice of the particular misconduct which  
10           is alleged to constitute the fraud." *Swartz v. KPMG LLP*, 476 F.3d  
11           756, 764 (9th Cir. 2007) (internal quotation marks omitted).  
12           Allegations of fraud must include the "time, place, and specific  
13           content of the false representations as well as the identities of  
14           the parties to the misrepresentations." *Id.* (internal quotation  
15           marks omitted). The "[a]verments of fraud must be accompanied by  
16           the who, what, when, where, and how of the misconduct charged."  
17           *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir. 2009)  
18           (internal quotation marks omitted). A plaintiff alleging fraud  
19           "must set forth more than the neutral facts necessary to identify  
20           the transaction. The plaintiff must set forth what is false or  
21           misleading about a statement, and why it is false." *Vess v.*  
22           *Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) (emphasis  
23           and internal quotation marks omitted).

24                           **IV. DISCUSSION.**

25           Defendants advance two arguments that are generally applicable  
26           to all of Plaintiff's claims. First, Defendants contend that this  
27           entire action should be dismissed because Plaintiff lacks standing  
28           due to a Chapter 7 petition filed in the Bankruptcy Court after the  
          complaint was filed. However, on September 27, 2010, Plaintiff's

1 Bankruptcy case closed. As Plaintiff has received his discharge  
2 and the bankruptcy proceeding is now closed, Defendants' argument  
3 that the complaint should be dismissed for lack of standing so that  
4 the Chapter 7 trustee can be substituted as Plaintiff is now moot.

5 Second, Defendants contend that many, if not all, of  
6 Plaintiff's claims are barred by the doctrine of collateral  
7 estoppel. Defendants ask the court to take judicial notice of a  
8 judgment entered by the California Superior Court in connection  
9 with GMAC's unlawful detainer action against Plaintiff. Defendants  
10 contend that the issues raised in this action were or should have  
11 been raised in the unlawful detainer trial.

12 Although the court may take judicial notice of the fact that  
13 GMAC obtained a judgment against Plaintiff, there is no written  
14 decision from the Superior Court from which the court can determine  
15 what issues were actually litigated in the unlawful detainer  
16 action. Nor is Plaintiff's answer to the unlawful detainer  
17 complaint before the court. Because unlawful detainer proceedings  
18 in California are generally limited in scope, the court cannot say  
19 that Plaintiff's claims in this case are precluded as a matter of  
20 law:

21 As a general rule, in unlawful detainer proceedings, only  
22 claims bearing directly upon the right to possession are  
23 involved. However...courts must make a limited inquiry  
into the basis of the plaintiff's title...

24 [W]here the plaintiff in the unlawful detainer action is  
25 the purchaser at a trustee's sale, he or she need only  
26 prove a sale in compliance with the statute and deed of  
27 trust, followed by purchase at such sale, and the  
28 defendant may raise objections only on that phase of the  
issue of title. Matters affecting the validity of the  
trust deed or primary obligation itself, or other basic  
defects in the plaintiff's title, are neither properly  
raised in this summary proceeding for possession, nor are  
they concluded by the judgment.

1 *Old Nat'l Fin. Servs. v. Seibert*, 194 Cal. App. 3d 460, 465 (Cal.  
2 Ct. App. 1987). The record is insufficient to determine that all  
3 of Plaintiff's claims are barred by collateral estoppel.

4 **A. Plaintiff's TILA<sup>1</sup> Claim**

5 Plaintiff seeks rescision of the underlying loan transaction  
6 pursuant to 15 U.S.C. § 1635 as well as statutory damages and costs  
7 pursuant to U.S.C. § 1640(a). (Complaint at 20-22). Plaintiff's  
8 TILA claim is based on Defendants' alleged failure to provide  
9 required disclosures and for placing "terms prohibited by statute  
10 into the transaction." (Complaint at 22). Defendants assert  
11 correctly that Plaintiff's TILA claims are time barred.

12 The right of rescission provided by section 1635 expires three  
13 years after the date of consummation of the transaction or upon the  
14 sale of the property, whichever occurs first. 15 U.S.C. § 1635(f).  
15 Based on the allegations of the complaint and judicially noticeable  
16 documents contained in the record, the Property at issue in this  
17 action was sold in a foreclosure sale on July 15, 2009.  
18 Accordingly, Plaintiff does not have a valid claim for rescision  
19 under section 1635, and Plaintiff may not cure the deficiency of  
20 his rescision claim with an amended complaint. *Id.*; *Miguel v.*  
21 *Country Funding Corp*, 309 F.3d 1161, 1164 (9th Cir. 2002) ("section  
22 1635(f) represents an 'absolute limitation on rescission  
23 actions'"). Plaintiff's rescision claim is DISMISSED, with  
24 prejudice.

25 Plaintiff's claim for statutory damages and costs is also  
26 foreclosed by the allegations of the complaint and judicially  
27

---

28 <sup>1</sup> The Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*

1 noticeable documents in the record. An action for statutory  
2 damages and costs pursuant to section 1640 must be brought within  
3 one year from the date of the occurrence of the TILA violation. 15  
4 U.S.C. § 1640(e). The TILA violations alleged in the complaint  
5 concern disclosure violations which occurred in November 2006.  
6 (Complaint at 8; 21-22). Accordingly, Plaintiff's claim is time  
7 barred, as it was not brought within one year of the alleged  
8 violations.

9 Plaintiff's contention that the statute of limitations began  
10 to run when Defendants allegedly failed to respond to the rescision  
11 demand Plaintiff sent in October of 2009 lacks merit. First, the  
12 complaint does not clearly allege a TILA violation based on the  
13 October 2009 rescision demand. More importantly, however, Plaintiff  
14 had no right to rescision in October 2009. The July 15, 2009  
15 foreclosure sale extinguished Plaintiff's right to rescision. 15  
16 U.S.C. § 1635(f). Plaintiff's claim for damages and costs under  
17 section 1640 is DISMISSED, with prejudice.

18 **B. Plaintiff's RESPA<sup>2</sup> Claim**

19 Defendant contends that Plaintiff's RESPA claim is time-  
20 barred, and that the complaint fails to properly plead damages in  
21 connection with the alleged RESPA violation. Plaintiff responds  
22 that he is entitled to equitable tolling, and that "damages will be  
23 determined at trial." (Opposition at 7-8).

24 The nature of Plaintiff's RESPA claim is unclear, but  
25 Plaintiff's opposition indicates that the RESPA violations occurred  
26 at the time of "closing." (See Opposition at 7). To the extent  
27

---

28 <sup>2</sup> The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.*



1 Plaintiff's claim was not filed within the applicable statute of  
2 limitations, Plaintiff's conclusory assertion of equitable tolling  
3 is insufficient; the complaint must allege facts sufficient to  
4 support the contention that equitable tolling should apply. In any  
5 event, to the extent Plaintiff has a RESPA claim that is not time-  
6 barred, such claim be dismissed because the complaint does not  
7 properly allege any damages.

8 Plaintiff's opposition states that "damages will be determined  
9 at trial;" this statement is tantamount to a tacit concession that  
10 the complaint does not allege any damages in connection with  
11 Defendant's alleged violation of the notice requirements set forth  
12 in 12 U.S.C. § 2605, and no damages are alleged within the four  
13 corners of the complaint. Plaintiff's claim for statutory damages  
14 of \$1,000.00 pursuant to 12 U.S.C. § 2605(1)(B) is insufficient,  
15 as the complaint does not allege facts sufficient to give rise to  
16 the inference that Defendants engage in a pattern or practice of  
17 noncompliance with RESPA. See 12 U.S.C. § 2605(1)(B) (plaintiffs  
18 may recover "any additional damages, as the court may allow, *in the*  
19 *case of a pattern or practice of noncompliance* with the  
20 requirements of this section, in an amount not to exceed \$ 1,000").  
21 Plaintiff's RESPA claim is DISMISSED, without prejudice.

### 22 **C. Plaintiff's Debt Collection Claims**

23 Plaintiff contends that Defendants violated California's  
24 Rosenthal Fair Debt Collection Practices Act ("RFDCPA") and the  
25 federal Fair Debt Collection Practices Act (FDCPA) by foreclosing  
26 on Plaintiff's property, filing an unlawful detainer action,  
27 falsely stating the amount of debt, and increasing the amount of  
28 the debt by including amounts not permitted by law or contract.

1 (Complaint at 23). Plaintiff's contentions regarding  
2 misrepresentation and inflation of the amount of debt at issue are  
3 not supported by sufficient factual allegations in the complaint.  
4 Further, foreclosing on a property pursuant to a deed of trust is  
5 not debt collection within the meaning of the RFDCPA or the FDCA.  
6 *See Izenberg v. ETS Servs., LLC*, 589 F. Supp. 2d 1193, 1198-99  
7 (C.D. Cal. 2008); *Ines v. Countrywide Home Loans, Inc.*, 2008 U.S.  
8 Dist. LEXIS 88739, 2008 WL 4791863, at \*2 (S.D. Cal. Nov. 3, 2008).  
9 The complaint fails to allege facts sufficient to support the  
10 inference that Defendants are "debt collectors." Plaintiff's  
11 argument that because the foreclosure proceeding was invalid, all  
12 the Defendants' conduct constituted "debt collection" lacks merit  
13 because, *inter alia*, the complaint does not allege sufficient facts  
14 to establish the illegality of the foreclosure proceeding.  
15 Plaintiff's debt collection claims are DISMISSED, without  
16 prejudice.

#### 17 **D. Plaintiff's Title Related Claims**

18 As Plaintiff concedes, Plaintiff's claims for wrongful  
19 foreclosure, quiet title, to set aside trustee's sale, and  
20 cancellation of the trustee's deed are deficient because the  
21 complaint does not allege an offer to tender. (Opposition at 9).  
22 It is undisputed that these claims must be dismissed. The only  
23 question is whether Plaintiff should be given leave to amend.

24 To the extent that any of these claims are based solely on  
25 Plaintiff's argument that only a holder of the promissory note may  
26 enforce its terms or the terms of the deed of trust, the claims are  
27 untenable. *See, e.g., Castaneda v. Saxon Mortgage Servs., Inc.*,  
28 687 F. Supp. 2d 1191, 1201 (E.D. Cal. 2009) ("Under California law,

1 there is no requirement for the production of the original note to  
2 initiate a non-judicial foreclosure"). Additionally, any claims  
3 premised on the argument that the foreclosure sale was not  
4 performed in compliance with the relevant California statutory  
5 authority or with the Deed of Trust are precluded by the prior  
6 judgment issued against Plaintiff in the unlawful detainer action.  
7 *See Wood v. Herson*, 39 Cal. App. 3d 737, 743-744 (Cal. Ct. App.  
8 1974) (discussing application of collateral estoppel as applied to  
9 judgments in unlawful detainer actions). Plaintiff will be given  
10 one opportunity to plead cognizable claims.

#### 11 **E. Slander of Title Claim**

12 Slander of title occurs when a person, without a privilege to  
13 do so, publishes a false statement that disparages title to  
14 property and causes pecuniary loss. *Truck Ins. Exch. v. Bennett*,  
15 53 Cal. App. 4th 75, 84 (Cal. Ct. App. 1997). "The elements of the  
16 tort are (1) publication, (2) absence of justification, (3) falsity  
17 and (4) direct pecuniary loss." *Id.* (citation omitted).

18 Although the complaint alleges that Defendant's recording of  
19 the Notice of Default, Notice of Trustee's Sale, and Trustee's deed  
20 was "improper," (Complaint at 27), the complaint fails to allege  
21 facts sufficient to support the inference that the publications  
22 were false. The complaint also fails to allege that Plaintiff  
23 suffered direct pecuniary loss as a result of the publications. As  
24 Defendants point out, the apparent basis for Plaintiff's slander of  
25 title claim is Plaintiff's argument concerning possession of the  
26 Note at the time of the "improper" publications.

27 Plaintiffs opposition to the motion to dismiss states "if  
28 allowed to amend, Plaintiff will eliminate the Slander of Title

1 cause of action." (Opposition at 12). Plaintiff's slander of  
2 title claim is DISMISSED, with prejudice.

3 **F. Civil Conspiracy Claim**

4 The complaint asserts a cause of action for "civil  
5 conspiracy." (Complaint at 28-29). There is no stand alone cause  
6 of action for civil conspiracy recognized by California law. E.g.  
7 *Grisham v. Philip Morris U.S.A., Inc.*, 40 Cal. 4th 623, 632 (Cal.  
8 2007) (citing *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*  
9 7 Cal.4th 503, 510-511 (Cal. 1994)). This claim is DISMISSED  
10 without prejudice.

11 **G. UCL Claims<sup>3</sup>**

12 The complaint alleges "Plaintiff is informed and  
13 believes...that Defendants committed unlawful, unfair, and/or  
14 fraudulent business practices as defined by California Business and  
15 Professions Code § 17200" ("UCL claims"). (Complaint at 29).  
16 Plaintiff's conclusory allegations do not give Defendants fair  
17 notice of the nature of Plaintiff's claim.

18 California law prohibits unfair competition including "any  
19 unlawful, unfair or fraudulent business act or practice." Cal. Bus.  
20 & Prof. Code § 17200 *et seq.* Because the statute is written in the  
21 disjunctive, it applies separately to business acts or practices  
22 that are (1) unlawful, (2) unfair, or (3) fraudulent. *See Pastoria*  
23 *v. Nationwide Ins.*, 112 Cal. App. 4th 1490, 1496 (Cal. Ct. App.  
24 2003). Each prong of the UCL is a separate and distinct theory of  
25 liability. *See id.*

26 ///

---

27  
28 <sup>3</sup> California Business and Professions Code § 17200 *et seq.*

1 Plaintiff's UCL allegations do not specify the basis for his  
2 claim, i.e., whether it is based on an unlawful, unfair, or  
3 fraudulent practice, let alone state, with reasonable  
4 particularity, the facts supporting the statutory elements of the  
5 violation. Second, to the extent Plaintiff asserts a UCL claim  
6 based on a violation of other law, his complaint fails to state a  
7 claim for a violation of RESPA, the RFDCPA, or any other law.  
8 Accordingly, to the extent the UCL claim is predicated on the  
9 violation of other law, it is insufficiently pled. Third, to the  
10 extent Plaintiff asserts a UCL claim that is based on or grounded  
11 in fraud, it must meet the requirements of Rule 9(b), which it does  
12 not. The complaint fails to specify what particular role each  
13 Defendant played in any alleged fraud. Plaintiff's UCL claim is  
14 DISMISSED, without prejudice.

15 **H. Plaintiff's RICO Claims**

16 Plaintiff's RICO claims are based on Defendants' alleged  
17 scheme to wrongfully foreclose on Plaintiff's property. (Complaint  
18 at 30-35). To the extent that Plaintiff's RICO claims rely on the  
19 predicate act of initiating a foreclosure without having possession  
20 of the Note, Plaintiff's claims are untenable. See, e.g.,  
21 *Castaneda*, 687 F. Supp. 2d at 1201 (E.D. Cal. 2009) ("Under  
22 California law, there is no requirement for the production of the  
23 original note to initiate a non-judicial foreclosure").  
24 Plaintiff's conclusory allegation that Defendants attempted to  
25 acquire the subject Property through "deception and fraud" is not  
26 supported by sufficient factual allegations. Plaintiff's RICO  
27 claims are dismissed, without prejudice.

28 ///

1 **I. Plaintiff's Fraud Claim**

2 Plaintiff's fraud claim fails to comply with the requirements  
3 of Federal Rule of Civil Procedure 9. Plaintiff attempts to simply  
4 incorporate the preceding 139 paragraphs of the complaint and  
5 asserts boilerplate language tracking the elements of fraud.  
6 (Complaint at 36). Plaintiff tacitly concedes that the complaint  
7 should be amended "to provide more specificity...including the  
8 actions of each defendant, the type of actions, and when those  
9 actions occurred." (Opposition at 11). Plaintiff's fraud claim is  
10 DISMISSED, without prejudice.

11 **J. Claims Based on California Civil Codes §§ 2923.5 and 2923.6**

12 California Civil Code section 2923.5 requires, before a notice  
13 of default may be filed, that a lender contact the borrower in  
14 person or by phone to "assess" the borrower's financial situation  
15 and "explore" options to prevent foreclosure. *Mabry v. Superior*  
16 *Court*, 185 Cal. App. 4th 208, 204 (Cal. Ct. App. 2010). The right  
17 of action provided by section 2923.5 is limited to obtaining a  
18 postponement of an impending foreclosure to permit the lender to  
19 comply with section 2923.5. As the complaint alleges that the  
20 Property has already been sold in a foreclosure sale, Plaintiff's  
21 claim under section 2923.5 is moot and is DISMISSED with prejudice.

22 Unlike section 2923.5, section 2923.6 does not *require* lenders  
23 to take any action. *Id.* at 211 n.9. Plaintiff has no cause of  
24 action under section 2923.6. Plaintiff's claim is DISMISSED with  
25 prejudice.

26 **ORDER**

27 \_\_\_\_\_ For the reasons stated, IT IS ORDERED:

- 28 1) Plaintiff's TILA claims are DISMISSED, with prejudice;

- 1 2) Plaintiff's RESPA claim is DISMISSED, without prejudice;  
2 3) Plaintiff's debt collection claims under California's  
3 RFDCPA and the federal FDCPA are DISMISSED, without prejudice;  
4 4) Plaintiff's claims for unlawful foreclosure, quiet title,  
5 to set aside trustee's sale, and for cancellation of the  
6 trustee's deed are DISMISSED, without prejudice;  
7 5) Plaintiff's slander of title claim is DISMISSED, with  
8 prejudice;  
9 6) Plaintiff's civil conspiracy claim is DISMISSED, without  
10 prejudice;  
11 7) Plaintiff's UCL claims are DISMISSED, without prejudice;  
12 8) Plaintiff's RICO claims are DISMISSED, without prejudice;  
13 9) Plaintiff's fraud claim is DISMISSED, without prejudice;  
14 10) Plaintiff's Claims Based on California Civil Codes §§  
15 2923.5 and 2923.6 are DISMISSED, with prejudice, and  
16 11) Plaintiff shall lodge a formal order consistent with this  
17 decision within five (5) days following electronic service of  
18 this decision by the clerk. Plaintiff shall file an amended  
19 complaint within fifteen (15) days of the filing of the order.  
20 Defendant shall file a response within fifteen (15) days of  
21 receipt of the amended complaint.

22  
23 IT IS SO ORDERED.

24 Dated: October 8, 2010

/s/ Oliver W. Wanger  
UNITED STATES DISTRICT JUDGE