



1 **BACKGROUND**

2 Plaintiff's first amended complaint (Doc. No. 26 [hereinafter "FAC"]) alleges as follows.

3 In January 2007, plaintiff's husband Francisco Arias took out a loan from Loan Center of  
4 California, Inc. ("LCC") in the amount of \$216,000. (FAC at 10.) Repayment of the loan was  
5 secured by a deed of trust recorded against real property located at 1121 East Ponderosa Avenue,  
6 Reedley, California, 93654. (*Id.* at 3, 10.) On January 19, 2007, LCC recorded the deed of trust  
7 and promissory note with the Fresno County Recorder's Office. (*Id.* at 10.) After the closing of  
8 the loan, plaintiff alleges LCC sold the debt to an unknown entity or entities. (*Id.* at 11.)

9 Mr. Arias passed away on April 16, 2007. (*Id.*) Following his death, plaintiff obtained a  
10 Spousal Order declaring the subject property as community property and that the property was to  
11 pass to plaintiff as the surviving spouse. (*Id.*) Plaintiff continued to make monthly mortgage  
12 payments, which were accepted by the then-mortgage servicer, until November 2009. (*Id.* at 11.)

13 In July 2009, an assignment of deed of trust was executed and recorded against plaintiff's  
14 property, which granted, assigned, and transferred the debt to defendant U.S. Bank Trust. (*Id.* at  
15 12.) Plaintiff disputes the validity of this assignment. (*Id.*) Thereafter, a notice of default was  
16 executed and recorded on plaintiff's property, which plaintiff alleges included false statements  
17 that defendant U.S. Bank Trust was the present beneficiary under the deed of trust. (*Id.* at 13.) In  
18 October 2009, a notice of trustee's sale was executed and recorded against plaintiff's property.  
19 (*Id.*) From 2011 to 2014, plaintiff received six notices of sale from U.S. Bank Trust threatening  
20 foreclosure. (*Id.*) During this time, plaintiff attempted but was unable to obtain a loan  
21 modification. (*Id.* at 11–12.) Plaintiff also attempted to assume the obligations of the loan, but  
22 was denied by defendant SPS in May 2017 for failing to submit the required documentation. (*Id.*  
23 at 12 & Ex. C.)

24 According to plaintiff, in September 2016, defendant SPS executed and subsequently  
25 recorded a substitution of trustee against plaintiff's property, attempting to substitute Quality  
26 Loan Service Corporation as the foreclosing trustee. (FAC at 13.) Plaintiff alleges this  
27 substitution was invalid because it was executed by defendant U.S. Bank Trust, whom plaintiff  
28 denies is the true beneficiary of the note. (*Id.* at 13–14.) The same month, defendants caused

1 another notice of default to be recorded against plaintiff's property. (*Id.* at 14.) Plaintiff claims  
2 that this notice of default falsely represents that U.S. Bank Trust is the beneficiary of the alleged  
3 debt. (*Id.*) Finally, in December 2016, a notice of trustee's sale was executed and recorded  
4 against plaintiff's property. (*Id.* at 15.)

5 Plaintiff alleges that neither of the defendants named in this lawsuit have authority to  
6 collect on the alleged debt, service the debt, or proceed with a non-judicial foreclosure, because  
7 they are "debt collectors" pursuant to the Fair Debt Collection Practices Act ("FDCPA"), and  
8 only a creditor may initiate a foreclosure proceeding. (*Id.* at 12, 14–15.)

9 This court previously granted defendants' motion to dismiss plaintiff's original complaint,  
10 but granted plaintiff leave to amend certain causes of action. (Doc. No. 25.) On January 9, 2018,  
11 plaintiff filed an amended complaint, alleging four causes of action: (1) violation of the FDCPA,  
12 15 U.S.C. § 1692f(6); (2) violation of California's Homeowner's Bill of Rights ("HBOR"); (3)  
13 cancellation of instruments; and (4) violation of California's Business & Professions Code §  
14 17200, *et seq.* (Doc. No. 26.) On January 24, 2018, defendants filed a motion to dismiss the first  
15 amended complaint and a request for judicial notice. (Doc. Nos. 27, 28.) Plaintiff filed  
16 oppositions to the motion to dismiss and the request for judicial notice on March 10, 2018. (Doc.  
17 Nos. 31, 32.) Defendants filed a reply in support of the motion to dismiss on March 19, 2018.  
18 (Doc. No. 34.)

### 19 LEGAL STANDARD

20 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal  
21 sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir.  
22 1983). A dismissal may be warranted where there is "the lack of a cognizable legal theory or the  
23 absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police*  
24 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff must allege "enough facts to state a claim to  
25 relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A  
26 claim is plausible on its face "when the plaintiff pleads factual content that allows the court to  
27 draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v.*  
28 *Iqbal*, 556 U.S. 662, 678 (2009).

1 In evaluating whether a complaint states a claim on which relief may be granted, the court  
2 accepts as true the allegations in the complaint and construes the allegations in the light most  
3 favorable to the plaintiff. *Hishon v. King & Spaulding*, 467 U.S. 69, 73 (1984); *Love v. United*  
4 *States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the court will not assume the truth of legal  
5 conclusions cast in the form of factual allegations. *United States ex rel. Chunie v. Ringrose*, 788  
6 F.2d 638, 643 n.2 (9th Cir. 1986). While Rule 8(a) does not require detailed factual allegations,  
7 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
8 statements, do not suffice.” *Iqbal*, 556 U.S. at 676. A complaint must do more than allege mere  
9 “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.”  
10 *Twombly*, 550 U.S. at 555.

11 In ruling on such a motion, the court is permitted to consider material which is properly  
12 submitted as part of the complaint, documents that are not physically attached to the complaint, if  
13 their authenticity is not contested and the plaintiff’s complaint necessarily relies on them, and  
14 matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 688–89 (9th Cir. 2001).

## 15 ANALYSIS

### 16 A. Judicial Notice

17 Before turning to defendants’ motion to dismiss, the court first considers defendants’  
18 request for judicial notice. (Doc. No. 28.) Defendants have requested judicial notice of the  
19 following documents: the Deed of Trust related to the subject property, recorded with the Fresno  
20 County Recorder on January 19, 2007 (Doc. No. 28, Ex. 1); an Assignment of Deed of Trust,  
21 recorded with the Fresno County Recorder on July 14, 2009 (Doc. No. 28, Ex. 2); a Substitution  
22 of Trustee, recorded with the Fresno County Recorder on September 13, 2016 (Doc. No. 28, Ex.  
23 3); a Notice of Default and Election to Sell, recorded with the Fresno County Recorder on  
24 September 13, 2016 (Doc. No. 28, Ex. 4); and a Notice of Trustee’s Sale, recorded with the  
25 Fresno County Recorder on December 19, 2016 (Doc. No. 28, Ex. 5). Plaintiff objects that the  
26 court may only take judicial notice of the existence of these documents, and not the truth of the  
27 contents therein. (Doc. No. 32.)

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1 Ordinarily, the court considers only the complaint and attached documents in deciding a  
2 motion to dismiss; however, the court may also take judicial notice of matters of public record  
3 without converting the motion into a motion for summary judgment. *Lee*, 250 F.3d 668, 689 (9th  
4 Cir. 2001). Pursuant to the Federal Rule of Evidence 201(b), a court may “judicially notice a fact  
5 that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s  
6 territorial jurisdiction; or (2) can be accurately and readily determined from sources whose  
7 accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Public records are properly  
8 the subject of judicial notice because the contents of such documents contain facts that are not  
9 subject to reasonable dispute, and the facts therein “can be accurately and readily determined  
10 from sources whose accuracy cannot reasonably be questioned.” *Id.*; see also *Intri-Plex Techs. v.*  
11 *Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007).

12 The exhibits offered by defendants for judicial notice are all matters of public record, duly  
13 recorded with the Fresno County Recorder. (*See* Doc. No. 28, Exs. 1–5.) The fact of their  
14 recording can be “accurately and readily determined” because the accuracy of the source of the  
15 records—the Fresno County Recorder—cannot reasonably be questioned. Fed. R. Evid. 201(b).  
16 Defendants’ request for judicial notice will be granted.

## 17 **B. Motion to Dismiss**

### 18 1. Standing

19 Defendants first argue that this action must be dismissed because plaintiff lacks prudential  
20 standing to bring the claims in this lawsuit. (Doc. No. 27 at 2–3.) Prudential standing “has come  
21 to encompass several judicially self-imposed limits on the exercise of federal jurisdiction.”  
22 *Pershing Park Villas Homeowners Ass’n v. United Pac. Ins. Co.*, 219 F.3d 895, 899 (9th Cir.  
23 2000) (internal citation and quotation marks omitted). Among those limits is the Rule 17(a)  
24 requirement that suits be maintained by the real party in interest. *Dunmore v. United States*, 358  
25 F.3d 1107, 1112 (9th Cir. 2004) (“Beyond this irreducible constitutional minimum of standing,  
26 we additionally require as a prudential matter that [plaintiff] assert his own legal interests as the  
27 real party in interest.”) (internal citation and quotation marks omitted). Because defendants  
28 challenge plaintiff’s prudential standing as the real party in interest, rather than her constitutional

1 standing, this motion is properly analyzed under Rule 12(b)(6). *See Doe v. Hamburg*, No. C-12-  
2 3412, 2013 WL 3783749, at \*5 (N.D. Cal. July 16, 2013) (“While constitutional standing is  
3 evaluated under [Rule] 12(b)(1), prudential standing is evaluated under Rule 12(b)(6).”).

4 Defendants note that plaintiff was not a borrower on the loan, and that although she  
5 received title to the property pursuant to a Court Spousal Order, she fails to allege that she was  
6 ordered liable for payments under the loan that encumbered the property. (Doc. No. 27 at 3.)  
7 Defendants argue that plaintiff therefore is not a “consumer” pursuant to 15 U.S.C. § 1692(a)(3),  
8 which defines a consumer as “any natural person obligated or allegedly obligated to pay any  
9 debt.” (*Id.* at 3.) Plaintiff’s opposition responds only that plaintiff has standing to file this  
10 lawsuit because she is the owner of the property. (Doc. No. 31 at 3.)

11 Defendants fail to address why plaintiff, as a successor in interest to the property, does not  
12 have standing to challenge a foreclosure of that property. *See Ward v. Wells Fargo Home*  
13 *Mortgage, Inc.*, No. 14-cv-00565 NC, 2014 WL 3885836, at \*3 (N.D. Cal. Aug. 7, 2014)  
14 (holding that plaintiff could bring an action on behalf of deceased mortgagor against mortgagee  
15 “if she is the personal representative of [the] estate or [decedent’s] successor in interest.”). The  
16 cases defendants rely on to suggest otherwise are inapposite. In *Santiago v. Bismark Mortgage*  
17 *Co., LLC*, the court dismissed claims brought by the girlfriend of the mortgagor because she “was  
18 not a party to the mortgage loan, and did not receive [the mortgagee’s] collection notice.” No.  
19 10-00467 SOM/KSC, 2011 U.S. Dist. LEXIS 22693, at \*13–14 (D. Haw. Mar. 4, 2011). The  
20 only other case defendants cite is *Clingman v. Somy*, in which the court dismissed claims brought  
21 by the joint tenant plaintiff because “she is not on the note and the BAC defendants are not  
22 collecting a debt against her.” No. 2:10-cv-1834 JCM (LRL), 2011 U.S. Dist. LEXIS 10756, at  
23 \*12–13 (D. Nev. Feb. 3, 2011). Although plaintiff here does not dispute that she was not a party  
24 to the loan, she alleges that defendants have attempted to collect the debt against her, by sending  
25 her monthly mortgage statements, among other written communications. (FAC at ¶ 10.)  
26 Moreover, in neither case cited by defendants was the party to the mortgage loan a deceased  
27 spouse of the plaintiff, and in neither case was the plaintiff the sole owner of the property at issue.  
28 This case thus presents facts readily distinguishable from those of *Santiago* and *Clingman*.

1           Liberally construing plaintiff’s complaint as is required by the court at this stage, and  
2 accepting all factual allegations as true, the court finds that plaintiff’s legal interest in the subject  
3 property gives her standing to challenge the foreclosure in question. *See Ward*, 2014 WL  
4 3885836, at \*3. The court therefore denies defendants’ motion to dismiss based upon plaintiff’s  
5 alleged lack of prudential standing.

6           2. Violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692f(6)

7           The court now turns to the sufficiency of the allegations in plaintiff’s first amended  
8 complaint. Plaintiff’s first cause of action is under § 1692f(6) of the FDCPA. (FAC at ¶¶ 1–18.)  
9 Section 1692f(6) prohibits:

10                   [t]aking or threatening to take any *nonjudicial action* to effect  
11                   dispossession or disablement of property if—(A) there is no present  
12                   right to possession of the property claimed as collateral through an  
13                   enforceable security interest; (B) there is no present intention to  
14                   take possession of the property; or (C) the property is exempt by  
15                   law from such dispossession or disablement. (emphasis added).

14           The FAC alleges that defendants have violated § 1692f(6) of the FDCPA because “they  
15 have no present right to possession of the Property claimed as collateral through an enforceable  
16 security interest and there is no present intention to take possession of the property.” (FAC at ¶  
17 3.) The FAC further alleges that defendants are debt collectors pursuant to the FDCPA and are  
18 “using unfair or unconscionable means to collect or attempt to collect a debt.” (*Id.* at ¶ 4.)  
19 Plaintiff’s opposition to the pending motion to dismiss offers no further facts: it simply states that  
20 “[t]he foreclosure documents were created and publicly recorded in violation of 15 U.S.C. §  
21 1692j(a)(b) and was compiled and designed in order to collect payment from an illegal sale of the  
22 Plaintiff’s personal private Property in violation of 15 U.S.C. § 1692f(6).” (Doc. No. 31 at 9.)

23           Plaintiff’s allegations are wholly conclusory. In light of the judicially noticed documents,  
24 and plaintiff’s failure to provide any factual allegations indicating that defendants lack the right to  
25 possess the property or the present intention to possess the property, plaintiff’s cause of action  
26 brought under § 1692f(6) will be dismissed.

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1                   3. Violation of California Homeowner’s Bill of Rights

2                   Plaintiff’s second cause of action challenges defendants’ legal authority to foreclose on  
3 the property under the California Homeowner’s Bill of Rights, and specifically California Civil  
4 Code §§ 2924.17 and 2924(a)(6). (FAC at ¶¶ 19–25.) Section 2924.17 requires that documents  
5 filed with respect to a foreclosure proceeding “shall be accurate and complete and supported by  
6 competent and reliable evidence.” Cal. Civ. Code § 2924.17(a). Section 2924(a)(6) requires that:

7                               No entity shall record or cause a notice of default to be recorded or  
8 otherwise initiate the foreclosure process unless it is the holder of  
9 the beneficial interest under the mortgage or deed of trust, the  
10 original trustee or the substituted trustee under the deed of trust, or  
11 the designated agent of the holder of the beneficial interest. No  
12 agent of the holder of the beneficial interest under the mortgage or  
13 deed of trust, original trustee or substituted trustee under the deed  
14 of trust may record a notice of default or otherwise commence the  
15 foreclosure process except when acting within the scope of  
16 authority designated by the holder of the beneficial interest.

13                   Plaintiff alleges that defendants have violated § 2924.17 because they “failed to provide  
14 competent and relevant support to their authorization to proceed with a non-judicial action against  
15 Plaintiff’s Property as debt collectors.” (FAC at ¶ 21.) Plaintiff also alleges that “[d]efendants  
16 are not creditors with the power to enforce the power of sale contained in a DOT . . . [and] have  
17 failed to provide an adequate chain of title that would demonstrate their authority to proceed with  
18 a non-judicial foreclosure.” (FAC at ¶¶ 22–23.)

19                   Once again, plaintiff cannot proceed on this claim based upon vague and conclusory  
20 allegations. Considering the judicially-noticed documents, which plaintiff has made no credible  
21 attempt to refute, and the complete lack of factual allegations in support of this claim, the court  
22 will dismiss plaintiff’s cause of action under §§ 2924.17 and 2924(a)(6).

23                   4. Cancellation of Instruments

24                   Plaintiff’s third cause of action is for cancellation of instruments. (FAC at ¶¶ 26–30.)  
25 California Civil Code § 3412 provides for the cancellation of a written instrument when there is  
26 “reasonable apprehension that if left outstanding it may cause serious injury to a person against  
27 whom it is void or voidable.” Cal. Civil Code § 3412. Plaintiff requests that the court order  
28 defendants to produce the Deed of Trust and other related documents so that they may be

1 canceled or declared void because they are fraudulent. (FAC at ¶¶ 27, 30.)

2 A request for the cancellation of an instrument is an equitable remedy that depends upon a  
3 substantive basis for liability. *See Yazdanpanah v. Sacramento Valley Mortg. Grp.*, No. C 09-  
4 02024 SBA, 2009 WL 4573381, at \*6 (N.D. Cal. Dec. 1, 2009) (“[T]he request to cancel [a  
5 written instrument] is a request for a remedy, not a cause of action or claim.”); *see also Lawson v.*  
6 *CitiCorp Trust Bank, FSB*, No. 2:11-cv-01163 KJM KJN PS, 2011 WL 3439223, at \*7 (E.D. Cal.  
7 Aug. 5, 2011) (concluding that “cancellation of an instrument is an equitable remedy” and listing  
8 cases holding the same). Because plaintiff presents no other viable claims for relief, she  
9 necessarily fails to assert a claim for cancellation of instruments. The court will dismiss this  
10 cause of action.

11 5. Violation of California Business and Professions Code § 17200, et seq.

12 Plaintiff’s fourth and final cause of action is brought under California’s Unfair  
13 Competition Law, Business and Professions Code § 17200 (the “UCL”). (FAC at ¶¶ 31–37.)  
14 Under the UCL, unfair competition includes “any unlawful, unfair, or fraudulent business act or  
15 practice.” Cal Bus. & Prof. Code § 17200. To state a cause of action under the UCL, “a plaintiff  
16 must allege facts sufficient to show a violation of some underlying law.” *Dougherty v. Bank of*  
17 *Am., N.A.*, 177 F. Supp. 3d 1230, 1251 (E.D. Cal. 2016) (citing *People v. McKale*, 25 Cal.3d 626,  
18 635 (1979)).

19 In her UCL cause of action, plaintiff describes a series of allegedly wrongful acts by  
20 defendants, including but not limited to: assessing improper or excessive fees; improperly  
21 characterizing customers’ accounts as being in default or delinquent status to generate  
22 unwarranted fees; instituting improper or premature foreclosure proceedings to generate  
23 unwarranted fees; mishandling borrowers’ documents resulting in fraudulent defaults and  
24 foreclosures; and executing, manufacturing, creating and recording false, fraudulent, forged and  
25 misleading deeds, assignments, notice of sale/default documents. (FAC at ¶ 34.) Aside from the  
26 additional allegation that defendants “fail[ed] to disclose the principal for which documents were  
27 being executed and recorded in violation of *Cal. Civ. Code section 1095*,” (*id.*), plaintiff’s  
28 allegations are otherwise identical to those alleged in plaintiff’s original complaint. Beyond

1 conclusory statements, however, the FAC alleges no relevant facts to support an inference that  
2 any of these alleged acts constitute unlawful, unfair, or fraudulent business practices under the  
3 UCL.

4 In addition, to the extent plaintiff's UCL cause of action is based on fraudulent acts, she  
5 "must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P.  
6 9(b). Such allegations must describe facts such as the time, place, persons, statements and  
7 explanations of why allegedly misleading statements are misleading. *In re GlenFed, Inc. Sec.*  
8 *Litig.*, 42 F.3d 1541, 1547 n.7 (9th Cir. 1994); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d  
9 1097, 1106 (9th Cir. 2003); *Fecht v. Price Co.*, 70 F.3d 1078, 1082 (9th Cir. 1995). Here,  
10 plaintiff has failed to provide any specificity regarding any element of fraud.

11 Finally, "[a] UCL cause of action cannot be maintained if other causes of action based on  
12 the same factual allegations fail." *Palmer v. MTC Financial, Inc.*, No. 1:17-cv-00043-DAD-  
13 SKO, 2017 WL 2311680, at \*11 (E.D. Cal. May 26, 2017). As explained above, plaintiff has  
14 failed to state any other cognizable claim. Because plaintiff's UCL cause of action relies on her  
15 other causes of action, all of which fail, the court must also dismiss plaintiff's UCL cause of  
16 action.

### 17 **C. Leave to Amend**

18 The undersigned has considered whether plaintiff may further amend her complaint to  
19 allege sufficient facts to state a claim for each of her causes of action. "Valid reasons for denying  
20 leave to amend include undue delay, bad faith, prejudice, and futility." *California Architectural*  
21 *Bldg. Prod. v. Franciscan Ceramics*, 818 F.2d 1466, 1472 (9th Cir. 1988); *see also Klamath-Lake*  
22 *Pharm. Ass'n v. Klamath Med. Serv. Bureau*, 701 F.2d 1276, 1293 (9th Cir. 1983) (holding that  
23 while leave to amend should be freely given, the court does not have to allow futile amendments).

24 Here, the court previously dismissed claims against these defendants with leave to amend.  
25 Nonetheless, plaintiff has identified no new facts in the FAC that would give rise to cognizable  
26 claim against them. In the court's view, plaintiff has been unable to cure the deficiencies noted in  
27 the order dismissing her original complaint. Accordingly, the court concludes that granting  
28 further leave to amend in this case would be futile.

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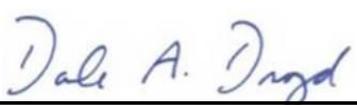
**CONCLUSION**

For the reasons set forth above:

1. Defendants' motion to dismiss the first amended complaint (Doc. No. 27) is granted in its entirety;
2. Plaintiff's first amended complaint (Doc. No. 26) is dismissed with prejudice; and
3. The Clerk of the Court is directed to close this case.

IT IS SO ORDERED.

Dated: March 28, 2018

  
UNITED STATES DISTRICT JUDGE