

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELIJA V. MADRID,

Case No. 09-cv-00731-JAM-GGH

Plaintiff,

ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS

v.

J.P.MORGAN CHASE BANK, N.A., a
National Banking Association,
CHASE HOME FINANCE, LLC;
TRIDENT FINANCIAL GROUP; NDEX
WEST, LLC; and DOES 1 through
100,

Defendants.

_____ /

This matter comes before the Court on Defendants JPMorgan Chase Bank, N.A. ("JPMorgan") and Chase Home Finance, LLC's ("Chase") (collectively "Defendants") Motion to Dismiss Plaintiff Elija Madrid's ("Plaintiff's") Second Amended Complaint ("SAC") for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff opposes the

1 motion.¹ Defendants also filed a Request for Judicial Notice
2 ("RJN") of six exhibits, and the Court takes judicial notice as
3 requested. For the reasons explained below, the Court grants
4 Defendants' Motion to Dismiss.
5

6
7 I. FACTUAL AND PROCEDURAL BACKGROUND

8 Plaintiff Elija V. Madrid purchased her home at 7808 Megan
9 Ann Court, Antelope, California ("Subject Property") in March
10 2006. In connection with the purchase of the subject property,
11 Plaintiff applied for a loan through Trident Financial Group and
12 received two adjustable rate loans from Defendant JP Morgan
13 Chase in March 2006. Defendant Chase Home Financing was assigned
14 as the beneficiary under the Deed of Trust in July 2008.
15

16 Plaintiff defaulted on the loan, and Defendants caused NDEX
17 West, LLC to record a Notice of Default with the Sacramento
18 County Recorder's Office on June 30, 2008. RJN, Exh. 4. A
19 trustee's sale was scheduled for October 22, 2008. RJN, Exh. 7.
20 The subject property was not sold at that time, and in March
21 2009, Plaintiff filed her original complaint in this court,
22 along with an ex parte motion for a temporary restraining order
23 and a preliminary injunction to block a future foreclosure sale
24 of the subject property. The temporary restraining order and the
25
26
27

28

¹ This motion was determined suitable for decision without oral
argument. E.D. Cal. L. R. 230(g).

1 preliminary injunction were denied by this court. Defendants
2 brought a motion to dismiss the original complaint, as well as a
3 request for judicial notice. Both filings were vacated upon
4 Plaintiff's filing of an amended complaint ("FAC"). Defendants
5 filed a motion to dismiss the FAC, which was granted in part and
6 denied in part. Plaintiff's SAC pleads amended versions of most
7 of the causes of action that were dismissed without prejudice.
8 Defendants now seek dismissal with prejudice of those claims
9 that were previously dismissed with leave to amend.
10
11

12 II. OPINION

13 A. Legal Standard

14 A party may move to dismiss an action for failure to state
15 a claim upon which relief can be granted pursuant to Federal
16 Rule of Civil Procedure 12(b)(6). In considering a motion to
17 dismiss, the court must accept the allegations in the complaint
18 as true and draw all reasonable inferences in favor of the
19 plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974),
20 overruled on other grounds by Davis v. Scherer, 468 U.S. 183
21 (1984); Cruz v. Beto, 405 U.S. 319, 322 (1972). Assertions that
22 are mere "legal conclusions," however, are not entitled to the
23 assumption of truth. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50
24 (2009) (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
25 (2007)). To survive a motion to dismiss, a plaintiff needs to
26
27
28

1 plead "enough facts to state a claim to relief that is plausible
2 on its face." Twombly, 550 U.S. at 570. Dismissal is appropriate
3 where the plaintiff fails to state a claim supportable by a
4 cognizable legal theory. Balistreri v. Pacifica Police Dep't,
5 901 F.2d 696, 699 (9th Cir. 1990).
6

7 Upon granting a motion to dismiss, a court has discretion
8 to allow leave to amend the complaint pursuant to Federal Rule
9 of Civil Procedure 15(a). "Absent prejudice, or a strong showing
10 of any [other relevant] factor[], there exists a presumption
11 under Rule 15(a) in favor of granting leave to amend." Eminence
12 Capital, L.L.C. v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir.
13 2002). "Dismissal with prejudice and without leave to amend is
14 not appropriate unless it is clear . . . that the complaint
15 could not be saved by amendment." Id. Accordingly, a court
16 should grant leave to amend the Complaint unless the futility of
17 amendment warrants dismissing a claim with prejudice.
18
19

20 In general, a court may not consider materials other than
21 the facts alleged in the complaint when ruling on a motion to
22 dismiss. Anderson v. Angelone, 86 F.3d 932, 934 (9th Cir.
23 1996). The court may, however, consider additional materials if
24 the plaintiff has alleged their existence in the complaint and
25 their authenticity is not disputed. See Branch v. Tunnell, 14
26 F.3d 449, 454 (9th Cir. 1994), overruled on other grounds by
27 Galbraith v. County of Santa Clara, 307 F.3d 1119 (9th Cir.
28

1 2002).

2 Defendants request the Court take judicial notice of six
3 exhibits. Plaintiff does not challenge the authenticity of these
4 exhibits, all of which were referenced in Plaintiff's SAC.
5 Accordingly, the Court takes judicial notice as requested.
6

7
8 B. Amended Causes of Action

9 1. Breach of the Covenant of Good Faith and Fair Dealing

10 Plaintiff's SAC alleges the implied covenant of good
11 faith and fair dealing applies to Defendant JPMorgan through the
12 Note and Deed of Trust, requiring Defendant to "safeguard,
13 protect, or otherwise care for the assets and rights of
14 [Plaintiff]." SAC ¶ 74. Plaintiff further alleges that
15 Defendant JPMorgan's acts of pursuing foreclosure and "fail[ing]
16 to cure insufficient disclosure . . . at or before closing . .
17 . ." constituted a breach. Id. at ¶ 77. Additionally, Plaintiff
18 argues that she may be deprived of the opportunity to take
19 advantage of loan modification incentives in the future because
20 of her financial state, which she attributes to JPMorgan and the
21 interest rate of her loan. Plaintiff also names Defendant Chase
22 in the caption of this cause of action, but does not
23 specifically name Defendant Chase in any of the paragraphs
24 substantiating Plaintiff's claims.
25
26
27
28

1 Under California law, every contract "imposes upon each
2 party a duty of good faith and fair dealing in its performance
3 and its enforcement." McClain v. Octagon Plaza, L.L.C., 159
4 Cal.App.4th 784, 798, 71 Cal.Rptr.3d 885 (2008). However, "[t]he
5 covenant . . . cannot be endowed with an existence independent
6 of its contractual underpinnings. It cannot impose substantive
7 duties or limits on the contracting parties beyond those
8 incorporated in the specific terms of their agreement." Guz v.
9 Bechtel Nat'l Inc., 24 Cal. 4th 317, 349-350, 100 Cal.Rptr.2d
10 352 (1992)(citations and quotations omitted). "[T]he implied
11 covenant of good faith is read into contracts in order to
12 protect the express covenants or promises of the contract, not
13 to protect some general public policy interest not directly tied
14 to the contract's purpose." Carma Dev., Inc. v. Marathon Dev.
15 Cal., 2 Cal. 4th 342, 373, 6 Cal.Rptr.2d 467 (1992)(citations
16 omitted).
17
18
19

20 As in the FAC, Plaintiff's claims in the SAC against
21 Defendant JPMorgan are deficient. Defendants correctly note that
22 Plaintiff's cause of action lacks allegations of how JPMorgan
23 harmed Plaintiff's rights under a contract or prevented
24 Plaintiff from receiving contract benefits. Simply alleging that
25 JPMorgan initiated foreclosure proceedings and Plaintiff might
26 not qualify for a loan modification in the future, is not enough
27
28

1 to state a claim for breach of the covenant of good faith and
2 fair dealing.

3 Defendants correctly point out that "[e]ntirely missing
4 from the SAC is any allegation indicating that Chase engaged in
5 any wrongdoing . . ." relating to a breach of the covenant of
6 good faith and fair dealing. (Doc # 43 at 4). Plaintiff's third
7 attempt to state a claim against Chase has failed, because there
8 are no facts allowing the asserted cause of action to be
9 "plausible on its face." See Twombly, 550 U.S. at 570. In her
10 Opposition, Plaintiff makes a general allegation that each
11 Defendant is working as an agent of the other Defendants, but
12 pleads no facts to support such a theory of agency. Plaintiff
13 also alleges that JPMorgan and Chase are "acting in concert"
14 because they are collectively represented. However, such general
15 allegations, without more, are not sufficient to maintain a
16 cause of action for breach of the covenant of good faith and
17 fair dealing against Chase. Accordingly, Plaintiff's claim
18 against Defendants for breach of the covenant of good faith and
19 fair dealing is dismissed with prejudice.
20
21
22
23

24 25 2. Fraud

26 Plaintiff's SAC contains a list of Defendants' actions
27 that allegedly constitute fraud. Plaintiff claims that there
28 were misleading terms within the loan documents provided by

1 Defendants, Defendants misstated the amount Plaintiff's loan was
2 in arrears, Defendants did not properly inform Plaintiff of her
3 legal rights, and Defendants did not provide Plaintiff with all
4 documents that required her signature, constituting fraud.
5

6 "In all averments of fraud or mistake, the circumstances
7 constituting fraud or mistake shall be stated with
8 particularity. Malice, intent, knowledge and other conditions of
9 mind of a person may be averred generally." Fed. R. Civ. Pro.
10 9(b). A claim of fraud must have the following elements: "(a) a
11 misrepresentation (false representation, concealment, or
12 nondisclosure); (b) knowledge of falsity (or 'scienter'); (c)
13 intent to defraud , i.e., to induce reliance; (d) justifiable
14 reliance; and (e) resulting damage." In re Estate of Young, 160
15 Cal. App. 4th 62, 79 (2008) (quoting Lazar v. Superior Court, 12
16 Cal. App. 4th 631, 638 (1996)) (internal quotation marks
17 omitted). The Ninth Circuit has "interpreted Rule 9(b) to mean
18 that the pleader must state the time, place and specific content
19 of the false representations as well as the identities of the
20 parties to the misrepresentation. Alan Neuman Productions, Inc.
21 v. Albright, 862 F. 2d 1388, 1393 (9th Cir. 1988).
22
23
24

25 Defendants correctly assert that the allegations in
26 Plaintiff's SAC do not meet the heightened pleading standard for
27 fraud through either misrepresentation or concealment.
28 Plaintiff's SAC is devoid of dates, times, names, or any

1 allegations of the content of the misrepresentations. Plaintiff
2 fails to provide anything beyond conclusory statements. The only
3 names alleged by Plaintiff in conjunction with the fraud claim
4 are Francis, an employee of Trident, and Theresa Carson, an
5 employee of NDEX. Plaintiff then attempts to attribute their
6 actions to JPMorgan and Chase, bringing numerous broad
7 allegations against "Defendants." When pleading fraud against
8 multiple defendants, Plaintiff must differentiate between
9 multiple defendants. "Rule 9(b) does not allow a complaint to
10 merely lump multiple defendants together but requires plaintiffs
11 to differentiate their allegations when suing more than one
12 defendant." Swartz v. KPMG LLP, 476 F. 3d 756, 764-65 (9th Cir.
13 2007).

14
15
16
17 Moreover, a requisite element of fraud is damages, and
18 Defendants note that Plaintiff has not alleged an amount of
19 damages, causing her claims of fraud to fail. In Nagy v. Nagy,
20 the court found that in order to state a claim for fraud, a
21 plaintiff must specifically allege the amount of the damages
22 purportedly suffered by Plaintiff. See 210 Cal.App.3d 1262 (Cal.
23 Ct. App. 1989) (sustaining demurrer to fraud claim where
24 complaint merely alleged that plaintiff suffered damages in "an
25 amount to be determined at the time of trial"). In Toscano v.
26 Ameriquest Mortgage Co., the Eastern District applied the
27 requirement from Nagy to a case involving an allegedly
28

1 problematic mortgage transaction, very similar to the case at
2 bar. See 2007 WL 3125023 (E.D. Cal. Oct. 24, 2007). Accordingly,
3 it is appropriate for Plaintiff to be required to plead all
4 aspects of her fraud claim with particularity, including an
5 amount of damages. Because Plaintiff has still not alleged a
6 specific amount of damages in her second amended complaint, her
7 fraud claim cannot survive Defendants' motion to dismiss, and it
8 is therefore dismissed with prejudice.
9
10

11 3. Quiet Title

12 Under California law, a claim for quiet title must be in a
13 verified complaint and include (1) a description of the property
14 that is the subject of the action, (2) the title of the
15 plaintiff as to which a determination under this chapter is
16 sought and the basis of the title, (3) the adverse claims to the
17 title of the plaintiff against which a determination is sought
18 (4) the date as of which the determination is sought, and (5) a
19 prayer for the determination of the title of the plaintiff
20 against the adverse claims. Cal Civ. Proc. Code §761.020.

21 Plaintiff amended the FAC to state that she seeks a
22 determination of her title to the subject property as of October
23 28, 2009.
24

25 However, a party cannot quiet title until the debt has been
26 discharged. "The purpose of a quiet title action is to establish
27
28

1 one's title against adverse claims to real property. A basic
2 requirement of an action to quiet title is an allegation that
3 plaintiffs are the rightful owners of the proper, i.e., that
4 they have satisfied their obligations under the Deed of Trust. A
5 mortgagor cannot quiet his title against the mortgagee without
6 paying the debt secured. As plaintiff concedes she has not paid
7 the debt secured by the mortgage, she cannot sustain a quiet
8 title action." Santos v. Countrywide Home Loans, 2009 WL
9 3756337, at *4 (E.D. Cal. Nov. 6, 2009).

10
11
12 Defendants argue that JPMorgan does not have an adverse
13 claim to the title at issue, and therefore cannot be named in
14 this cause of action as a matter of law. They also argue that
15 Plaintiff is required to allege tender in order to state a claim
16 for quiet title against Chase.

17
18 Plaintiff argues that the Court did not indicate that
19 tender was required in its previous Opinion regarding the FAC.
20 However, the Court notes that Defendants did not advance the
21 tender argument in their previous motion to dismiss the FAC.
22 Thus, the Court did not reach out and make the argument for
23 Defendants, instead dismissing the quiet title claim based on
24 Defendants' argument that the FAC failed to plead all the
25 elements required by California Civil Code §761.020. This does
26 not excuse Plaintiff from the requirement to properly plead a
27 cause of action for quiet title, particularly given that this is
28

1 now her second amended complaint. Defendants have raised the
2 tender argument, and they are correct that tender is required in
3 order to quiet title. See e.g. Distor v. U.S. Bank, 2009 WL
4 3429700, at *6 (N.D. Cal. October 22, 2009) (finding that
5 "Plaintiff has no basis to quiet title without first discharging
6 her debt, and she has not alleged that she has done so and is
7 therefore the rightful owner of the property.") Plaintiff has
8 amended her claim twice at this point, and still does not plead
9 tender or an offer of tender, a basic requirement for a quiet
10 title claim. Thus, the Court dismisses the Quiet Title claim,
11 with prejudice.
12
13

14 15 4. Unjust Enrichment

16 Plaintiff alleges Defendants unjustly retained "extra
17 interest on [Plaintiff's] loan attributable to yield spread
18 premium," constituting a cause of action for unjust enrichment,
19 and "even though [Plaintiff] is in default on [her] loan, the
20 cause of default can be attributed to yield spread premium
21 payments." SAC ¶¶ 111-13.
22
23

24 The elements of an unjust enrichment claim are the receipt
25 of a benefit and unjust retention of the benefit at the expense
26 of another. Lectrodryer v. SeoulBank, 77 Cal. App. 4th 723, 726
27 (2000).
28

1 Defendant correctly argues that Plaintiff fails to plead
2 facts sufficient to survive Defendants' motion to dismiss. No
3 facts in the SAC support that either Defendant received any
4 property from Plaintiff under circumstances that give rise to a
5 legal or equitable obligation to return such property. Plaintiff
6 contends that the "extra interest on the loan attributable to
7 Yield Spread Premium" was a "benefit" which was unjustly
8 retained. Pl.'s Opp. at pg. 8. However, Plaintiff fails to plead
9 or point to facts explaining why it was unjust for Defendants to
10 keep the yield spread premium or why Defendants were required to
11 refund the amount to Plaintiff. Merely stating it was "unjust"
12 will not allow the claim to move forward and withstand
13 Defendants' motion to dismiss. See Iqbal, 129 S.Ct. 1937, 1949-
14 50 (2009) (statements of mere "legal conclusions" cannot
15 withstand a motion to dismiss). Accordingly, Plaintiff's claim
16 for unjust enrichment is dismissed with prejudice.
17
18
19
20

21 5. Preliminary and Permanent Injunctive Relief

22 Plaintiff brings a cause of action for preliminary and
23 permanent injunctive relief to prohibit Defendants from
24 conducting a Trustee's sale of the subject property. Plaintiff's
25 claim for injunctive relief is grounded in her claim of fraud
26 against Defendants. Indeed, "[i]njunctive relief is a remedy
27 which must rely upon underlying claims." Hafiz v. Greenpoint
28

1 Mortgage Funding, Inc., 652 F.Supp.2d 1039 (N.D. Cal. 2009).

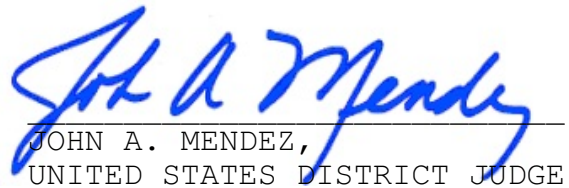
2 Because Plaintiff's fraud claim has been dismissed with
3 prejudice, the cause of action for injunctive relief cannot
4 stand. Accordingly, Plaintiff's claim for injunctive relief is
5 dismissed with prejudice.
6

7
8 III. ORDER

9 For the reasons set forth above, Defendants' motion to
10 dismiss is GRANTED, WITH PREJUDICE.
11

12
13 IT IS SO ORDERED.

14
15 Dated: March 25, 2010

16 
17 _____
18 JOHN A. MENDEZ,
19 UNITED STATES DISTRICT JUDGE
20
21
22
23
24
25
26
27
28