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

ERNEST ALTMANN,)
)
 Plaintiff,)
)
 v.)
)
 INDYMAC FEDERAL BANK; GREEN TREE)
)
 SERVICING, LLC; NATIONAL CITY)
)
 MORTGAGE, A DIVISION OF NATIONAL)
)
 CITY BANK; FIRST BANK dba FIRST)
)
 BANK MORTGAGE; QUALITY LOAN)
)
 SERVICE CORP.; BANK OF AMERICA;)
)
 MORTGAGE ELECTRONIC REGISTRATION)
)
 SYSTEMS, INC.; GEORGE ROJAS,)
)
 Defendants.)
)
 _____)

2:09-cv-02361-GEB-KJN
ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS AND DENYING
MOTION TO EXPUNGE LIS PENDENS*

Defendants Mortgage Electronic Systems, Inc. ("MERS") and Green Tree Servicing, LLC ("Green Tree") have each filed a motion under Federal Rules of Civil Procedure ("Rule") 12(b)(6) and 9(b) to dismiss the claims brought against them in Plaintiff's First Amended Complaint ("FAC"). (Docket Nos. 17 and 22.) MERS also filed a motion to expunge an unrecorded lis pendens on the property at issue in this

* This matter is deemed suitable for decision without oral argument. E.D. Cal. R. 230(g).

1 case, which concerns Plaintiff's mortgage loan. (Docket No. 18.)
2 Plaintiff filed a late opposition to MERS's motion to dismiss, but did
3 not file an opposition to either MERS's motion to expunge lis pendens
4 or Green Tree's motion to dismiss. For the reasons stated below, each
5 Defendants' motion to dismiss is GRANTED and the motion to expunge is
6 DENIED.

7 I. LEGAL STANDARD

8 A Rule 12(b)(6) motion "challenges a complaint's compliance
9 with . . . pleading requirements." Champlaine v. BAC Home Loans
10 Servicing, LP, No. S-09-1316 LKK/DAD, 2009 WL 3429622, at *1 (E.D.
11 Cal. Oct. 22, 2009). A pleading must contain "a short and plain
12 statement of the claim showing that the pleader is entitled to relief
13" Fed. R. Civ. P. 8(a)(2). The complaint must "give the
14 defendant fair notice of what the [plaintiff's] claim is and the
15 grounds upon which relief rests" Bell Atlantic Corp. v.
16 Twombly, 550 U.S. 544, 555 (2007). Further, "[a] pleading that offers
17 labels and conclusions or a formulaic recitation of the elements of a
18 cause of action will not do. Nor does a complaint suffice if it
19 tenders naked assertions devoid of further factual enhancement."
20 Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).

21 To avoid dismissal, the plaintiff must allege "only enough
22 facts to state a claim to relief that is plausible on its face."
23 Twombly, 550 U.S. at 547. "A claim has facial plausibility when the
24 plaintiff pleads factual content that allows the court to draw the
25 reasonable inference that the defendant is liable for the misconduct
26 alleged." Iqbal, 129 S. Ct. at 1949. Plausibility, however, requires
27 more than "a sheer possibility that a defendant has acted unlawfully."
28 Id. "When a complaint pleads facts that are merely consistent with a

1 defendant's liability, it stops short of the line between possibility
2 and plausibility of entitlement to relief." Id. (quotations and
3 citation omitted).

4 In evaluating a dismissal motion under Rule 12(b)(6), the
5 court "accept[s] as true all facts alleged in the complaint, and
6 draw[s] all reasonable inferences in favor of the plaintiff." Al-Kidd
7 v. Ashcroft, 580 F.3d 949, 956 (9th Cir. 2009). However, neither
8 conclusory statements nor legal conclusions are entitled to a
9 presumption of truth. See Iqbal, 129 S. Ct. at 1949-50.

10 II. FACTUAL ALLEGATIONS AND PLAINTIFF'S CLAIMS

11 In July 2006, Plaintiff Ernest Altmann sought to refinance
12 his residential property located at 6161 Cherokee Road, Stockton, in
13 San Joaquin County, California (the "Property"). (FAC ¶¶ 7, 29.)
14 Plaintiff met with Remien Mortgage Family, Inc. loan officers Robert
15 Remien ("Remien") and George Rojas ("Rojas"), who informed Plaintiff
16 they could get him the "best deal" and the "best interest rates"
17 available on the market. (Id. ¶ 30.) Plaintiff requested a 30-year
18 fixed rate loan with additional "cash" for home improvements. (Id. ¶
19 32.) Plaintiff alleges he qualified as a "prime" borrower but that
20 Rojas and Remien classified Plaintiff as "sub-prime" and failed to
21 "disclose other loan program options." (Id. ¶ 31.) Rojas and Remien
22 told Plaintiff the only loan available was an adjustable rate loan,
23 which had a "teaser rate of 1% and carried a prepayment penalty."
24 (Id. ¶ 32.) Rojas and Remien sold Plaintiff a "pick-a-pay" loan for
25 \$1,000,000 with an adjustable interest rate of 7%, which would adjust
26 to "almost 10%." (Id.) The loan included an option to pay at a 1%
27 rate, an option that would "negatively amortiz[e the] loan." (FAC ¶
28 33.) "Plaintiff was not told of the negative amortizing." (Id.)

1 “Immediately following the closing of the loan” Rojas and
2 Remien told Plaintiff they had “goofed” the loan and had been unable
3 to obtain “cash” for home improvements. (Id. ¶ 34.) They told
4 Plaintiff he “would have to again refinance.” (Id.) “Three weeks
5 later,” Rojas and Remien sold Plaintiff two additional loans, the
6 first for \$1,000,000 and the second for \$125,000. (Id. ¶ 35.)
7 Plaintiff alleges Rojas and Remien “received commissions and yield
8 spread premiums of over \$50,000 for the three transactions combined.”
9 (Id.) Rojas and Remien informed Plaintiff that if the loan ever
10 became unaffordable, they would refinance the loan. (FAC ¶ 39.)

11 “At the time of this loan, Plaintiff owned a construction
12 company and made approximately \$8,500 per month.” (Id. ¶ 36.)
13 Plaintiff alleges Rojas and Remien stated his monthly income as
14 \$35,000 on the first loan application and \$30,000 per month on the
15 second loan application. (Id.) Plaintiff alleges the “combined
16 payments were over \$5,600[] per month.” (Id. ¶ 37.)

17 Plaintiff was not given a copy of the loan documents prior
18 to closing as required, and at the time of closing, Plaintiff was
19 rushed to sign the documents. (Id. ¶ 41.) The loan documents were
20 never explained to Plaintiff, Plaintiff was never given an opportunity
21 to review them, and Plaintiff never received the required copies of
22 the notice of cancellation. (Id.)

23 Defendant Quality Loan Service Corporation (“Quality Loan”)
24 filed a Notice of Default on February 12, 2009, in San Joaquin County,
25 California. (FAC ¶ 48.) Quality Loan noticed the Trustee Sale of the
26 Property on July 21, 2009. (Id. ¶ 49.) Plaintiff sent a Qualified
27 Written Request (“QWR”) to Indymac Federal Bank (“Indymac”) and Green
28 Tree under the Real Estate Settlement Procedures Act (“RESPA”) on

1 April 7, 2009, in which Plaintiff demanded rescission of the loan
2 under the Truth in Lending Act ("TILA"). (FAC ¶ 50.) Neither party
3 has "properly respond[ed]" to the QWR. (Id. ¶ 50.)

4 Plaintiff alleges the following five claims against Green
5 Tree: (1) violation of the California Rosenthal Act, Cal. Civil Code
6 §§ 1788 *et seq.*; (2) negligence; (3) violation of RESPA, 12 U.S.C. §§
7 2601, *et seq.*; (4) fraud; and (5) violation of the California Business
8 and Professions Code, Cal. Civ. Code §§ 17200. Plaintiff alleges the
9 following three claims against MERS: (1) negligence; (2) fraud; and
10 (3) violation of the California Business and Professions Code, Cal.
11 Civ. Code §§ 17200.

12 III. DISCUSSION

13 A. Plaintiff's Rosenthal Act Claim

14 Green Tree seeks dismissal of Plaintiff's claim for
15 violation of the California Rosenthal Act, arguing the FAC "does not
16 allege any facts beyond simply mimicking the statutory language,
17 violating Federal Rule of Civil Procedure 8(a)." (Green Tree Mot. to
18 Dismiss ("Mot.") 9:24-27.)

19 The Rosenthal Act serves to "prohibit debt collectors from
20 engaging in unfair or deceptive acts or practices in the collection of
21 consumer debts and to require debtors to act fairly in entering into
22 and honoring such debts." Arikat v. JP Morgan Chase & Co., 430 F.
23 Supp. 2d 1013, 1026 (N.D. Cal. 2006) (citing Cal. Civ. Code § 1788.1)
24 (emphasis omitted).

25 Plaintiff alleges "Defendants Indymac and Green Tree"
26 violated the Rosenthal Act by "sending deceptive letters and making
27 phone calls . . . demanding payment." (FAC ¶ 85.) Plaintiff also
28 alleges these defendants "made false reports to credit agencies about

1 Plaintiff's credit standing, falsely stat[ed] that a debt was owed,
2 and falsely state[ed] Plaintiff's payment history." (Id. ¶ 86.)
3 Plaintiff further alleges these defendants "increased the amount of
4 Plaintiff's mortgage debts by stating amounts not permitted by law or
5 contract, including but not limited to, excessive service fees,
6 attorneys' fees, and late charges." (Id. ¶ 87.)

7 Plaintiff's allegations, however, "are too vague to give
8 rise to any inference that a specific defendant has violated" the
9 Rosenthal Act. Arikat, 430 F. Supp. 2d at 1027 (dismissing as too
10 vague, Rosenthal Act claim that alleged all violations against all
11 defendants without specifying each defendant's individual conduct).
12 Plaintiff does not allege what specific conduct was committed by
13 either Indymac or Green Tree; nor does Plaintiff allege which entity
14 serviced which loan. Plaintiff's complaint is also deficient since it
15 fails to allege which sections of the Rosenthal Act Green Tree
16 violated. See Blanco v. Am. Home Mortg. Servicing, Inc., No. CIV
17 2:09-578 WBS DAD, 2009 WL 4674904, at *4 (E.D. Cal. Dec. 4, 2009)
18 (dismissing claim under Rosenthal Act, in part, for failing to
19 identify the provisions of the statute allegedly violated).
20 Therefore, Plaintiff's Rosenthal Act claim against Green Tree is
21 dismissed.

22 **B. Plaintiff's Negligence Claim**

23 Green Tree argues Plaintiff's negligence claim should be
24 dismissed since Plaintiff failed to plead any facts establishing that
25 Green Tree owed Plaintiff a duty of care which could give rise to a
26 negligence claim. (Mot. 7:10-8:21.) MERS also argues Plaintiff has
27 failed to plead facts establishing that MERS owed Plaintiff a duty of
28 care. (MERS's Mot. to Dismiss ("MERS Mot.") 6:24-9:27.) Plaintiff

1 responds to MERS's motion only, arguing "[a] general duty not to harm
2 another is owed to everyone." (Opp'n 14:7-8.)

3 "The elements of a cause of action for negligence are: the
4 defendant had a duty to use due care, . . . he or she breached that
5 duty, and . . . the breach was the proximate or legal cause of the
6 [plaintiffs'] resulting injur[ies]." Vasquez v. Residential Invs.,
7 Inc., 118 Cal. App. 4th 269, 278 (2004). "[T]he threshold element of
8 a cause of action for negligence is the existence of a duty to use due
9 care toward an interest of another Whether this essential
10 prerequisite has been satisfied in a particular case is a question of
11 law." Glenn K. Jackson, Inc. v. Roe, 273 F.3d 1192, 1196-97 (9th Cir.
12 2001) (quotations and citations omitted) (applying California law).

13 "Under California law, a lender does not owe a borrower or
14 third party any duties beyond those expressed in the loan agreement,
15 excepting those imposed due to special circumstances"
16 Resolution Trust Corp. v. BVS Dev., Inc., 42 F.3d 1206, 1214 (9th Cir.
17 1994) (citing Nymark v. Heart Fed. Sav. & Loan Ass'n, 231 Cal. App. 3d
18 1089, 1096 (1991)). "Special circumstances" giving rise to a duty of
19 care may exist when the "lender actively participates in the financed
20 enterprise beyond the domain of the usual money lender." Nymark v.
21 Heart Fed. Savings & Loan Ass'n, 231 Cal. App. 3d 1089, 1096 (1991).
22 This rule also applies to loan servicers. Azzini v. Countrywide Home
23 Loans, No. 09-cv-787 DMS (CAB), 2009 WL 5218042, at *2 (S.D. Cal. Dec.
24 29, 2009); Shepherd v. Am. Home Mortg. Services, Inc., No. Civ. 2:09-
25 1916 WBS GGH, 2009 WL 4505925, at *2 (E.D. Cal. Nov. 20, 2009).

26 Plaintiff alleges that MERS was the beneficiary and nominee
27 for the lender and the lender's successor and assigns. (FAC ¶ 46.)
28 Plaintiff also alleges:

1 MERS owed Plaintiff a duty to perform its
2 administrative function recording, maintaining and
3 transferring documents as it relates to Plaintiff's
4 loan under [the first Deed of Trust ("DOT1")] in a
5 manner not to cause Plaintiff harm. Defendant MERS
6 breached its duty to Plaintiff when it failed to
7 receive, maintain or transfer the negotiable
instrument related to Plaintiff's loan under DOT1,
8 communicated false information to others regarding
9 Plaintiff's loan, and authorized others to collect
10 payments on Plaintiff's mortgage and commence
11 foreclosure proceedings.

12 (Id. ¶ 97.) However, Plaintiff has failed to plead that "MERS, as
13 nominee of the lender," owed Plaintiff a duty of care since "Plaintiff
14 has not plead[ed] any action beyond the domain of a usual money lender
15 which would create such a duty." Sorenson v. Countrywide Home Loans,
16 Inc., No. 2:09-cv-01943-MCE-KJM, 2010 WL 308794, at *5 (E.D. Cal. Jan.
17 12, 2010) (dismissing negligence claim against MERS for failure to
18 allege a duty of care MERS owed to Plaintiff); see also Webb v.
19 Indymac Bank Home Loan Servicing, No. CIV 2:09-2380 WBS DAD, 2010 WL
20 121084, at *3 (E.D. Cal. Jan. 7, 2010) (dismissing identical
21 allegations against MERS for failing to cite "authority for the
22 proposition that MERS owed a duty to not cause plaintiff harm in its
23 capacity [as] the nominal beneficiary for the loan"); Pok v. American
24 Home Mortg. Servicing, Inc., No. CIV 2:09-2385 WBS EFB 2010 WL 476674,
25 at *4 (E.D. Cal. Feb. 3, 2010) (dismissing identical allegations
26 against MERS and holding that "[a]s the listed nominee and beneficiary
27 under the Deed of Trust, MERS had authority to assign its beneficial
28 interest to another party."). Therefore, MERS's motion to dismiss
Plaintiff's negligence claim is granted.

29 Plaintiff does not specifically allege what role Green Tree
30 had in the loan transaction; however, it appears Plaintiff alleges
31 Green Tree serviced one of Plaintiff's loans. Plaintiff alleges:

1 Defendants Indymac [and] Green Tree owed Plaintiff
2 a duty of care. Defendants Indymac and Green Tree
3 breached their duty of care to the Plaintiff when
4 they took payments to which they were not entitled,
5 charged fees they were not entitled to charge, and
6 wrongfully made or otherwise authorized negative
7 reporting of Plaintiff's creditworthiness to
8 various credit bureaus. Additionally, Indymac and
9 Green Tree had a statutory duty to Plaintiff to
10 properly respond to Plaintiff's Qualified Written
11 Request pursuant to 12 U.S.C. § 2605(e), and to
12 give Plaintiff notice of the transfer of the
13 servicing rights to their loan pursuant to 12
14 U.S.C. § 2605(c).

9 (FAC ¶ 95.) However, Plaintiff's negligence claim against Green Tree
10 fails because he has not alleged any conduct by Green Tree outside the
11 scope of its conventional role as a loan servicer. See Pok, 2010 WL
12 476674, at *4 (dismissing identical allegations and holding "loan
13 servicers do not owe a duty to the borrowers of the loan they
14 service"). Plaintiff, therefore, has not pled facts demonstrating
15 that Green Tree owed him a duty of care. See Azzini, 2009 WL 5218042,
16 at *2 (dismissing negligence claim against loan servicer). Further,
17 Plaintiff has not alleged which conduct was allegedly committed by
18 each loan servicer, and Green Tree "should not be forced to guess how
19 their conduct was allegedly negligent". Webb, 2010 WL 121084, at *3.
20 Therefore, Green Tree's motion to dismiss Plaintiff's negligence claim
21 is granted.

22 **C. Plaintiff's RESPA Claim**

23 Green Tree seeks dismissal of Plaintiff's RESPA claim,
24 arguing Plaintiff has "failed to adequately allege damages for any
25 supposed violation of the statute." (Mot. 10:9-10.)

26 Plaintiff alleges that Green Tree violated various
27 requirements imposed by section 2605 of RESPA. Specifically,
28 Plaintiff pleads while he "is not certain at this time exactly which

1 of Defendants was actually the servicer of [his] [l]oans at any given
2 time . . . [p]ursuant to 12 U.S.C. §§ 2605(b) and 2605(c), . . . Green
3 Tree had a statutory obligation to notify Plaintiff, within 15 days,
4 of the assignment, sale, or transfer of the servicing rights to
5 Plaintiff's loans." (FAC ¶ 102.) Plaintiff also alleges that Green
6 Tree "failed to provide Plaintiff notice of the assignment, sale, or
7 transfer of servicing rights to Plaintiff's [l]oans." (Id.)
8 Plaintiff further alleges "Indymac and Green Tree" violated section
9 2605(e)(2)-(3). (Id. 104, 106-108.)

10 Section 2605(f) imposes liability on loan servicers for
11 actual and statutory damages for failure to comply with section 2605.
12 12 U.S.C. § 2605(f). Specifically, section 2605(f) provides:

13 Whoever fails to comply with any provision of
14 [section 2605] shall be liable to the borrower for
15 each such failure to the following amounts
16 In the case of any action by an individual, an
17 amount equal to the sum of - (A) any actual damages
18 to the borrower as a result of the failure; and (B)
19 any additional damages, as the court may allow, in
20 the case of a pattern or practice of noncompliance
21 with the requirements of this section, in an amount
22 not to exceed \$1,000.

23 12 U.S.C. § 2605(f)(1)(A), (B).

24 Plaintiff does not allege Green Tree engaged in a "pattern
25 or practice of noncompliance" and therefore has not stated a claim for
26 statutory damages. See Lal v. Am. Home Servicing, Inc., No. 2:09-cv-
27 01585 MCE-DAD, --- F. Supp. 2d ---, 2010 WL 225524, at *4 (E.D. Cal.
28 Jan. 19, 2010) (stating that "[t]o recover statutory damages,
Plaintiffs must plead some pattern or practice of noncompliance with
RESPA."). Further, while section 2605(f)(1)(A) "does not explicitly
make a showing of damages part of the pleading standard, a number of
courts have read the statute as requiring a showing of pecuniary

1 damages in order to state a claim [for actual damages under section
2 2605 of RESPA]." Pok, 2010 WL 476674, at *5 (quoting Allen v. United
3 Fin. Mortg. Corp., 2009 WL 2984170, at *5 (N.D. Cal. Sept. 15, 2009)).
4 "[A]lleging a breach of RESPA duties alone does not state a claim
5 under RESPA. Plaintiff must, at a minimum, also allege that the
6 breach resulted in actual damages." Id. (quoting and citing
7 Hutchinson v. Del. Sav. Bank FSB, 410 F. Supp. 2d 374, 383 (D.N.J.
8 2006)); see also Lal, 2010 WL 225524 at *4 (finding that a plaintiff
9 alleging a RESPA claim under section 2605 must allege a loss related
10 to the RESPA violation); Allen, 660 F. Supp. 2d at 1097 (requiring
11 plaintiff to allege pecuniary loss to state a RESPA claim for actual
12 damages); Singh v. Washington Mut. Bank, No. C-09-2771 MMC, 2009 WL
13 2588885, at *5 (N.D. Cal. Aug. 19, 2009) (dismissing RESPA claim since
14 "plaintiffs have failed to allege they suffered any actual damages as
15 a result" of defendants' alleged RESPA violation). This pleading
16 requirement, however, is interpreted liberally. Yulaeva v. Greenpoint
17 Mortg. Funding, Inc., No. CIV S-09-1504 LKK/KJM, 2009 WL 2880393, at
18 *15 (E.D. Cal. Sept. 3, 2009). Nonetheless, "the loss alleged must be
19 related to the RESPA violation itself." Lal, 2010 WL 225524, at *4.
20 Further, "simply having to file suit [does not suffice] as a harm
21 warranting actual damages. If such were the case, every RESPA suit
22 would inherently have a claim for damages built in." Id.

23 Plaintiff merely alleges that as a result of Green Tree's
24 alleged RESPA violations, "[he] has suffered and continues to suffer
25 damages and costs of suit." (FAC ¶ 109.) "Even under a liberal
26 pleading standard for harm, this level of generality fails." Pok,
27 2010 WL 476674, at *5 (finding same allegation of harm insufficient to
28 state a section 2605 claim for actual damages); see also Lal, 2010 WL

1 225524, at *4 (stating that "simply having to file suit [does not]
2 suffice" to state a section 2605 claim for actual damages).
3 Accordingly, Green Tree's motion to dismiss Plaintiff's RESPA claim is
4 granted.

5 **D. Plaintiff's Fraud Claim**

6 Both Green Tree and MERS argue Plaintiff's fraud claims
7 should be dismissed because Plaintiff's FAC fails to comply with the
8 heightened pleading standard required by Rule 9(b). Plaintiff
9 counters MERS's motion, arguing that he has satisfied Rule 9(b)'s
10 requirements.

11 Under California law, the elements of a fraud claim are: (1)
12 misrepresentation (including, false representation, concealment, or
13 nondisclosure); (2) knowledge of falsity; (3) intent to induce
14 reliance; (4) justifiable reliance; and (5) resulting damage. Lazar
15 v. Superior Court, 12 Cal. 4th 631, 638 (1996). A claim for fraud in
16 federal court, however, must satisfy Rule 9(b)'s particularity
17 requirements. See Vess v. Ciba-Geigy Corp., 317 F.3d 1097, 1103 (9th
18 Cir. 2003). "A pleading is sufficient under Rule 9(b) if it
19 identifies the circumstances constituting fraud so that the defendant
20 can prepare an adequate answer from the allegations. The complaint
21 must specify such facts as the times, dates, places, benefits
22 received, and other details of the alleged fraudulent activity."
23 Neubronner v. Milken, 6 F.3d 666, 671-72 (9th Cir. 1993) (quotations
24 and citations omitted).

25 Plaintiff alleges "Green Tree misrepresented to Plaintiff
26 that Indymac and Green Tree ha[ve] the right to collect monies from
27 Plaintiff on their behalf or on behalf of others when Defendants
28

1 Indymac and Green Tree had no legal right to collect such monies.”

2 (FAC 125.) Plaintiff further alleges:

3 MERS misrepresented to Plaintiff on the DOT1 that
4 it is a qualified beneficiary with the ability to
5 assign or transfer the DOT1 and/or the Note and/or
6 substitute trustees under the DOT1. Further, . . .
7 MERS misrepresented that it followed the applicable
8 legal requirements to transfer the Note and DOT1 to
9 subsequent beneficiaries.

10 (FAC ¶ 126.)

11 Plaintiff’s fraud claims clearly fail to satisfy the
12 requirements of Rule 9(b). Although Plaintiff alleges Defendants
13 Rojas and Remien made false representations at the inception of
14 Plaintiff’s loan transactions, Plaintiff fails to adequately allege
15 how the moving defendants are responsible for those alleged
16 misrepresentations. Further, Plaintiff’s allegations do not include
17 the time, date, place, or benefits resulting from the moving
18 defendants’ allegedly fraudulent activity. Since Plaintiff’s fraud
19 claims against Green Tree and MERS fail to satisfy Rule 9(b), they are
20 dismissed.

21 **E. Plaintiff’s UCL Claim**

22 Lastly, both Green Tree and MERS argue Plaintiff’s claim
23 under California Business & Professions Code § 17200 *et seq.* (the
24 “UCL”) should be dismissed. Green Tree argues this claim is deficient
25 since it is premised upon Plaintiff’s other claims, none of which
26 state a viable claim. (Mot. 12:17-26.) MERS argues Plaintiff’s UCL
27 claim is vague and conclusory and does not give MERS fair notice of
28 the basis upon which it is being sued. (MERS Mot. 14:11-28.)
Plaintiff counters MERS’s motion only, arguing that his UCL claim is
sufficient since he has alleged “multiple violations . . . of specific
statutory and common law provisions” (Opp’n 21:20-22.)

1 The UCL "prohibits specific practices which the legislature
2 has determined constitute unfair trade practices." Cal-Tech Commc'ns.
3 Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 179 (1999)
4 (quotations and citations omitted). "[A]n action based on [the UCL]
5 to redress an unlawful business practice 'borrows' violations of other
6 laws and treats these violations . . . as unlawful practices,
7 independently actionable under section 17200 et seq. and subject to
8 the distinct remedies provided thereunder." Farmers Ins. Exch. v.
9 Superior Court, 2 Cal. 4th 377, 383 (1992) (quotations and citations
10 omitted). "A plaintiff alleging unfair business practices under [the
11 UCL] must state with reasonable particularity the facts supporting the
12 statutory elements of the violation." Khoury v. Maly's of California,
13 Inc., 14 Cal. App. 4th 612, 619 (1993).

14 Plaintiff alleges "Green Tree's violation of the Rosenthal
15 Act, RESPA, its negligence, fraud and illegal foreclosure activities,
16 as alleged herein, constitute unlawful, unfair, and/or fraudulent
17 business practices." (FAC ¶ 137.) Plaintiff also alleges "MERS['s]
18 negligence, fraud, and illegal foreclosure activities, as alleged
19 herein, constitute unlawful, unfair, and/or fraudulent business
20 practices." (Id. ¶ 139.) Further, Plaintiff alleges "[a]s a result
21 of Defendants' wrongful conduct, Plaintiff has suffered various
22 injuries according to proof at trial." (Id. ¶ 142.)

23 Plaintiff's UCL claims against Green Tree and MERS are
24 deficient. First, Plaintiff's claim is vague and conclusory and he
25 fails to allege supporting facts. Plaintiff has not identified a
26 specific practice of either Defendant that he contends is "unfair" or
27 "fraudulent." Plaintiff's allegations, therefore, lack the
28 "reasonable particularity" that is required to state a claim under the

1 UCL. Second, Plaintiff's UCL claim is entirely premised upon the
2 other claims he alleges in his complaint, all of which fall to state a
3 claim. Since none of his other claims are viable, by necessity, his
4 UCL claim must also fail. Therefore, Plaintiff's UCL claims against
5 Green Tree and MERS are dismissed.

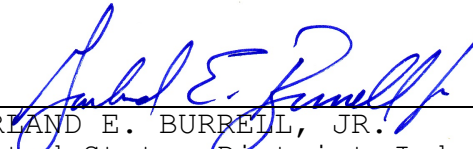
6 **IV. MOTION TO EXPUNGE LIS PENDENS**

7 MERS seeks to have expunged "an unrecorded copy of a Notice
8 of Pendency of Action" which Plaintiff "served by mail on One West
9 Bank, the current servicer of the first loan alleged by Plaintiff."
10 (Mot. to Expunge 1:4-6.) However, since MERS cites no authority
11 supporting its arguments that this *unrecorded* lis pendens can be
12 expunged, MERS's motion to expunge is denied. Accordingly, MERS's
13 motion to expunge is denied.

14 **V. CONCLUSION**

15 For the stated reasons, Green Tree and MERS's motions to
16 dismiss are GRANTED and Plaintiff's FAC is DISMISSED. Plaintiff,
17 however, is granted leave to amend the dismissed claims provided that
18 an amended complaint is filed within fourteen (14) days of the date on
19 which this order is filed. Further, MERS's motion to expunge is
20 DENIED.

21 Dated: May 7, 2010

22
23 
24 _____
GARLAND E. BURRELL, JR.
United States District Judge