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

PATRICK OSEI,

Case No. 2:09-cv-02534 JAM-GGH

Plaintiff,

ORDER: GRANTING DEFENDANT GMAC  
MORTGAGE'S MOTION TO DISMISS

v.

GMAC MORTGAGE; COUNTRYWIDE HOME  
LOANS, INC.; GREENPOINT  
MORTGAGE FUNDING, INC.;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.;  
PELLETIER FINANCE, INC., DBA  
DELTA MORTGAGE AND REAL ESTATE;  
JEFFREY ALAN PELLETIER; JEFFREY  
PAUL OLSON; JEFFREY BRYAN  
DELORA; BANK OF AMERICA, FKA  
COUNTRYWIDE HOME LOANS, INC.;  
ETS SERVICES, LLC; and DOES 1-  
20, inclusive,

Defendants.

\_\_\_\_\_ /

This matter comes before the Court on Defendant GMAC  
Mortgage's ("Defendant's" or "GMAC's") Motion to Dismiss (Doc.  
#33) Plaintiff Patrick Osei's ("Plaintiff's") First Amended

1 Complaint ("FAC") (Doc. #23) pursuant to Federal Rule of Civil  
2 Procedure 12(b)(6), and Defendant's Motion to Strike (Doc. #34)  
3 portions of the FAC pursuant to Federal Rule of Civil Procedure  
4 12(f). Plaintiff opposed the motions. (Doc. #35). For the  
5 reasons explained below, this Court GRANTS Defendant's Motion to  
6 Dismiss.<sup>1</sup>  
7  
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9 I. FACTUAL AND PROCEDURAL BACKGROUND

10 On January 25, 2007, Plaintiff entered into a loan  
11 agreement with Defendant Delta Mortgage and Real Estate  
12 ("Delta"). (FAC ¶ 37.) The loan was secured by the Deed of Trust  
13 to real property located at 5458 Tares Circle, Elk Grove,  
14 California ("the subject property"). (Id. ¶¶ 7, 37.) The Deed of  
15 Trust identified Marin Conveyancing Corporation as a trustee for  
16 the loan. (Id. ¶ 37.) Plaintiff claims Defendant Jeffrey Bryan  
17 Delora placed him into loan inappropriate for his financial  
18 situation by fraudulently overstating Plaintiff's income on the  
19 loan application. (Id. ¶¶ 29-34.) Plaintiff claims GMAC is a  
20 loan servicer and began demanding mortgage payments sometime  
21 after Plaintiff acquired the loan for the subject property. (Id.  
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26 <sup>1</sup> These motions were determined to be suitable for decision  
27 without oral argument. E.D. Cal. L.R. 230(g). The motions were  
28 originally set for hearing before Magistrate Judge Hollows on  
2/11/2010. Pursuant to the Clerk's Minute Order (Doc. #46), they  
were re-noticed for hearing before this Court on 4/21/2010.

1 ¶ 8.) Plaintiff also claims GMAC did not give him notice that it  
2 acquired servicing rights to Plaintiff's loan. (Id. ¶¶ 19, 39.)

3 On September 9, 2008, Defendant ETS Services, LLC ("ETS")  
4 filed a Notice of Default on Plaintiff's loan. (Id. ¶ 40.) On  
5 September 11, 2008, ETS recorded a Notice of Trustee's Sale  
6 ("Notice") of the subject property which identified ETS as the  
7 trustee under the Deed of Trust. (Id. ¶ 41.) On October 9, 2009  
8 a Substitution of Trustee was drafted for Defendant Mortgage  
9 Electronic Registration Systems, which assigned ETS as its  
10 successor. (Id. ¶ 42.) Plaintiff claims that GMAC is now  
11 attempting to obtain title to the subject property (Id. ¶ 46.)  
12  
13

14 Plaintiff alleges that on June 18, 2009, a Qualified  
15 Written Request ("QWR") was mailed to GMAC. (Id. ¶ 43.)  
16 Plaintiff claims that the QWR "properly identified the  
17 Plaintiff, identified the loan in question, a statement of  
18 reasons for Plaintiff's belief that the account was in error due  
19 to fraud at the inception of the loan, improper charges added to  
20 the loan, the improper increase in the principal balance of  
21 Plaintiff's Loan, and requested specific servicing related  
22 information from [Defendant]." (Id.) Plaintiff claims that  
23 Defendant failed to properly respond to the QWR. (Id.)  
24  
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26 Plaintiff filed this action alleging ten federal and state  
27 causes of action against numerous defendants. Specifically,  
28 Plaintiff brings the following causes of action against GMAC:

1 (1) violations of the Real Estate Settlement Procedures Act  
2 ("RESPA"); (2) violations of California's Rosenthal Fair Debt  
3 Collection Practices Act ("RFDCPA"); (3) negligence; (4) fraud;  
4 (5) violations of California Business and Professions Code; (6)  
5 and wrongful foreclosure. (Id. ¶¶ 67-92, 107-30, 152-60.)

6  
7 Defendant has filed two motions. First, Defendant seeks to  
8 dismiss Plaintiff's FAC for failure to state a claim. Second,  
9 Defendant seeks to strike paragraphs of the FAC pertaining to  
10 punitive damages for failure to allege facts sufficient to show  
11 that he is entitled to punitive damages as a matter of law.  
12 Plaintiff opposes Defendant's motions, and alternatively,  
13 requests that he be given leave to amend his FAC.  
14

## 15 16 II. OPINION

### 17 A. Legal Standard

#### 18 1. Motion to Dismiss

19  
20 A party may move to dismiss an action for failure to state  
21 a claim upon which relief can be granted. Fed. R. Civ. P.  
22 12(b)(6). In considering a motion to dismiss, the court must  
23 accept the allegations in the complaint as true and draw all  
24 reasonable inferences in favor of the plaintiff. Scheuer v.  
25 Rhodes, 416 U.S. 232, 236 (1974), overruled on other grounds by  
26 Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S.  
27 319, 322 (1972). Assertions that are mere "legal conclusions,"  
28

1 however, are not entitled to the assumption of truth. Ashcroft  
2 v. Iqbal, 129 S.Ct. 1937, 1949-50 (2009) (citing Bell Atl. Corp.  
3 v. Twombly, 550 U.S. 544, 555 (2007)). To survive a motion to  
4 dismiss, a plaintiff needs to plead "enough facts to state a  
5 claim to relief that is plausible on its face." Twombly, 550  
6 U.S. at 570. It is inappropriate to "assume that the [plaintiff]  
7 can prove facts that [he or she] has not alleged or that the  
8 defendants have violated...laws in ways that have not been  
9 alleged." Associated Gen. Contractors of Cal., Inc. v. Cal.  
10 State Council of Carpenters, 459 U.S. 519, 526 (1983). Dismissal  
11 is appropriate where the plaintiff fails to state a claim  
12 supportable by a cognizable legal theory. Balistreri v.  
13 Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

14  
15  
16 Upon granting a motion to dismiss, a court has discretion  
17 to allow leave to amend the complaint. See Fed. R. Civ. P.  
18 15(a). "Dismissal with prejudice and without leave to amend is  
19 not appropriate unless it is clear...that the complaint could  
20 not be saved by amendment." Eminence Capital, LLC v. Aspeon,  
21 Inc., 316 F.3d 1048, 1052 (9th Cir. 2002).

## 22 23 24 2. Motion to Strike

25  
26 A court may "strike from a pleading...any redundant,  
27 immaterial, impertinent, or scandalous matter." Fed. R. Civ. P.  
28 12(f). "[T]he function of a 12(f) motion to strike is to avoid

1 the expenditure of time and money that must arise from  
2 litigating spurious issues by dispensing with those issues prior  
3 to trial." Sidney-Vinsein v. A.H. Robins Co., 697 F.2d 880, 885  
4 (9th Cir. 1983). A court should not grant a motion to strike  
5 "unless the matter to be stricken clearly could have no possible  
6 bearing on the subject of the litigation." Platte Anchor Bolt,  
7 Inc. v. IHI, Inc., 352 F. Supp. 2d 1048, 1057 (N.D. Cal. 2004).  
8  
9

10 B. Federal Claim: RESPA

11 Plaintiff's fourth claim for relief alleges that Defendant  
12 violated various provisions of RESPA 12 U.S.C. § 2605 et seq.  
13 Specifically, Plaintiff alleges that Defendant violated the  
14 following sections: (1) § 2605(b) and (c) by failing to provide  
15 written notice within fifteen days of the assignment of  
16 servicing rights to Plaintiff's loan; (2) § 2605(e) (2) by  
17 failing to provide a proper response to Plaintiff's QWR; (3) §  
18 2605(e) (2) (A) by failing to make appropriate corrections to  
19 Plaintiff's account in response to the QWR and failing to  
20 provide Plaintiff notice of such corrections; (4) § 2605(e) (2)  
21 by refusing to cease collection efforts after receiving the QWR;  
22 and (5) § 2605(e) (3) by providing information to consumer  
23 reporting agencies regarding overdue payments allegedly owed by  
24 Plaintiff that were related to the QWR. (FAC ¶¶ 85-91).  
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1 "Section 2605 requires a loan servicer to provide  
2 disclosures relating to the assignment, sale, or transfer of  
3 loan servicing to a potential or actual borrower: (1) at the  
4 time of the loan application, and (2) at the time of transfer.  
5 12 U.S.C § 2605(b). The loan servicer also has a duty to respond  
6 to a borrower's inquiry or "qualified written request." 12  
7 U.S.C. § 2605(e). A qualified written request is a written  
8 correspondence that enables the servicer to identify the name  
9 and account of the borrower. 12 U.S.C. § 2605(e)(1). It also  
10 either includes a statement describing why the borrower believes  
11 that the account is in error or provides sufficient detail to  
12 the servicer regarding other information sought by the borrower.  
13 Id. The loan servicer is required to respond by making  
14 appropriate corrections to the borrower's account, if necessary  
15 and, after conducting an investigation, providing the borrower  
16 with a written clarification or explanation. 12 U.S.C. §  
17 2605(e)(2)." Keen v. Am. Home Mortgage Servicing, Inc., 664 F.  
18 Supp. 2d 1086, 1097 (E.D. Cal. 2009).

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22 Plaintiff alleges that he submitted a QWR to which  
23 Defendant failed to respond. (FAC ¶ 87.) However, Defendant  
24 contends that the FAC does not indicate to whom or where the QWR  
25 was sent. (MTD 5:21-22.) Plaintiff has alleged that, "[he] is  
26 not certain at this time exactly which of [the] Defendants was  
27 actually the servicer of the Loan at any given time." (FAC ¶  
28

1 85.) Plaintiff's inability to allege whether GMAC was the loan  
2 servicer at the time in question is fatal to his claim because  
3 "under RESPA § 2605, only a loan servicer has a duty to respond  
4 to a borrower's inquiries." Gonzalez v. First Franklin Loan  
5 Servs., No. 1:09-CV-00941, 2010 WL 144862, at \*12 (E.D. Cal.  
6 Jan. 11, 2010). Without alleging that Defendant was a loan  
7 servicer under RESPA during any relevant time, Plaintiff cannot  
8 show that Defendant owed any duty to respond to Plaintiff's  
9 alleged QWR. Moreover, Plaintiff's RESPA claims rest on whether  
10 Defendant was a servicer and had a duty to respond to the  
11 alleged QWR. As such, the remainder of Plaintiff's RESPA claims  
12 fail.  
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15 In addition to alleging that the Defendant was a servicer,  
16 Plaintiff's RESPA claim "must also allege actual harm to survive  
17 a motion to dismiss. Section 2605(f) imposes liability on  
18 servicers that violate RESPA and fail to make the required  
19 disclosures. 12 U.S.C. § 2605(f). Although this section does not  
20 explicitly make a showing of damages part of the pleading  
21 standard, a number of courts have read the statute as requiring  
22 a showing of pecuniary damages in order to state a claim." Lane  
23 v. Vitek Real Estate Indus. Group, No. 2:10-335, 2010 WL  
24 1956707, at \*7 (E.D. Cal. May 13, 2010) (citations omitted). For  
25 example, in Hutchinson v. Del. Sav. Bank FSB, 410 F. Supp. 2d  
26 374 (D. N.J. 2006), the court stated that "alleging a breach of  
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1 RESPA duties alone does not state a claim under RESPA. Plaintiff  
2 must, at a minimum, also allege that the breach resulted in  
3 actual damages." Id. at 383. "This pleading requirement has the  
4 effect of limiting the cause of action to circumstances in which  
5 plaintiffs can show that a failure to respond or give notice has  
6 caused them actual harm." Lane, 2010 WL 1956707, at \*7 (citation  
7 omitted). Here, Plaintiff alleges that he "has suffered and  
8 continues to suffer damages and costs of suit" (FAC ¶ 92), but  
9 has not offered any facts to support an inference that  
10 Defendant's failure to respond to his QWR resulted in pecuniary  
11 damages.  
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13  
14 Plaintiff's RESPA claim is insufficient as currently pled.  
15 Plaintiff has already amended his complaint once, and it is  
16 clear that further amendment would be futile. Accordingly,  
17 Defendant's motion to dismiss Plaintiff's RESPA claim is  
18 granted, with prejudice.  
19

## 20 21 C. State Law Claims

### 22 1. California's RFDCPA

23 Plaintiff's second claim for relief alleges that Defendant  
24 is a debt collector under California's RFDCPA, and that  
25 Defendant violated the RFDCPA by: (1) using unfair means to  
26 collect a debt; (2) making false reports about Plaintiff's  
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1 credit standing to credit reporting agencies; and (3) charging  
2 excessive fees not permitted by law or contract. (FAC ¶¶ 68-71.)

3 California's RFDCPA was enacted "to prohibit debt  
4 collectors from engaging in unfair or deceptive acts or  
5 practices in the collection of consumer debts." Cal. Civ. Code §  
6 1788.1(b). However, foreclosure does not constitute debt  
7 collection under the RFDCPA. See Keen v. Am. Home Mortgage  
8 Servicing, Inc., 664 F. Supp. 2d 1086, 1095 (E.D. Cal 2009);  
9 Izenberg v. ETS Servs. LLC, 589 F. Supp. 2d 1193, 1199 (C.D.  
10 Cal. 2008). Thus, any alleged conduct relating to foreclosure is  
11 excluded from the definition of debt collection under the  
12 RFDCPA. Here, Plaintiff's RFDCPA allegations against Defendant  
13 relate solely to Defendant's attempts to foreclose on the  
14 property. (See FAC ¶¶ 70-71.) Accordingly, Defendant's motion to  
15 dismiss Plaintiff's RFDCPA claim is granted, with prejudice.  
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## 20 2. Negligence

21 Plaintiff's third claim for relief alleges that Defendant  
22 owed a duty to the Plaintiff to exercise reasonable care in  
23 performing its agency duties for Plaintiff's best interest, that  
24 Defendant breached its duty to the Plaintiff when it directed  
25 Plaintiff into a loan for which he was not qualified, and that  
26 Defendant had a statutory duty to Plaintiff to properly respond  
27 to Plaintiff's QWR and provide notice of the transfer of the  
28

1 servicing rights to his loan. (FAC ¶¶ 75-79.) Defendant contends  
2 that it owed no legal duty to Plaintiff. (MTD 4:5-15.)

3 To state a cause of action for negligence, a plaintiff must  
4 allege: (1) the defendant has a legal duty to use due care; (2)  
5 the defendant breached that legal duty; and (3) the breach was  
6 the proximate cause of the resulting injury. Ladd v. County of  
7 San Mateo, 911 P.2d 496, 498 (Cal. 1996) (citation omitted).

8 "[T]he existence of a duty is a question of law for the court."

9  
10 Ky. Fried Chicken of Cal., Inc. v. Superior Court, 927 P.2d  
11 1260, 1263 (Cal. 1997). In the lending context, "financial  
12 institutions owe no duty of care to a borrower when the  
13 institution's involvement in the loan transaction does not  
14 exceed the scope of its conventional role as a mere lender of  
15 money." Nymark v. Heart Fed. Sav. & Loan Ass'n, 231 Cal. App. 3d  
16 1089, 1096 (1991). Furthermore, "loan servicers do not owe a  
17 duty to the borrowers of the loans they service." Pok v. Am.  
18 Home Mortgage Servicing, Inc., No. 2:09-2385, 2010 WL 476674, at  
19 \*4 (E.D. Cal. Feb 3, 2010); see also Watts v. Decision One  
20 Mortgage Co., No. 09-43 CV 0043, 2009 WL 2044595, at \*2 (S.D.  
21 Cal. July 13, 2009); Marks v. Ocwen Loan Servicing, No. 07-2133,  
22 2009 WL 975792, at \*7 (N.D. Cal. Apr. 10, 2009).

23  
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26 Plaintiff's negligence claim against Defendant fails to  
27 establish a claim upon which relief can be granted. Defendant is  
28 the alleged servicing company to the lender (FAC ¶ 8) and does

1 not owe a duty to Plaintiff. As such, without the required  
2 existence of a duty, Plaintiff has no claim for negligence  
3 against Defendant. Accordingly, Defendant's motion to dismiss  
4 Plaintiff's negligence claim is granted, with prejudice.  
5

### 6 3. Fraud

7  
8 Plaintiff's sixth claim for relief alleges that Defendant  
9 misrepresented that it had the right to collect loan payments  
10 from him (FAC ¶ 110), and that Defendant's "officers, directors  
11 and/or managing agents failed to adequately supervise, train and  
12 direct its employees, and employing [sic] them with conscious  
13 disregard for the safety of Plaintiff." (Id. ¶ 121.)  
14

15 Under California law, the elements of fraud are: (1) a  
16 misrepresentation; (2) knowledge of falsity; (3) intent to  
17 defraud; (4) justifiable reliance; and (5) resulting damage.  
18 Robinson Helicopter Co., Inc. v. Dana Corp., 102 P.3d 268, 274  
19 (Cal. 2004). A plaintiff "must state with particularity the  
20 circumstances constituting fraud." Fed. R. Civ. P. 9(b). Rule  
21 9(b) requires that the Plaintiff "set forth what is false or  
22 misleading about a statement, and why it is false," Decker v.  
23 GlenFed, Inc., 42 F.3d 1541, 1548 (9th Cir. 1994), as well as  
24 provide an account of the "time, place, and specific content of  
25 the false representations as well as the identities of the  
26 parties to the misrepresentation." Edwards v. Marin Park, Inc.,

1 356 F. 3d 1058, 1066 (9th Cir. 2004). A court may dismiss a  
2 fraud claim when its allegations fail to satisfy the heightened  
3 pleading requirements of Rule 9(b). Vess v. Ciba-Geigy Corp.  
4 USA, 317 F.3d 1097, 1107 (9th Cir. 2003).

5 Here, Plaintiff bases his claim on mere conclusory  
6 allegations and fails to include statements regarding the time,  
7 place, and content of these alleged fraudulent activities.  
8 Although Plaintiff alleges that Defendant misrepresented to  
9 Plaintiff that it had the right to collect on the mortgage,  
10 Plaintiff fails to adequately allege how the Defendant is  
11 responsible for the alleged wrongdoing. Having already amended  
12 his complaint once, Plaintiff again fails to allege facts  
13 sufficient to raise a fraud claim under Rule 9(b)'s heightened  
14 standard. Accordingly, Defendant's motion to dismiss Plaintiff's  
15 fraud claim is granted, with prejudice.  
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#### 20 4. Wrongful Foreclosure

21 Plaintiff's tenth claim for relief alleges that Defendant  
22 was not in possession of the Note and is not a beneficiary,  
23 assignee, or employee of the person or entity in possession of  
24 the Note, and therefore is not entitled to enforce the security  
25 interest on the subject property. (FAC ¶ 154.) Plaintiff further  
26 alleges that Defendant never acquired a right to enforce the  
27 Note and Deed of Trust due to defective transfers, and as a  
28

1 result, Defendant violated California Civil Code § 2923.5 by  
2 commencing foreclosure proceedings. (Id. ¶¶ 155-57.)

3 Defendant contends that "Plaintiff fails to allege that he  
4 tendered the amount of secured indebtedness." (MTD 7:28-8:1.)

5 "Under California law, the 'tender rule' requires that as a  
6 precondition to challenging a foreclosure sale, or any cause of  
7 action implicitly integrated into the sale, the borrower must  
8 make a valid and viable tender of payment of the secured debt."

9  
10 Montoya v. Countrywide Bank, F.S.B., No. C09-00641, 2009 WL  
11 1813973, at \*11 (N.D. Cal. June 25, 2009) (citations omitted).

12 "A valid and viable tender of payment of the indebtedness owing  
13 is essential to an action to cancel a voidable sale under a deed  
14 of trust." Karlsen v. Am. Sav. & Loan Ass'n, 92 Cal. Rptr. 851,  
15 854 (Ct. App. 1971) (citations omitted). "The overwhelming  
16 majority of California district courts utilize the Karlsen  
17 rationale in examining wrongful foreclosure claims." Keen v. Am.  
18 Home Mortgage Servicing, Inc., 664 F. Supp. 2d 1086, 1100 (E.D.  
19 Cal. 2009) (citations omitted).

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21  
22 Plaintiff argues that under Humboldt Sav. Bank v.  
23 McCleverty, 161 Cal. 285, 291 (1911), "a tender need not be made  
24 where it would be inequitable to do so," adding that "tender is  
25 not required when the owner's action attacks the validity of the  
26 underlying debt because the tender would constitute an  
27 affirmation of the debt." (Pl.'s Opp'n 13:22-14:2.) However,  
28

1 courts have held otherwise. See, e.g. Montoya, 2009 WL 1813973,  
2 at \*12 (dismissing plaintiff's wrongful foreclosure claim  
3 because plaintiff failed to allege that loan amount was  
4 tendered, despite plaintiff's claim that the loan was invalid);  
5 Williams v. Countrywide Home Loans, Inc., No. C 99-0242, 1999 WL  
6 740375, at \*2 (N.D. Cal. Sept. 20, 1999) (granting defendant  
7 loan servicer's motion for summary judgment on plaintiff's  
8 wrongful foreclosure claim because plaintiff failed to allege  
9 that loan amount was tendered, despite plaintiff's claim that  
10 the loan was invalid). Furthermore, Defendant rightfully  
11 contends that Plaintiff "fails to identify any allegations that  
12 would show it would be inequitable to require him to make an  
13 offer of tender." (Reply 7:4-6.) Thus, Plaintiff fails to  
14 adequately allege a cause of action for wrongful foreclosure.  
15  
16

17 Defendant further argues that Plaintiff's assertion that  
18 Defendant must possess the original note to validate the  
19 foreclosure sale is without merit. (MTD 8:2-3.) "[T]here does  
20 not appear to be any requirement under California law that the  
21 original note be produced in order to render the foreclosure  
22 proceedings valid." Farner v. Countrywide Home Loans, No.  
23 08cv2193, 2009 WL 189025, at \*2 (S.D. Cal. Jan. 26, 2009).  
24  
25

26 Additionally, "Section 2923.5 contains no language that  
27 indicates that any intent whatsoever to create a private right  
28 of action. As such, the Court concludes that section 2923.5 does

1 not contain such a right, and that amendment of the claim would  
2 be futile." Gaitan v. Mortgage Elec. Registration Sys., No. 09-  
3 1009, 2009 WL 3244729, at \*7 (C.D. Cal., Oct. 5, 2009); see also  
4 Yulaeva v. Greenpoint Mortgage Funding, Inc., No. S-09-1504,  
5 2009 WL 2880393, at \*11 (E.D. Cal. Sept. 03, 2009) ("Defendants  
6 also argue that section 2923.5 does not provide for a private  
7 right of action. Section 2923.5 does not explicitly provide such  
8 a right. Under California law, an implied right of action exists  
9 only where the legislature so intended. Moradi-Shalal v.  
10 Fireman's Fund Ins. Companies, 758 P.2d 58, 69 (Cal. 1988).").  
11 Accordingly, Defendant's motion to dismiss Plaintiff's wrongful  
12 foreclosure claim is granted, with prejudice.  
13  
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15  
16 5. California Business & Professions Code § 17200 et seq.

17 Plaintiff's seventh claim for relief alleges that  
18 Defendant's violations of RESPA and California's RFDCPA, and  
19 Defendant's alleged negligence, fraud, and wrongful foreclosure  
20 activities constitute "unlawful, unfair, and/or fraudulent  
21 business practices" in violation of California's Unfair  
22 Competition Law ("UCL"). (FAC ¶ 123.)  
23

24 The UCL prohibits "any unlawful, unfair or fraudulent  
25 business act or practice and unfair, deceptive, untrue or  
26 misleading advertising." Cal. Bus. & Prof. Code § 17200.  
27

28 "According to the California Supreme Court, the UCL 'borrows'



1 violations of other laws and treats them as unlawful practices  
2 independently actionable under the UCL." Vega v. JPMorgan Chase  
3 Bank, N.A., 654 F. Supp. 2d 1104, 1117 (E.D. Cal. 2009) (citing  
4 Farmers Ins. Exch. V. Superior Court, 826 P.2d 730, 734 (Cal.  
5 1992)). "As such, a 'defendant cannot be liable under § 17200  
6 for committing 'unlawful business practices' without having  
7 violated another law.'" Gonzalez v. First Franklin Loan Svcs.,  
8 No. 1:09-CV-00941, 2010 WL 144862, at \*15 (E.D. Cal. Jan. 11,  
9 2010) (quoting Ingles v. Westwood One Broadcasting Servs., Inc.,  
10 28 Cal. Rptr. 3d 933, 938 (Ct. App. 2005)).  
11

12 Plaintiff's failure to state any claim underlying unlawful,  
13 unfair, or fraudulent conduct is fatal to his UCL claim.  
14

15 Given that Plaintiff's RESPA, RFDCPA, negligence, fraud,  
16 and wrongful foreclosure claims fail, the UCL claim also fails.  
17 See Gonzalez, 2010 WL 144862, at \*16; Vega, 654 F. Supp. at  
18 1118. Defendant's motion to dismiss Plaintiff's UCL claim is  
19 granted, with prejudice.  
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1 D. Motion to Strike

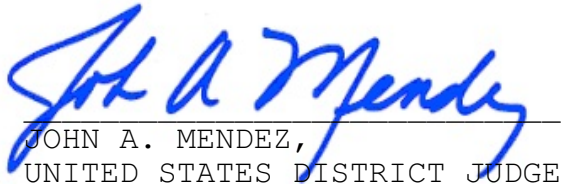
2 Given that the Court is dismissing the FAC in its entirety,  
3 with prejudice, the Motion to Strike is moot.  
4

5 III. ORDER

6 For the reasons stated above, Defendant's Motion to Dismiss  
7 is GRANTED, WITH PREJUDICE.  
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9 IT IS SO ORDERED.  
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11 Dated: June 18, 2010

12   
13 JOHN A. MENDEZ,  
14 UNITED STATES DISTRICT JUDGE  
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