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

JASBIR KAUR,)	
)	
Plaintiff,)	2:10-cv-00456-GEB-DAD
)	
v.)	<u>ORDER GRANTING MOTIONS TO</u>
)	<u>DISMISS</u> *
FIDELITY NATIONAL TITLE INSURANCE)	
CO.; WELLS FARGO BANK, N.A.; WELLS)	
FARGO HOME MORTGAGE; BANK OF)	
AMERICA, N.A.; MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS; FIRST)	
AMERICAN LOANSTAR TRUSTEE SERVICES,)	
)	
Defendants.)	
_____)	

On March 5, 2010, Defendant First American Loanstar Trustee Services filed a motion to dismiss Plaintiff's complaint for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6). Plaintiff's complaint concerns a residential mortgage transaction. Defendants Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, Bank of America, N.A., and Mortgage Electronic Systems also filed a motion to dismiss on March 9, 2010, for failure to state claim. Plaintiff has not opposed either motion.

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

1 On April 3, 2010, Plaintiff filed a Notice of Filing
2 Bankruptcy, in which Plaintiff's attorney declares, "Pursuant to U.S.
3 Bankruptcy Code 362(a), the filing of a Voluntary Petition effectuates
4 on a stay [sic] on the continuation of any judicial action that was
5 commenced before the filing of the Voluntary Petition." However,
6 United States Bankruptcy Code § 362(a) does not automatically stay
7 Plaintiff's case. See, e.g., 11 U.S.C. § 362(a) (stating that a
8 bankruptcy petition stays, inter alia, "a judicial . . . action or
9 proceeding *against* the debtor" (emphasis added)); see also In re
10 Schwartz, 954 F.2d 569, (9th Cir. 1992) ("[T]he automatic stay . . .
11 is designed to protect debtors from all collection efforts while they
12 attempt to regain their financial footing.").

13 The adequacy of a complaint is governed by Federal Rule of
14 Civil Procedure 8(a)(2), which requires "a short and plain statement
15 of the claim showing that the pleader is entitled to relief"
16 Dismissal for failure to satisfy Rule 8(a)(2) is proper even if the
17 factual elements of the claim are present, if the elements are
18 scattered throughout the complaint and are not organized into a "short
19 and plain statement of the claim." McHenry v. Renne, 84 F.3d 1172,
20 1178 (9th Cir. 1996) (stating that a complaint should set forth "who
21 is being sued, for what relief, and on what theory, with enough detail
22 to guide discovery"). Further, Rule 8(d) "requir[es] each averment of
23 a pleading to be simple, concise, and direct, . . . and is a basis for
24 dismissal independent of Rule 12(b)(6)." Id. (citing Nevijel v. North
25 Coast Life Ins. Co., 651 F.2d 671, 673 (9th Cir. 1981)). "The
26 propriety of dismissal for failure to comply with Rule 8 does not
27 depend on whether the complaint is wholly without merit." McHenry, 84
28 F.3d at 1179.

1 Even construed liberally, Plaintiff's complaint fails to
2 comply with Rule 8. Plaintiff alleges thirty-two claims, each
3 "Against All Defendants and Does 1-10,000," yet fails to allege each
4 particular Defendant's wrongful conduct. Instead, Plaintiff's
5 complaint lumps all defendants together without specifying why each is
6 being sued. See, e.g., Compl. ¶ 253 ("Defendants failed to conduct
7 proper investigations of disputed credit entries, in violation of the
8 Consumer Legal Remedies Act"); ¶ 263 ("The misconduct of defendants,
9 individually and severally, in engaging in false, misleading and
10 deceptive mailing and advertising techniques, and in originating,
11 servicing, collecting, or transferring the mortgage loan taken out by
12 plaintiff resulted in the defendants being unjustly enriched"); ¶ 271
13 ("defendants failed to act as reasonable prudent persons proximately
14 resulting in harm to plaintiff"); ¶ 279 ("Defendants negligently
15 inflicted severe emotional distress upon plaintiff proximately
16 resulting in harm suffered by plaintiff"). Further, it is unclear
17 whether Plaintiff alleges any claims against Bank of America. Bank of
18 America is listed in the caption of Plaintiff's complaint, and all
19 claims are asserted against "All Defendants," yet nothing else is said
20 about Bank of America. Therefore, Plaintiff's complaint fails to set
21 forth "who is being sued, for what relief, and on what theory, with
22 enough detail to guide discovery," and does not satisfy the notice
23 requirements of Rule 8(a)(2). McHenry, 84 F.3d at 1178.

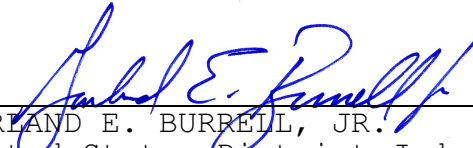
24 Each defendant's Rule 12(b)(6) motion tests the legal
25 sufficiency of a complaint. Plaintiff's factual allegations "must be
26 enough to raise the right to relief above the speculative level."
27 Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007). Plaintiff
28 must allege "enough facts to state a claim to relief that is plausible

1 on its face.” Id. at 570. “Determining whether a complaint states a
2 plausible claim for relief” is “a context-specific task that requires
3 the reviewing court to draw on its judicial experience and common
4 sense.” Ashcroft v. Iqbal, --- U.S. ----, 129 S.Ct. 1937, 1950,
5 (2009). “But where the well-pleaded facts do not permit the court to
6 infer more than the mere possibility of misconduct, the complaint has
7 alleged-but it has not shown-that the pleader is entitled to relief.’”
8 Id. (internal quotations and brackets omitted).

9 Here, Plaintiff’s complaint merely alleges Defendants are
10 liable for various claims, without specifying which Defendants are
11 liable and what actions make them liable. See e.g., Compl. ¶ 314
12 (“Defendants violated the Real Estate Settlement Procedures Act
13 (“RESPA”) as set forth above proximately resulting in harm suffered by
14 plaintiff.”); ¶ 317 (“Defendants violated the Truth in Lending Act
15 (“TILA”), as set forth above, proximately resulting in harm suffered
16 by plaintiff.”). Similarly, Plaintiff’s complaint merely recites the
17 elements of several claims pursued without providing the grounds of
18 entitlement to relief.

19 Therefore, Defendants’ motions to dismiss are GRANTED and
20 Plaintiff’s complaint is dismissed. However, Plaintiff is granted ten
21 (10) days from the date on which this Order is filed within which to
22 file a first amended complaint.

23 Dated: May 6, 2010

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GARLAND E. BURRELL, JR.
United States District Judge