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

Victoria Sawyer,)	2:10-CV-00723-JAM-KJM
)	
Plaintiff,)	<u>ORDER GRANTING DEFENDANT'S</u>
)	<u>MOTION TO DISMISS</u>
v.)	
)	
Aurora Loan Services; Julie He;)	
and DOES 1-50, inclusive,)	
)	
Defendants.)	
)	
	/)	

This matter comes before the Court on Defendant Aurora Loan Services's ("Defendant's") Motion to Dismiss Plaintiff Victoria Sawyer's ("Plaintiff's") Complaint. The motion to dismiss is pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Plaintiff untimely opposes the motion.¹

Plaintiff's Complaint was removed to federal court on March 25, 2010. (Doc. No. 1.) Defendant filed this Motion to Dismiss ("MTD") on April 23, 2010. (Doc. No. 7.) Plaintiff untimely

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

1 filed a First Amended Complaint ("FAC"), which the Court struck
2 from the record on June 6, 2010. (Doc. No. 9.) On the same day,
3 Plaintiff untimely filed an Opposition. (Doc. No. 11.)
4 Accordingly, the Court will not consider Plaintiff's Opposition,
5 except to the extent that it voluntarily dismisses the claim for
6 breach of statutory duties.

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8 The facts of this case are unclear because the Complaint
9 and the MTD are so poorly pled. The Court is concerned with the
10 discrepancies in the parties' pleadings. The parties list
11 different addresses for the Subject Property. Defendant's MTD
12 lists 6237 Arcadia Street, Corona, California as the Subject
13 Property. Plaintiff, and the Deed of Trust ("DOT") which
14 Defendant submitted in its Request for Judicial Notice, list
15 6728 Brook Falls Circle, Stockton, California as the Subject
16 Property. Plaintiff alleges that she entered into a written
17 agreement whereby Defendant would service a mortgage for the
18 Subject Property. However, Plaintiff does not specify when she
19 entered into this agreement, nor has she presented a copy of the
20 agreement to the Court. The date on the DOT is September 24,
21 2004.

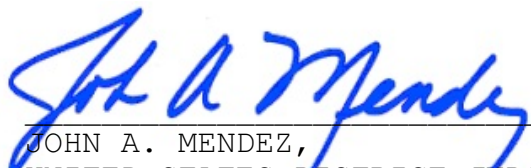
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24 Plaintiff's Complaint is replete with contradictory
25 allegations and the Court is unable to determine precisely what
26 Plaintiff is alleging. It appears that Plaintiff complains of
27 Defendant's foreclosure on the Subject Property. Plaintiff
28

1 alleges that Defendant attempted to foreclose on the Subject
2 Property, and has sold the Subject Property. However, Defendant
3 contends that a Notice of Default has never been filed, or even
4 prepared, and a foreclosure has never been initiated on the
5 Subject Property. Neither party has presented a Notice of
6 Default to the Court.
7

8 Given Defendant's inconsistent assertions of what Subject
9 Property is involved in this case and Plaintiff's
10 incomprehensible Complaint, this Court is in no position to
11 grant Defendant's MTD. Accordingly, the parties are ordered to
12 start over and to make sure that they provide the Court with
13 accurate information the second time around. Plaintiff is
14 granted leave to file an amended complaint within twenty (20)
15 days of the date of this Order. The amended complaint shall not
16 include a claim for breach of statutory duties.
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21 IT IS SO ORDERED.

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23 DATED: August 10, 2010

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE