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PAIMAN RAHBARIAN,

Plaintiff,

v.

JP MORGAN CHASE; and DOES 1
through 20 inclusive,

Defendant.

No. 2:14-cv-01488 JAM-KJN

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO DISMISS AND DENYING
DEFENDANT'S REQUEST TO EXPUNGE
LIS PENDENS**

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Before the Court is Defendant JPMorgan Chase Bank's ("Defendant") motion to dismiss Plaintiff Paiman Rahbarian's ("Plaintiff") complaint that alleges chain-of-title defects and procedural irregularities in Defendant's servicing of the mortgage on his home. For the following reasons, Defendant's motion is GRANTED in part and DENIED in part.¹

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

Attar Fakhri, Plaintiff's mother, took out a mortgage on her

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for October 15, 2014.

1 home in 2007. Compl. ¶¶ 14, 19. The Deed of Trust named
2 California Reconveyance ("CRC") as trustee and Washington Mutual
3 as lender and beneficiary. Compl. ¶ 14. Plaintiff states, "on
4 information and belief," that Washington Mutual transferred the
5 mortgage to "WaMu Mortgage Pass-Through Certificate Series 2007-
6 OA4." Compl. ¶ 15. This entity then "filed a Form 10-K with the
7 SEC and was dissolved." Compl. ¶ 16. Dissolution caused "the
8 assets," including Plaintiff's mother's mortgage, to be
9 distributed to the certificate holders. Id. Washington Mutual
10 then itself dissolved, conveying its assets to Defendant. Compl.
11 ¶ 17. Plaintiff alleges that his mother's mortgage was not among
12 these assets now owned by Defendant, because it was previously
13 transferred to the certificate holders. Compl. ¶ 38.

14 Following his mother's death in 2011, Plaintiff took
15 possession of the mortgaged home. Compl. ¶¶ 4, 19-20. Plaintiff
16 soon defaulted on the mortgage, and CRC issued a Notice of
17 Default and Election to sell, dated March 12, 2013. Compl. ¶ 22.
18 On that same day, CRC recorded a "Corporate Assignment of Deed of
19 Trust," signed by Colleen Irby as Vice President of JPMorgan
20 Chase. Compl. ¶ 21. Plaintiff "alleges on information and
21 belief that Colleen Irby is an employee of CRC, not JP Morgan
22 Chase and is, in face [sic], a 'robo-signer.'" Compl. ¶ 21. CRC
23 later sent to Plaintiff a Notice of Trustee Sale. Compl. ¶ 26.
24 But as of the date of filing the complaint, no sale had occurred.
25 See Compl. ¶ 27; id. at 9 ¶ 1.

26 Plaintiff brought this action in Placer County Superior
27 Court on May 16, 2014, alleging (1) violations of the California
28 Homeowner Bill of Rights ("HBOR"), (2) wrongful foreclosure, and

1 (3) violations of California's Unfair Competition Law ("UCL")
2 (Cal. Bus. & Prof. Code § 17200 et seq.). Plaintiff then filed a
3 motion for a temporary restraining order, which the state court
4 tentatively denied on the basis that Plaintiff failed to file
5 proof of service. RJN Exh. 10, at 7. He also filed a Notice of
6 Pendency of Action (lis pendens). See RJN Exh. 11. After
7 removing the case to this Court, Defendant now moves to dismiss
8 all causes of action for failure to state a claim (Doc. #5).
9 Plaintiff opposes the motion (Doc. #14) and Defendant has replied
10 (Doc. #15).

11 12 II. OPINION

13 A. Legal Standard

14 To survive a motion to dismiss, a plaintiff must plead
15 "enough facts to state a claim to relief that is plausible on
16 its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 547
17 (2007). In considering a motion to dismiss, a district court
18 must accept all the allegations in the complaint as true and
19 draw all reasonable inferences in favor of the plaintiff.
20 Scheuer v. Rhodes, 416 U.S. 232, 236 (1974), overruled on other
21 grounds by Davis v. Scherer, 468 U.S. 183 (1984); Cruz v. Beto,
22 405 U.S. 319, 322 (1972). "[T]he factual allegations that are
23 taken as true must plausibly suggest an entitlement to relief,
24 such that it is not unfair to require the opposing party to be
25 subjected to the expense of discovery and continued litigation."
26 Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011). Assertions
27 that are mere "legal conclusions" are therefore not entitled to
28 the presumption of truth. Ashcroft v. Iqbal, 556 U.S. 662, 678

1 (2009) (citing Twombly, 550 U.S. at 555).

2 Upon granting a motion to dismiss for failure to state a
3 claim, a district court has discretion to allow leave to amend
4 the complaint pursuant to Federal Rule of Civil Procedure 15(a).
5 A court should freely grant leave to amend. Fed. R. Civ. Proc.
6 15(a)(2). A court "is generally required to grant the plaintiff
7 leave to amend, even if no request to amend the pleading was
8 made, unless amendment would be futile." Cook, Perkiss & Liehe,
9 Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 246-47 (9th
10 Cir. 1990). Amendment is not futile if the plaintiff could
11 "cure the defect requiring dismissal 'without contradicting any
12 of the allegations of [the] original complaint.'" Plascencia v.
13 Lending 1st Mortgage, 583 F. Supp. 2d 1090, 1095 (N.D. Cal.
14 2008) (quoting Reddy v. Litton Indus., Inc., 912 F.2d 291, 296
15 (9th Cir. 1990)) (alteration in original).

16 B. Judicial Notice

17 Generally, the Court may not consider material beyond the
18 pleadings in ruling on a motion to dismiss. However, the Court
19 may take judicial notice of matters of public record, provided
20 that they are not subject to reasonable dispute. Fed. R. Evid.
21 201; see Santa Monica Food Not Bombs v. City of Santa Monica,
22 450 F.3d 1022, 1025 n.2 (9th Cir. 2006); Lee v. City of Los
23 Angeles, 250 F.3d 662, 689 (9th Cir. 2001).

24 Defendant here requests that the Court judicially notice
25 eleven documents, to which Plaintiff makes no objection. Of the
26 eleven, six were recorded with the Placer County Recorder and
27 four were filed in state court: (1) Deed of Trust (RJN Exh. 1);
28 (2) Assignment of the Deed of Trust (RJN Exh. 2); (3) Notice of

1 Default (RJN Exh. 4); (4) Notice of Trustee's Sale recorded on
2 August 23, 2013 (RJN Exh. 5); (5) Substitution of Trustee (RJN
3 Exh. 6); (6) Notice of Trustee's Sale recorded on February 26,
4 2014 (RJN Exh. 7); (7) Plaintiff's application for a temporary
5 restraining order (RJN Exh. 8); (8) Plaintiff's declaration
6 filed as part of his application for a temporary restraining
7 order (RJN Exh. 9); (9) Tentative ruling of the Placer County
8 Superior Court regarding the temporary restraining order (RJN
9 Exh. 10); and (10) Notice of pendency of action filed by
10 plaintiff in Superior Court (RJN Exh. 11). Since these
11 documents are in the public record, the Court takes judicial
12 notice of them. However, as to the four documents filed in state
13 court, this Court only takes judicial notice of the fact that
14 they were filed and any facts contained in these court filings
15 which are disputed may not be judicially noticed.

16 The final document, a Purchase and Assumption Agreement
17 between Defendant and the Federal Deposit Insurance Corporation
18 ("FDIC") is publicly available on a government website
19 (www.fdic.gov), so it too is the proper subject of judicial
20 notice. See Mitchell v. Wells Fargo Bank, N.A., 2014 U.S. Dist.
21 LEXIS 7803, at *9 (N.D. Cal. Jan. 21, 2014) (noticing a document
22 on the same website); Paralyzed Veterans of Am. v. McPherson,
23 2008 U.S. Dist. LEXIS 69542, at *7 (N.D. Cal. Sept. 9, 2008)
24 (collecting cases in which a court judicially noticed material
25 on government websites).

26 C. Discussion

27 1. First Cause of Action: Homeowner Bill of Rights

28 Plaintiff's first cause of action alleges violations of the

1 Homeowner Bill of Rights ("HBOR") on the grounds that Defendant
2 (1) failed to "provide notice to Plaintiff that he could request
3 certain information from Defendant"; (2) failed to establish a
4 single point of contact and "[i]nstead[] [] used multiple points
5 of contact"; and (3) "ha[d] Colleen Irby, a CRC employee,
6 robo-sign the Corporate Assignment of the Deed of Trust." Compl.
7 ¶¶ 32-34.

8 a. Failure to provide notice under California
9 Civil Code § 2923.55

10 Defendant argues that Plaintiff's allegation that it failed
11 to provide notice is insufficient, because the Notice of Default
12 "[was] accompanied by a declaration of compliance[,] which
13 demonstrates that Chase did in fact comply with the requirements
14 of § 2923.55." Mot. at 6:20-21. That declaration, submitted by
15 Defendant as RJN Exhibit 4, states, "The mortgagee, beneficiary
16 or authorized agent was not required to comply with Cal. Civ.
17 Code Section 2923.55 because: The real property is not owner-
18 occupied residential property as defined by the statute." RJN
19 Exh. 4, at 4.

20 Defendant relies on Maguca v. Aurora Loan Servs., 2009 U.S.
21 Dist. LEXIS 104251 (C.D. Cal. Oct. 28, 2009) and Dorado v. Shea
22 Homes Ltd. P'ship, 2011 U.S. Dist. LEXIS 97672 (E.D. Cal. Aug.
23 31, 2011), holding them out as examples of cases in which
24 "allegations of non-compliance fail[ed] in the presence of [] a
25 declaration [of compliance]." Mot. at 6:21-27. But neither
26 case is relevant here. Maguca and Dorado, which were both
27 decided before HBOR's effective date (January 1, 2013),
28 considered California Civil Code section 2923.5 – a different

1 statutory provision from the one at issue here: California Civil
2 Code section 2923.55. Dorado, 2011 U.S. Dist. LEXIS 97672, at
3 *49; Maguca, 2009 U.S. Dist. LEXIS 104251, at *5.

4 Section 2923.5 requires merely that a notice of default
5 "include a declaration" stating that an authorized agent has
6 contacted (or attempted to contact) the borrower. Cal. Civ.
7 Code § 2923.5(b). Therefore, a defendant may defeat allegations
8 that it failed to comply with that section by submitting a
9 judicially noticed notice of default showing that the required
10 declaration was attached. See Dorado, 2011 U.S. Dist. LEXIS
11 97672, at *49; Maguca, 2009 U.S. Dist. LEXIS 104251, at *5.

12 In contrast, section 2923.55 requires that the loan
13 servicer provide "[a] statement that the borrower may request"
14 certain information, including a copies of the promissory note,
15 the deed of trust, "any assignment . . . demonstrat[ing] the
16 right of the mortgage servicer to foreclose[,] and the
17 borrower's payment history. Cal. Civ. Code § 2923.55(b). This
18 provision is not satisfied by a "declaration"; it is only
19 satisfied by a writing containing the proper information. Id.

20 The "declaration of compliance" Defendant submitted does
21 not contain any such writing. Nor does it even state that such
22 a writing was provided to Plaintiff. Instead, it proclaims that
23 Defendant "was not required to comply with [] Section
24 2923.55[.]" RJN Exh. 4, at 4. Whether Defendant was required
25 to comply is a legal question that is not resolved by
26 Defendant's own determination that it was exempt from the terms
27 of the statute. Whatever evidentiary value this declaration has
28 - if any - it does not preclude Plaintiff's claim that Defendant

1 never provided the written notice required by section 2923.55.
2 In fact, it corroborates Plaintiff's claim that he did not
3 receive notice, since Defendant apparently considered itself
4 exempt.

5 To the extent that Defendant urges dismissal based on a
6 theory that it was exempt,² the Court also rejects that argument.
7 Defendant states, "§ 2923.55 only applies to mortgages . . . as
8 described in § 2924.15. [citation omitted] In relevant part,
9 § 2924.15 defines 'owner-occupied' property as property that is
10 'the principal residence of the borrower and is security for a
11 loan" Mot. at 6:16-19. Defendant appears to suggest
12 that Plaintiff's property was not "owner-occupied." See RJN
13 Exh. 4, at 4. However, the complaint directly contradicts this
14 contention. See Compl. ¶ 4 (stating that the property is
15 "Plaintiff's principal and family residence"). Because the
16 Court must take the allegations in the complaint as true,
17 Defendant's motion to dismiss Plaintiff's first cause of action
18 is DENIED as it relates to a violation of California Civil Code
19 section 2923.55.

20 b. Failure to create a single point of contact
21 under California Civil Code § 2923.7

22 Defendant urges this Court to dismiss Plaintiff's claim that
23 it failed to provide a single point of contact, arguing that
24 Plaintiff's allegation "lacks factual support" and is precluded
25 by his "admission that he was assigned a 'designated point of
26

27 ² Defendant's brief leaves unclear whether it is advancing this
28 argument or merely noting that its employee previously made the
determination that it need not comply.

1 contact[.]'" Mot. at 6:8-9 (citing RJN Exh. 9). Plaintiff does
2 not address these arguments, but simply reiterates his claim that
3 Defendant violated HBOR by "shuffl[ing] multiple points of
4 contact[.]" Opp. at 5:22-23 (citing Compl. ¶ 33).

5 Section 2923.7 requires loan servicers to "promptly
6 establish a single point of contact and provide to the borrower
7 one or more direct means of communication with the single point
8 of contact." Cal. Civ. Code § 2923.7(a). A bank violates this
9 provision if it assigns a single point of contact, but then
10 changes that point of contact multiple times. See Mann v. Bank
11 of Am., N.A., 2014 U.S. Dist. LEXIS 15111, at *12-*14 (C.D. Cal.
12 Feb. 3, 2014).

13 Plaintiff here has alleged that Defendant "used multiple
14 points of contact." Compl. ¶ 33. This statement is the only
15 allegation contained in the complaint relating to Plaintiff's
16 section 2923.7 claim. No facts explain who the points of contact
17 were, how many different points of contact Defendant assigned, or
18 the circumstances or timing of such reassignments. See Mann,
19 2014 U.S. Dist. LEXIS 15111, at *12-*13 (denying motion to
20 dismiss where plaintiffs described six reassignments to different
21 points of contact over three months). Without any such factual
22 support, the allegation that Defendant violated section 2923.7 by
23 "us[ing] multiple points of contact" is insufficient. Cf.
24 Lawrence v. Wells Fargo Bank, N.A., 2014 WL 2705425, at *12 (N.D.
25 Cal. June 13, 2014) (finding that plaintiff had "not pled any
26 facts in support of [his UCL] claim" where plaintiff alleged that
27 the bank "failed to provide a Single Point of Contact who was
28 prepared to dismiss [sic] foreclosure prevention alternatives

1 with Plaintiff”).

2 Although this claim is insufficient as pled, the Court must
3 grant leave to amend. Contrary to Defendant’s representations,
4 Plaintiff’s section 2923.7 claim is not fatally contradicted by
5 judicially noticed documents. In particular, Defendant argues
6 that Plaintiff’s claim “is belied by” a declaration (filed in
7 support of Plaintiff’s application for a temporary restraining
8 order in state court) in which Plaintiff stated, “Shane Gowitt is
9 my designated point of contact.” Reply at 2:27; RJN Exh. 9 ¶ 8.

10 First of all, the Court may not judicially notice the
11 purported fact that Defendant properly appointed Shane Gowitt as
12 Plaintiff’s single point of contact, as Defendant urges. See Lee
13 v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001)
14 (reiterating that a court “may not take judicial notice of
15 disputed facts stated in public records”) (emphasis in original).

16 Even if the Court could notice it, that fact does not
17 fatally contradict Plaintiff’s allegation that he was shuffled
18 between different points of contact in violation of section
19 2923.7. Namely, even if Defendant assigned Shane Gowitt as
20 Plaintiff’s point of contact, it still could have violated
21 section 2923.7 by “us[ing] multiple points of contact[,]” as
22 Plaintiff alleges. For instance, it could have subsequently (or
23 previously) reassigned the point of contact. See, e.g., Mann,
24 2014 U.S. Dist. LEXIS 15111, at *12-*14. Or it could have had
25 other individuals improperly interact with Plaintiff instead of
26 Shane Gowitt. See, e.g., Mungai v. Wells Fargo Bank, 2014 WL
27 2508090, at *3, *10 (N.D. Cal. June 3, 2014) (denying motion to
28 dismiss section 2923.7 claim where plaintiff alleged that “[w]hen

1 [she] attempted to contact Goode[,] [her designated point of
2 contact], she was referred to other Wells Fargo representatives,
3 none of which [sic] could apprise Plaintiff of the status of her
4 loan modification application and all of whom referred Plaintiff
5 to Goode"). Plaintiff could therefore cure the defects in his
6 section 2923.7 pleadings "without contradicting any of the
7 allegations of [his] original complaint." Plascencia, 583 F.
8 Supp. 2d at 1095.

9 Accordingly, the Court GRANTS WITH LEAVE TO AMEND
10 Defendant's motion to dismiss the first cause of action as it
11 relates to California Civil Code section 2923.7.

12 c. "Robosigning" in violation of California
13 Civil Code § 2924.17

14 Defendant seeks to dismiss Plaintiff's claim that Colleen
15 Irby "robosign[ed]" the assignment of Plaintiff's deed of trust
16 on the basis that he has not pled "harm[]." Mot. at 6.

17 HBOR directs that "[b]efore recording or filing [certain
18 documents including the assignment of a deed of trust], a
19 mortgage servicer shall ensure that it has reviewed competent
20 and reliable evidence to substantiate the borrower's default and
21 the right to foreclose, including the borrower's loan status and
22 loan information." Cal. Civ. Code § 2924.17. Failing to
23 conduct such review before signing is known as "robo-signing."
24 Michael J. Weber Living Trust v. Wells Fargo Bank, N.A., 2013
25 U.S. Dist. LEXIS 41797, at *10 (N.D. Cal. Mar. 25, 2013). A
26 borrower may bring a cause of action for injunctive relief based
27 on robo-signing allegations prior to foreclosure sale. Cal. Civ.
28 Code § 2924.12(a).

1 To support its argument for dismissal for failure to plead
2 harm, Defendant cites Nastrom v. New Century Mortg. Corp., 2012
3 U.S. Dist. LEXIS 79929 (E.D. Cal. June 8, 2012). But Defendant
4 has failed to persuade this Court that the harm requirement
5 discussed in Nastrom applies to claims under section 2924.17.

6 The whole of the relevant reasoning in Nastrom states,
7 "Plaintiffs offer no factual allegations (or legal theory)
8 indicating how the alleged robo-signing of documents which
9 assigned the subject loans harmed Plaintiffs. The robo-signing
10 allegations do not relate to any notice of default or otherwise
11 demonstrate that Plaintiffs were somehow defrauded or harmed by
12 the loan assignments." Id. at *15-*16. Nastrom does not cite
13 any cases and leaves unclear the origin of this harm
14 requirement.

15 Defendant is correct in the sense that prior to HBOR,
16 plaintiffs were required to show harm or prejudice to proceed on
17 a robo-signing claim. See Mendoza v. JPMorgan Chase Bank, N.A.,
18 228 Cal.App.4th 1020, 1037 (2014), rev. filed (Sept. 23, 2014)
19 (noting the "prevailing view" that a plaintiff generally "lacks
20 standing to contest the validity of a robo-signature, because
21 his foreclosure was the result of not making payments and
22 entering default, such that he did not suffer an injury as a
23 result of the assignment of deed of trust") (quoting Bennett v.
24 Wells Fargo Bank, N.A., 2013 WL 4104076, at *5-*6 (N.D. Cal.
25 Aug. 9, 2013)) (quotation marks omitted). However, HBOR
26 included a provision specifically granting a private cause of
27 action to borrowers in cases where loan servicers engaged in
28 robo-signing and certain other violations of sections 2923 and

1 2924. This provision reads:

2 (1) . . . [A] borrower may bring an action for
3 injunctive relief to enjoin a material violation of
4 [various statutes including section 2924.17].

5 (2) Any injunction shall remain in place and any
6 trustee's sale shall be enjoined until the court
7 determines that the mortgage servicer, mortgagee,
8 trustee, beneficiary, or authorized agent has
corrected and remedied the violation or violations
giving rise to the action for injunctive relief. An
enjoined entity may move to dissolve an injunction
based on a showing that the material violation has
been corrected and remedied.

9 Cal. Civ. Code § 2924.12(a).

10 Notably, this language does not include a requirement that
11 a plaintiff demonstrate harm or injury. The plain meaning thus
12 indicates that no showing of harm is required.

13 The parties have also failed to cite any cases indicating
14 that section 2924.12 incorporates the pre-HBOR harm requirement.
15 To the contrary, the legislature intended HBOR to alter the
16 nonjudicial foreclosure process and increase enforcement
17 opportunities. See Cal. SB 900 § 1 ("It is essential to the
18 economic health of this state to mitigate the negative effects
19 on the state and local economies and the housing market that are
20 the result of continued foreclosures by modifying the
21 foreclosure process to ensure that borrowers who may qualify for
22 a foreclosure alternative are considered for, and have a
23 meaningful opportunity to obtain, available loss mitigation
24 options."); Vasquez v. Bank of Am., N.A., 2013 WL 6001924, at *7
25 (N.D. Cal. Nov. 12, 2013) ("[The] pre-HBOR cases cited by
26 Defendants discussing the defunct version of 2923.6 have little,
27 if any, applicability to . . . the now-applicable law. Perhaps
28 even more importantly, HBOR also added Section 2924.12

1 Section 2924.12 expressly provides that borrowers may bring an
2 action based on a violation of the new Section 2923.6[.]”).

3 The Court holds therefore that Plaintiff need not plead
4 harm to make a claim under section 2924.12(a) for a violation of
5 section 2924.17. The plain language of section 2924.12(a)
6 includes no such requirement and the Court declines to read one
7 in. To the extent that other courts have addressed the issue,
8 they have not required a showing of harm. See Rothman v. U.S.
9 Bank Nat’l Ass’n, 2014 WL 1648619, at *7 (N.D. Cal. Apr. 24,
10 2014) (denying motion to dismiss section 2924.17 claim, but
11 granting motion to dismiss other claims because plaintiff did
12 not plead harm); Copeland v. Ocwen Loan Servicing, LLC, 2014 WL
13 304976, at *5 (C.D. Cal. Jan. 3, 2014) (“Defendants also argue
14 that [plaintiff] has no claim under [HBOR] because he has
15 suffered no damages However, [plaintiff] does claim
16 that he incurred damages. And what's more, [HBOR] provides for
17 statutory damages in the event of a violation.”) (citing Cal.
18 Civ. Code § 2924.12) (citations to the record omitted). The
19 Court therefore declines to dismiss Plaintiff’s claim on this
20 basis.

21 The Court notes that although section 2924.12(a) does not
22 have a “harm” requirement, it only allows actions for “material”
23 violations of 2924.17. See Cal. Civ. Code § 2924.12(a)(1).
24 Defendant has not argued that the alleged violations were not
25 material. Defendant does cite one case that discusses the
26 materiality requirement: Johnson v. PNC Mortgage, 2014 WL
27 3962662, at *13 (N.D. Cal. Aug. 12, 2014). However, Defendant
28 cites this case only in its reply, and for a different

1 proposition. See Reply at 2:12-19 (arguing that Johnson held
2 that allegations similar to Plaintiff's were conclusory).
3 Defendant's brief does not mention materiality or section
4 2924.12, but it then states, "Furthermore, the [Johnson] court
5 noted that even if plaintiffs' [robosigning] theory were
6 correct, 'the assignment would not have changed their payment
7 obligations. It would have affected the lender and notice to
8 future encumbrancers and purchasers (but not Plaintiff's).'"
9 Reply at 2:15-18 (quoting Johnson, 2014 3962662, at *13).

10 Even if Defendant's discussion of Johnson were enough to
11 raise the materiality issue, the Court need not reach it and
12 declines to do so here. See Zamani v. Carnes, 491 F.3d 990, 997
13 (9th Cir. 2007) ("The district court need not consider arguments
14 raised for the first time in a reply brief.") (citing Koerner v.
15 Grigas, 328 F.3d 1039, 1048 (9th Cir. 2003)).

16 Moving to Defendant's other arguments for dismissal,
17 Defendant contends that the section 2924.17 allegations are
18 conclusory and lack factual support. Mot. at 4-5. The Court
19 agrees.

20 The complaint states that Defendant violated section
21 2924.17 "by having, Colleen Irby, a CRC employee, robo-sign the
22 Corporate Assignment of the Deed of Trust." Compl. ¶ 34. The
23 only factual allegation supporting this claim is that "on
24 information and belief[,] [] Colleen Irby is an employee of CRC,
25 not JP Morgan Chase and is, in face [sic], a 'robo-signer.'"
26 Compl. ¶ 21.

27 Such "bare assertion[s]" are insufficient. See Johnson,
28 2014 WL 3962662, at *13 (dismissing section 2924.17 claim that

1 alleged that a document was "robosigned without reliance on
2 competent or reliable evidence to substantiate the right to
3 foreclose" in part because "the critical allegations – that
4 Commonwealth never assigned its interest to any party to the
5 assignment and that PNC 'robosigned' the assignment – are made
6 entirely on information and belief"); Baldoza v. Bank of Am.,
7 N.A., 2013 U.S. Dist. LEXIS 34323, at *37 (N.D. Cal. Mar. 12,
8 2013) (dismissing robo-signing claim where plaintiff alleged, "on
9 information and belief, [that] Muradyan, a known robo-signer,
10 was not an employee of MERS but instead was employed by
11 Defendant BOA"); Sohal v. Federal Home Loan Mortg. Corp., 2011
12 WL 3842195, at *5 (N.D. Cal. Aug. 30, 2011) (granting motion to
13 dismiss in part because "Plaintiffs [did] not allege[] facts
14 setting forth the basis on which they [were] informed and
15 believe [the robo-signing] allegations [were] true").

16 Plaintiff argues that his allegations do suffice, citing
17 Mena v. JP Morgan Chase Bank, N.A., 2012 U.S. Dist LEXIS 128585
18 (N.D. Cal. Sept. 7, 2012). According to Plaintiff, Mena
19 involved "facts identical to the case at bar." Opp. at 4:21.
20 But the Court finds Mena distinguishable in multiple ways.

21 First, Mena involved allegations of robo-signing in support
22 of a slander of title claim, not a claim related to section
23 2924.17 or other statutorily-required due diligence. Id. at
24 *13.

25 Second, the Mena plaintiffs' allegations were more
26 thoroughly pled than the complaint here. The Mena plaintiffs
27 asserted that "the signatures on the relevant documents [were]
28 of 'robo-signers' who lacked the legal capacity to sign

1 For example, "Deborah Brignac" [was] a 'robo-signer' whose name
2 appear[ed] on documents for different companies." Id. at *13-
3 *14 (citing complaint alleging instances where Brignac signed as
4 "Vice President" of two different companies).

5 In contrast, the complaint here does not allege that
6 Colleen Irby did not have authority to sign, nor that she failed
7 to conduct the due diligence required by section 2924.17.

8 Although this Court must take as true Plaintiff's allegation
9 that Colleen Irby was an "employee of CRC, not JP Morgan Chase,"
10 Compl. ¶ 21, the Court need not infer that Irby therefore had no
11 authority to sign or that she did not conduct statutorily-
12 required due diligence. See Halajian v. Deutsche Bank Nat.
13 Trust Co., 2013 WL 593671, at *6 (E.D. Cal. Feb. 14, 2013)

14 ("The mere fact that Deborah Brignac was not an employee of
15 JPMorgan and Colleen Irby was not an employee of CRC does not
16 give rise to a reasonable inference that they did not have the
17 authority to sign documents on behalf of those companies.'")
18 (quoting Couch v. JPMorgan Chase Bank, N.A., No. CV 11-8710-GHK,
19 at *5 (C.D. Cal May 14, 2012)).

20 Plaintiff attempts to elaborate on his robo-signing
21 allegations in his opposition. See Opp. at 4 (citing Glaski v.
22 Bank of Am., N.A., 218 Cal.App.4th 1079, 1086 n.8 (2013) for the
23 proposition that Colleen Irby previously signed a document as
24 "assistant secretary" for another company). But the Court may
25 consider only the complaint and judicially noticed documents in
26 evaluating the sufficiency of a claim upon a motion to dismiss.
27 See Mayer v. Wedgewood Neighborhood Coal., 707 F.2d 1020, 1021
28 (9th Cir. 1983).

1 In sum, Plaintiff is correct that section 2924.17 was
2 intended to address "robosigning." See Michael J. Weber Living
3 Trust, 2013 U.S. Dist. LEXIS 41797, at *10. But as pled, his
4 allegations are insufficient.

5 For these reasons, the Court GRANTS WITH LEAVE TO AMEND
6 Defendant's motion to dismiss Plaintiff's claim under California
7 Civil Code section 2924.17.

8 2. Second Cause of Action: Wrongful Foreclosure

9 Plaintiff's second claim alleges wrongful foreclosure on
10 the basis of California Civil Code section 2924(a)(6).
11 Defendant argues that the Court should dismiss this claim
12 because a foreclosure sale has not yet occurred.

13 Indeed, Plaintiff's claim fails because there has been no
14 sale. "In at least some circumstances, California courts have
15 allowed wrongful foreclosure claims to proceed even when there
16 was not actual foreclosure." Baldain v. Am. Home Mortg.
17 Servicing, Inc., 2010 U.S. Dist. LEXIS 5671, at *40 (E.D. Cal.
18 Jan. 5, 2010) (citing Garretson v. Post, 156 Cal.App.4th 1508,
19 1514 (2007)); see, e.g., Pfiefer v. Countrywide Home Loans,
20 Inc., 211 Cal.App.4th 1250, 1281 (2012) (allowing foreclosure
21 action prior to sale where plaintiff alleged violations of HUD
22 servicing requirements). But most courts hold that such claims
23 based on chain of title defects are premature if brought before
24 sale. See, e.g., Pugh v. JPMorgan Chase Bank, N.A., 2013 U.S.
25 Dist. LEXIS 151873, at *8-*9 (E.D. Cal. Oct. 22, 2013); Manzano
26 v. MetLife Bank N.A., 2011 U.S. Dist LEXIS 56316, at *20 (E.D.
27 Cal. May 24, 2011); Rosenfeld v. JPMorgan Chase Bank, N.A., 732
28 F. Supp. 2d 952, 961 (N.D. Cal 2010); Rossberg v. Bank of Am.,

1 N.A., 219 Cal.App.4th 1481, 1493 (2013), rev. denied (Nov. 26,
2 2013) (citing Jenkins v. JP Morgan Chase Bank, N.A., 216
3 Cal.App.4th 497, 511-513 (2013); Gomes v. Countrywide Home
4 Loans, Inc., 192 Cal.App.4th 1149, 1154-56 (2011)).

5 Plaintiff has not pled that Defendant has already
6 instituted a foreclosure sale. Therefore, Plaintiff's wrongful
7 foreclosure claim is premature and the Court must dismiss it.
8 Furthermore, amendment would be futile, because the complaint
9 acknowledges that no sale has occurred. See Compl. at 9 ¶ 1
10 (seeking an injunction from this court prohibiting such sale).

11 Accordingly, the Court GRANTS WITHOUT LEAVE TO AMEND
12 Plaintiff's second cause of action. Resolving this motion as to
13 the second claim on this basis, the Court does not reach the
14 other issues presented by the parties, including Plaintiff's
15 ability to tender outstanding debt, whether Defendant in fact
16 had authority to foreclose and to what extent it was required to
17 verify such authority.

18 3. Third Cause of Action: Violation of UCL

19 Plaintiff's third claim asserts that Defendant engaged in
20 unlawful and unfair business practices under the UCL by
21 "violat[ing] [] HBOR" and "fail[ing] to ensure it ha[d] a
22 beneficial interest in the Subject Property prior to initiating
23 foreclosure proceedings." Compl. ¶¶ 43-44.

24 Defendant argues that Plaintiff does not have standing to
25 raise this UCL claim. Defendant is correct that the complaint
26 fails to demonstrate standing.

27 A plaintiff may bring an action under the UCL only if he
28 has "suffered injury in fact and has lost money or property as a

1 result of the unfair competition." Cal. Bus. & Prof. Code
2 § 17204. The amendment adding this language to the UCL "plainly
3 preserved standing for those who had had business dealings with
4 a defendant and had lost money or property as a result of the
5 defendant's unfair business practices." Clayworth v. Pfizer,
6 Inc., 49 Cal.4th 748, 788 (2010) (emphasis omitted). To show
7 standing, a plaintiff must "(1) establish a loss or deprivation
8 of money or property sufficient to qualify as injury in fact,
9 i.e., economic injury, and (2) show that that economic injury
10 was the result of, i.e., caused by, the unfair business practice
11 or false advertising that is the gravamen of the claim."
12 Kwikset Corp. v. Superior Court, 51 Cal.4th 310, 322 (2011)
13 (emphasis in original).

14 Plaintiff cites three cases to support his contention that
15 he has standing, Opp. at 10, however all three were decided
16 before Kwikset and none acknowledges or applies the causation
17 requirement. See Rosenfeld, 732 F. Supp. 2d at 973; Rabb v. BNC
18 Mortg., Inc., 2009 WL 3045812, at *2 (C.D. Cal. Sept. 21, 2009);
19 Sullivan v. Wash. Mutual Bank, FA, 2009 WL 3458300, at *5 (N.D.
20 Cal. Oct. 23, 2009). Each reiterates that imminent loss of a
21 home to foreclosure constitutes an injury, and for this
22 proposition the Court agrees with Plaintiff. However, none of
23 these cases consider whether defendants' actions – rather than
24 the plaintiffs' own failures to keep current on their loans –
25 was the cause of the loss.

26 The Court relies instead on a post-Kwikset case involving
27 similar allegations to those advanced in this case, including
28 lack of authority to foreclose, defects in the chain of title,

1 and robo-signing. See Jenkins, 216 Cal.App.4th at 510, 519. In
2 Jenkins, the plaintiff's home was in foreclosure proceedings,
3 but there had been no sale. Id. at 522. The court reasoned
4 that "[i]f such proceedings [were] pursued to their completion,
5 [the plaintiff's] interest in her property [would] be
6 extinguished." Id. Based on the prospect of losing a property
7 interest in her home, the plaintiff met her "minimal" burden in
8 pleading Kwikset's first prong. Id.

9 As to the second prong, the court held that the plaintiff
10 failed to plead that the defendant's behavior caused her injury.
11 Id. at 523. The court reasoned that the plaintiff's failure to
12 make payments culminating in default – and not any wrongful act
13 by the defendant – had caused the imminent loss of her home.
14 Id. Therefore, she could not demonstrate a "causal link." Id.

15 Here, as in Jenkins, Plaintiff has pled an economic injury:
16 imminent loss of his property rights in his house if foreclosure
17 proceedings are to proceed. See Compl. ¶¶ 22, 26. Also as in
18 Jenkins, Plaintiff fails to establish a causal link between
19 Defendant's actions and his property loss.

20 Plaintiff argues that he has shown causation because
21 Defendant's "improper initiation of the foreclosure process . . .
22 harm[ed] Plaintiff." Opp. at 10:13-15 (citing Compl. ¶ 44). But
23 the foreclosure process was triggered by Plaintiff's default.
24 See Compl. ¶ 22. Even in the absence of Defendant's alleged
25 "improper initiation" of foreclosure, Plaintiff still would have
26 defaulted, resulting in a lawful foreclosure. See Jenkins, 216
27 Cal.App.4th at 523 ("Jenkins's default triggered the lawful
28 enforcement of the power of sale clause in the deed of trust, and

1 it was the triggering of the power of sale clause that subjected
2 Jenkins's home to nonjudicial foreclosure.").

3 Nor did the other allegedly unfair practices, as pled,
4 cause Plaintiff's default. The complaint contains no facts
5 indicating that robo signing caused the default. In fact, the
6 complaint eliminates this possibility, as the alleged
7 robo signing appears to have occurred after Plaintiff became
8 unable to pay his mortgage. See Compl. ¶¶ 21-22 (alleging that
9 Colleen Irby robo signed a document on the same day that
10 Defendant issued a notice of default). Similarly, the alleged
11 violation of failing to provide notice about documents occurred
12 after default. See Cal. Civ. Code § 2923.55(a) & (b) (requiring
13 such notice to be sent with the notice of default).

14 Therefore, Plaintiff lacks standing to bring a UCL claim on
15 these bases, and it cannot be remedied upon amendment. See
16 Jenkins, 216 Cal.App.4th at 523-24 (denying leave to amend
17 because alleged UCL violations occurred after plaintiff
18 defaulted on her loan, so there was no possibility that she
19 could establish causation upon amendment). The Court
20 accordingly GRANTS WITHOUT LEAVE TO AMEND Defendant's motion as
21 to these bases for the UCL cause of action. Given this result,
22 the Court does not reach Defendant's argument that the "unfair"
23 prong is not satisfied by the robo signing allegations.

24 As to Plaintiff's final basis for his UCL claim, Plaintiff
25 has not explained how failure to establish a single point of
26 contact could have caused his default. But unlike the other
27 bases discussed above, failure to provide a single point of
28 contact could be an ongoing violation that potentially predated

1 - and potentially contributed to - his default. See Pernermon v.
2 Wells Fargo Bank, N.A., 2014 WL 2754596, at *12-*13 (N.D. Cal.
3 June 11, 2014). Therefore, the Court GRANTS Defendant's motion,
4 but allows LEAVE TO AMEND as the UCL claim relates to failure to
5 provide a single point of contact.

6 Defendant's final argument is that Plaintiff cannot show a
7 violation of a predicate statute. Mot. at 10. The Court
8 reaches this issue only as to the UCL claim relating to failure
9 to provide a single point of contact, because the other bases
10 for this claim are dismissed without leave to amend. The Court
11 disagrees with Defendant's argument, because the predicate HBOR
12 violation of section 2923.7 has survived the motion to dismiss.
13 See supra § II.C.1.a (denying motion to dismiss the first cause
14 of action).

15
16 4. Defendant's request to expunge lis pendens

17 Defendant argues that "if this Court grants Defendant's
18 Motion to Dismiss, expungement of Plaintiff's recorded lis
19 pendens is also appropriate." Mot. at 12:4-5. As discussed
20 above, the Court partially grants but partially denies
21 Defendant's motion to dismiss. Therefore, it denies Defendant's
22 request for expungement.

23
24 III. ORDER

25 The Court DENIES Defendant's motion to dismiss as it relates
26 to Plaintiff's first cause of action for violation of California
27 Civil Code section 2923.55. The Court GRANTS WITH LEAVE TO AMEND
28 Defendant's motion as to the remainder of the first cause of

1 action and as to the third cause of action as it relates to
2 failing to provide a single point of contact. Finally, the Court
3 GRANTS WITHOUT LEAVE TO AMEND Plaintiff's second cause of action
4 and the remainder of the third cause of action.

5 Plaintiff must file his amended complaint within twenty (20)
6 days from the date of this order. Defendant's responsive
7 pleading is due within twenty (20) days thereafter.

8 IT IS SO ORDERED.

9 Dated: November 10, 2014

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12 JOHN A. MENDEZ,
13 UNITED STATES DISTRICT JUDGE
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