UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

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JOHN CASTORINA, individually and on behalf of all others similarly situated, Plaintiff, v. BANK OF AMERICA, N.A., and INTEGON NATIONAL INSURANCE COMPANY, Defendants.	No. 2:21-cv-02004 WBS KJN MEMORANDUM AND ORDER RE: DEFENDANTS' MOTIONS TO DISMISS

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Plaintiff John Castorina ("plaintiff") has filed this putative class action against Defendant Bank of America, N.A. ("Bank of America") and Integon National Insurance Company ("Integon") alleging various violations of federal and California state laws relating to defendants' practices surrounding the purchasing and placing of insurance, and the conducting of inspections, on borrowers' properties. (Compl. (Docket No. 1).) Bank of America and Integon now move to dismiss plaintiff's

complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket Nos. 15, 20.)

I. Factual and Procedural Background

Plaintiff purchased the property at issue at 2110 Forestlake Drive, Rancho Cordova, California 95670 ("the property") in 1995. (Compl. ¶ 7, 131.) After a series of transactions and transfers, on or about April 25, 2003, plaintiff entered into a "mortgage" agreement on the property with Countrywide Home Loans.[1] (Id.) In 2008, Bank of America purchased the mortgage and became the mortgage lender and servicer. (Id.)

The deed of trust at issue contained a provision that required plaintiff to secure and pay for adequate property insurance that protected the property against loss due to hazards. (Id. ¶ 132; Id., Ex. A., Deed of Trust ("Deed of Trust") ¶ 4 (Docket No. 1-1).) It also contained a provision allowing Bank of America to inspect and safeguard the property if it is "vacant or abandoned or the loan is in default." (Compl. ¶ 133; Deed of Trust ¶ 5.)

Plaintiff alleges that in 2019 he applied for a loan modification and received correspondence from Bank of America denying his application because of its inability to confirm plaintiff actually owned the property. (Compl. ¶ 134.) Plaintiff responded to the denial with a copy of his deed to confirm

[1] In their pleadings, the parties refer to the deed of trust and promissory note collectively as the "mortgage," "mortgage agreement" or "agreement." The contractual terms which are at issue in this case are those set forth in the deed of trust.

ownership. (Id.) At that time, Bank of America began refusing to accept monthly payments on the loan. (Id.)

On or about September 1, 2019, Bank of America put plaintiff's loan account into delinquency. (Id. ¶ 135.) Plaintiff alleges he provided the requested documentation and obtained assistance of counsel to prove ownership over the property. (Id. ¶¶ 135, 138.) Bank of America nevertheless continued to refuse to accept payments or acknowledge plaintiff's ownership of the property for twenty-two months. (Id. ¶¶ 136, 142.)

Plaintiff alleges that on July 24, 2019, Bank of America began charging his account for property inspections. (Id. ¶ 137.) He alleges Bank of America conducted fifteen property inspections, some of which were to check if the property was vacant, though plaintiff alleges Bank of America knew he was occupying it. (Id. ¶ 139.) Seven of those inspections were charged to plaintiff's account on the same day, June 10, 2021, after plaintiff had made multiple payments to bring his account out of default. (Id.; Compl., Ex. C, June 10, 2021 Account Statement ("June 10, 2021 Account Statement") (Docket No. 1-1).)

In or around November 2019, plaintiff's voluntary hazard insurance policy lapsed, and Bank of America then purchased a hazard insurance policy through Integon, and placed it onto plaintiff's property. (Id. ¶ 143.)[2] The lender-placed insurance remains on plaintiff's property and plaintiff has paid

[2] An insurance policy that is placed on borrowers' properties in this manner is referred to by the parties both as "force-placed insurance" and "lender-placed insurance." The court will refer to it as "lender-placed insurance."

the amounts for the lender-placed insurance charges to Bank of America. (Id.) Plaintiff alleges that charges for the lender-placed insurance made to plaintiff were higher than the cost of the lender-placed insurance that Bank of America paid to Integon. (Id. ¶ 145.) Plaintiff also alleges that the cost of the lender-placed insurance is twelve times more expensive than his prior voluntary policy due to a "kickback scheme" between the defendants. (Id.)

Plaintiff alleges the "kickback scheme" between defendants works as follows: Integon monitors Bank of America's loan portfolio, and once a lapse in insurance coverage is identified, a notice, purporting to come from Bank of America, is sent to the borrower regarding lender-placed insurance. (Id. ¶ 114.) Bank of America pays Integon for the certificate for insurance, which issues from an already existing master policy that Bank of America has with Integon. (Id. ¶ 116.) Bank of America charges the borrower the full amount it initially pays Integon for the insurance. (Id. ¶ 120.)

However, once coverage begins, Bank of America receives a set percentage back of its initial payment to Integon "disguised as 'commissions,' 'reinsurance payments,' or 'expense reimbursements,'" which lowers the cost of coverage that Bank of America pays to Integon. (Id. ¶ 117.) Bank of America does not pass on these "kickbacks" to borrowers. Plaintiff alleges that Integon performs the insurance monitoring services on Bank of America's loans to maintain the exclusive right to place insurance on Bank of America's borrowers. (Id. ¶ 122.)

On October 21, 2021, plaintiff initiated this action by

filing a proposed class action complaint alleging nine claims: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692; (4) violations of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601; (5) violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962(c); (6) conspiracy under RICO, 18 U.S.C. § 1962(d); (7) violations of the Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"), Cal. Civ. Code § 1788; (8) unjust enrichment; and (9) violations of California Unfair Competition Law, Cal. Bus. & Pro. Code § 17200. Plaintiff alleges all nine claims against Bank of America, and only the two RICO claims against Integon.

II. Discussion

Federal Rule 12(b)(6) allows for dismissal when the plaintiff's complaint fails "to state a claim upon which relief can be granted." Fed. R. Civ. Pro. 12(b)(6). The inquiry before the court is whether, accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor, the plaintiff has stated a claim to relief that is plausible on its face. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." Id. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id.

A. Breach of Contract

To state a breach of contract claim under California

law, plaintiffs must allege (1) the existence of a contract; (2) plaintiff's performance or excuse for nonperformance of the contract; (3) defendant's breach of the contract; and (4) resulting damages. First Com. Mortg. Co. v. Reece, 89 Cal. App. 4th 731, 745 (2d Dist. 2001). Plaintiff alleges Bank of America breached the terms of the deed of trust by charging plaintiff for "excessive and unfair property inspections," charging plaintiff for lender-placed insurance that was "unnecessary and excessive," and not passing on the kickbacks on the cost of coverage. (Compl. ¶¶ 175-79.)

Bank of America argues that plaintiff has failed to allege a breach because the deed of trust allows it to conduct property inspections and charge plaintiff related fees. (Bank of America's Mot. ("BOA Mot.") at 5.) The deed of trust states that Bank of America "may do and pay whatever is necessary to protect the value of the [p]roperty and [its] rights in the [p]roperty" if plaintiff fails to perform under the agreement or there is a legal proceeding. (Deed of Trust ¶ 7.) Specifically, Bank of America may inspect the property if it is "vacant or abandoned or the loan is in default." (Id. ¶ 5.)

Plaintiff does not dispute that these provisions are in the deed of trust. However, plaintiff alleges that he was charged for inspections that were "drive-by or fabricated." (Compl. ¶ 174.) The deed of trust does not allow Bank of America to charge for inspections that never actually happened. Plaintiff also alleges that the inspections occurred when plaintiff was occupying the property and that Bank of America knew he was occupying it. (Id. ¶ 175.) The parties also

disagree on whether plaintiff was in default when the inspections began. At the pleading stage, the court cannot decide whether plaintiff actually was in default in order to determine if his claim may proceed. Therefore, based on these factual allegations, plaintiff states a breach of contract claim that is "plausible on its face" as Bank of America was allegedly conducting property inspections even when the property was not "vacant or abandoned or the loan [was not] in default." See Ashcroft, 556 U.S. at 678; (Deed of Trust ¶ 5.)

Plaintiff's allegations regarding the frequency of the property inspections also sufficiently state a claim for breach of contract. Plaintiff pleads inspections were occurring "in excess of once every 30 days." (Compl. ¶ 174.) Bank of America contends that fifteen property inspections in a 22-month period is not excessive given that courts analyzing similar claims have held inspections once a month were allowed. (BOA Mot. at 5-6 (citing Walker v. Countrywide Home Loans, Inc., 98 Cal. App. 4th 1158 (2d Dist. 2002) (holding that charging the borrower for 12 inspections that happened approximately every 30 days was not in violation of the California Unfair Competition Law).) However, plaintiff was charged for seven inspections on a single day, which raises an inference that the inspections were excessive or fabricated, and not done per the contract as "is necessary to protect the value of the property" or Bank of America's rights in it. (June 10, 2021 Account Statement; Deed of Trust ¶ 7.)

In regard to the lender-placed insurance, the agreement states that any amounts "disbursed by" Bank of America for the lender-placed insurance will "become an additional debt of the

borrower." (Deed of Trust ¶ 7.) Here, plaintiff alleges that Bank of America did not actually pay the amount it charged plaintiff for lender-placed insurance, and therefore, the amount "disbursed by" Bank of America is less than what "becomes an additional debt" for plaintiff. (See id.) Therefore, plaintiff sufficiently alleges that he was charged beyond what the deed of trust permits.

Bank of America notes that it disclosed to plaintiff that lender-placed insurance "may be significantly more expensive than insurance [plaintiff] can buy [himself]." (BOA Mot. at 8; Compl., Ex. B, Lender-Placed Insurance Notice ("Insurance Notice") (Docket No. 1-1).) However, the deed of trust could be interpreted as restricting Bank of America's discretion because it states that Bank of America may pay whatever is "necessary." (Deed of Trust ¶ 7.)

"[W]here the language [of a contract] is ambiguous, such that it is capable of two or more reasonable interpretations and therefore leaves doubt as to the parties' intent, a motion to dismiss must be denied." Maloney v. Indymac Mortg. Servs., No. CV-13-04781 DDP, 2014 WL 6453777, at *6 (C.D. Cal. Nov. 17, 2014); see Consul Ltd. V. Solide Enters., 802 F.2d 1143, 1149 (9th Cir. 1986) (holding that the district court erred in dismissing for failure to state a claim where the conflict in language of an agreement "leaves doubt as to the parties' intent"). Though the deed of trust allows Bank of America to institute lender-placed insurance, whether the amount it paid was "necessary" creates ambiguities regarding the authorized level of insurance.

The conduct alleged in this case, including the language in the deed of trust itself, is strikingly similar to that in McNeary-Calloway v. JP Morgan Chase Bank, N.A., 863 F. Supp. 2d 928 (N.D. Cal. Mar. 26, 2012). In McNeary, the plaintiffs' agreements included the same language about the lender's right to "do and pay whatever is necessary to protect the value of the property and Lender's rights in the property, including payment of . . . hazard insurance." McNeary, 863 F. Supp. 2d at 956. The court in McNeary, determined that the defendants could only place insurance "to the extent such insurance 'is necessary,'" which did not give defendants "unlimited discretion," and therefore the court denied defendants' motion to dismiss the breach of contract claim. Id.; see also Longest v. Green Tree Servicing LLC, 74 F. Supp. 3d 1289, 1298 (C.D. Cal. Feb. 9, 2015) (finding there to be ambiguity in the mortgage agreement due to the tension between the allowance of lender-placed insurance but the discretionary function of the lender being able to do "whatever is reasonable and appropriate").

Plaintiff has sufficiently alleged a breach of contract claim against Bank of America based on the property inspections and lender-placed insurance. Accordingly, Bank of America's motion to dismiss plaintiff's breach of contract claim will be denied.

B. Implied Covenant of Good Faith and Fair Dealing

Under California law, all contracts contain an implied covenant of good faith and fair dealing. See San Jose Prod. Credit Ass'n v. Old Republic Life Ins. Co., 723 F.2d 700, 703

(9th Cir. 1984). The covenant "requires each contracting party to refrain from doing anything to injure the right of the other to receive the benefits of the agreement." Id. (quotations and citation omitted).

Bank of America argues that plaintiff's implied covenant of good faith and fair dealing claim avers only a contractual violation and is therefore duplicative of plaintiff's claim for breach of the deed of trust. (BOA Mot. at 9.) "[W]here breach of an actual term is alleged, a separate implied covenant claim, based on the same breach, is superfluous." Guz v. Bechtel Nat. Inc, 24 Cal. 4th 317, 327 (2000); see also Env't Furniture, Inc. v. Bina, No. CV 09-7978 PSG, 2010 WL 5060381, *3 (C.D. Cal. Dec. 6, 2010) (quotations omitted) ("California law requires that a claim for breach of the implied covenant of good faith and fair dealing go beyond the statement of a mere contract breach and not rely on the same alleged acts or simply seek the same damages" as the breach of contract claim).

Plaintiff's implied covenant of good faith and fair dealing claim alleges the same conduct alleged in his breach of contract claim. (Compare compl. ¶¶ 174-79, with id. ¶¶ 188a-h.) Notably, plaintiff alleges that Bank of America breached its duty of good faith and fair dealing "in violation of the applicable [deed of trust] provisions." (Id. ¶¶ 188c, 188f.) As alleged, plaintiff's implied covenant of good faith and fair dealing claim is superfluous. Therefore, that claim will be dismissed.

C. Fair Debt Collection Practices Act and Rosenthal Act

The FDCPA and the Rosenthal Act prohibit false, deceptive, or misleading representations or means in connection

with the collection of any debt, and using unfair and unconscionable means to collect or attempt to collect any debt. 15 U.S.C. § 1692e-f; Cal. Civ. Code § 1788.1(b).

1. "Debt Collector" Requirement for FDCPA

In order to be liable under both the FDCPA and the Rosenthal Act, Bank of America must qualify as a "debt collector." The definition of "debt collector" is broader under the Rosenthal Act than it is under the FDCPA, as the latter excludes creditors collecting on their own debts or a debt that was not in default when it was obtained by a creditor. See 15 U.S.C. § 1692a(6)(F); Herrera v. LCS Fin. Servs. Corp., No. C09-02843 TEH, 2009 WL 5062192, at *2 n.1 (N.D. Cal. Dec. 22, 2009) ("[t]he federal definition [of debt collectors] excludes creditors collecting on their own debts, 15 U.S.C. § 1692a(6), an exclusion that does not appear in the state statute, Cal. Civ. Code § 1788.2(c)").

Plaintiff stipulated at oral argument to dropping his FDCPA claim as the parties agree that Bank of America is not a "debt collector" under the FDCPA. Bank of America is the lender on the loan, and therefore, is "collecting on its own debt" and the loan was not in default when Bank of America obtained it. Accordingly, plaintiff's FDCPA claim will be dismissed.

2. Rosenthal Act Claim

Plaintiff alleges that Bank of America violated the Rosenthal Act by representing to him that he "must make payments for Escrow Account Advances (which contained illegal fees for excessive and improper [lender-placed insurance]), and the fees for property inspections that were not conducted, excessive, and

not permitted, when . . . [Bank of America] knew that the fees . . . were not legitimate debts." (See compl. ¶¶ 253-55.)

The heightened pleading standard of Federal Rule of Civil Procedure 9(b) applies to claims under the Rosenthal Act when premised on allegations of fraud, and here plaintiff's Rosenthal Act claim is premised on Bank of America allegedly making false, deceptive, and misleading statements. See Brown v. CitiMortgage, Inc., SACV 16-00048-CJC, 2016 WL 7507762, at *4 (C.D. Cal. Feb. 17, 2016) (applying heightened Rule 9(b) pleading standard for Rosenthal Act claim); Day v. Am. Home Mortg. Servicing, Inc., No. 2:09-CV-02676-GEB-KJM, 2010 WL 2231988, at *2 (E.D. Cal. June 2, 2010) (same).

The Ninth Circuit has held that "to avoid dismissal for inadequacy under Rule 9(b), [the] complaint would need to 'state the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation.'" Edwards v. Marin Park, Inc., 356 F.3d 1058, 1066 (9th Cir. 2004) (quoting Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1393 (9th Cir. 1988)). Further, Rule 9(b) requires that a plaintiff "must set forth what is false or misleading about a statement, and why it is false." Rubke v. Capitol Bancorp Ltd., 551 F.3d 1156, 1161 (9th Cir. 2009) (quotations omitted).

Here, the complaint states that Bank of America "made demands for payments after delinquency and/or default by sending letters, making telephone calls, and other attempts to collect mortgage payments." (Compl. ¶ 250.) Beyond this, the complaint does not include any other factual allegations about the "time,

place, and specific content" of the "letters, telephone calls, or other attempts." Edwards, 356 F.3d at 1066; (Id.) Accordingly, plaintiff's Rosenthal Act claim will be dismissed.

D. Truth in Lending Act

TILA is a consumer protection statute that aims to "avoid the uninformed use of credit." 15 U.S.C. § 1601(a). The statute "requires creditors to provide borrowers with clear and accurate disclosures of terms dealing with things like finance charges, annual percentage rates of interest, and the borrower's rights." Beach v. Ocwen Fed. Bank, 523 U.S. 410, 412 (1998) (citing 15 U.S.C. §§ 1631, 1632, 1635 & 1638).

1. TILA Claim for Lender-Placed Insurance

Under TILA, 12 C.F.R. § 226.18(d), a creditor must disclose a "finance charge" which includes a premium for insurance. Plaintiff cites to cases allowing TILA claims to proceed in which the original mortgage agreement did not contemplate that the borrower was required to have hazard insurance or that Bank of America was authorized to purchase it if the borrower's policy lapsed. (Pl.'s Opp'n to Bank of America Mot. at 15 (citing Hofstetter v. Chase Home Fin., LLC, 751 F. Supp. 2d 1116, 1125-28 (N.D. Cal. Oct. 29, 2010) (granting leave to amend to add a TILA claim where mandatory flood insurance was not required "at the loan's consummation and insufficient initial disclosures were made to the borrower that such insurance would have to be purchased in the future"); Travis v. Boulevard Bank N.A., 880 F. Supp. 1226, 1229 (N.D. Ill. Mar. 31, 1995) (emphasis added) ("Defendant's purchase of the allegedly unauthorized insurance and the subsequent addition of the resulting premiums

to plaintiff's existing indebtedness constituted a new credit transaction" requiring new disclosures under TILA). Here, the deed of trust differs from plaintiff's cited cases because it required plaintiff to have hazard insurance and authorized Bank of America to institute lender-placed insurance if plaintiff's policy lapsed.

However, the agreement did not authorize Bank of America to receive kickbacks from the lender-placed insurance or charge for inspections that were drive-by or fabricated. See Cannon v. Wells Fargo Bank, N.A., 917 F. Supp. 2d 1025, 1044-46 (N.D. Cal. Jan. 9, 2013) (denying motion to dismiss TILA claim where lender-placed insurance was authorized by the mortgage agreement, but the kickbacks were not). Plaintiff sufficiently alleges that Bank of America violated TILA, 12 C.F.R. § 226.17, by failing to disclose the amount and nature of the kickback scheme. (Compl. ¶ 211.)

2. TILA Claim for Property-Inspection Fees

Plaintiff's TILA claim also alleges in conclusory terms that Bank of America violated TILA "through the imposition of unauthorized or inflated" property inspections. (Id. ¶ 215.) Beyond this conclusory allegation, the complaint contains no other factual allegations pertaining to property inspections in accordance with the TILA claim. See Ashcroft, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.") Further, plaintiff provides no argument in opposition about the TILA claim to the extent it is based on property-inspection fees. (See Pl.'s Opp'n to Bank of America at 14-16.) Accordingly, the

court will grant Bank of America's motion to dismiss plaintiff's TILA claim to the extent it is based on property-inspection fees.

3. TILA Statute of Limitations

Bank of America argues plaintiff's TILA claim is time-barred to the extent it is premised on conduct before October 29, 2020, as TILA has a one-year statute of limitations. See 15 U.S.C. 1640(e). In his opposition, plaintiff does not argue that equitable tolling is appropriate, though he attempted to plead as such in the complaint. (See Pl.'s Opp'n to Bank of America at 16-17; Compl. ¶¶ 149-154.) Plaintiff merely argues that he has also alleged conduct that occurred within the statute of limitations, because the lender-placed insurance was renewed on April 19, 2021. (Pl.'s Opp'n to Bank of America at 16-17.) Plaintiff provides no explanation of how a claim based on conduct occurring prior to October 29, 2020 would be subject to equitable tolling. Plaintiff also insufficiently alleges how the information upon which he bases his claims was not available to him earlier, since he had been getting charged for the lender-placed insurance as early as 2019. Presumably, plaintiff was made aware of these charges as part of his monthly statements, and if he was not, he fails to allege facts to support that inference.

Therefore, to the extent plaintiff's TILA claim is based on alleged violations from prior to October 29, 2020, it is time-barred and will be dismissed. For conduct after October 29, 2020, plaintiff's TILA claim based on lender-placed insurance is sufficiently alleged and Bank of America's motion will be denied.

E. RICO Claims

Both defendants move to dismiss plaintiff's RICO claim which is based on the alleged "kickback scheme" for lender-placed insurance between defendants. To state a claim under RICO, a plaintiff must allege the existence of a RICO enterprise, the existence of a pattern of racketeering activity, a nexus between the defendant and either the pattern of racketeering activity or the RICO enterprise, and a resulting injury to the plaintiff. Occupational-Urgent Care Health Sys., Inc. v. Sutro & Co., Inc., 711 F. Supp. 1016, 1021 (E.D. Cal. 1989).

When the alleged racketeering activity sounds in fraud -- and here plaintiff bases his RICO claim upon mail and wire fraud -- the complaint must "state with particularity the circumstances constituting fraud or mistake" to meet the standard under Federal Rule of Civil Procedure 9(b). In re Countrywide Fin. Corp. Mortg. Mktg. & Sales Prac. Lit., 601 F. Supp. 2d 1201, 1215 (S.D. Cal. 2009) (quoting Fed. R. Civ. P. 9(b)). To allege a pattern of racketeering activity, a plaintiff must allege two or more predicate acts. Sun Sav. & Loan Ass'n v. Dierdorff, 825 F.2d 187, 193 (9th Cir. 1987).

Here, the complaint alleges only one predicate act of mail and wire fraud. Plaintiff alleges that he received a lender-placed insurance notice on April 19, 2021 from Bank of America, which he alleges was actually from Integon. (Compl. ¶ 144.) Even assuming that the April 19, 2021 letter is a sufficiently alleged predicate act, plaintiff's RICO claim fails because he has not alleged a second predicate act. Beyond the one letter, plaintiff does not identify any other predicate acts with the required particularity under Rule 9(b). Merely stating

that Integon sent letters with approval from Bank of America, without identifying the time, place or specific content of false representations of more than one letter, is insufficient to survive a motion to dismiss under the heightened pleading standard of Rule 9(b). (Id. ¶ 232.)

Furthermore, plaintiff's RICO claim must be dismissed for the independent reason that it is nothing more than a dressed-up attempt to assert a breach of contract claim, which plaintiff already alleges. "A plaintiff cannot state a claim under the Civil RICO statute by simply artfully pleading what is essentially a breach of contract claim." Manos v. MTC Fin., Inc., No. SACV 16-01142-CJC, 2018 WL 6220051, *7 (C.D. Cal. Apr. 2, 2018) (quotations omitted); Vega v. Ocwen Fin. Corp., No 2:14-cv-04408-ODW, 2015 WL 1383241, *12 (C.D. Cal. Mar. 24, 2015) (dismissing RICO claim which alleged that the defendant assessed fees in violation of the borrowers' mortgage agreement because the claim was premised on a breach of contract). The alleged conduct under plaintiff's RICO claim, of improperly charging borrowers for lender-placed insurance, is also the alleged conduct upon which plaintiff's breach of contract claim is premised. (Compare compl. ¶ 243, with id. ¶ 179.)

Plaintiff's opposition to defendants' motion on this issue only argues that his RICO claim is different than his breach of contract claim for the property-inspection fees. (Pl.'s Opp'n to Bank of America at 9.) However, as pled by plaintiff, his RICO claim is only based on lender-placed insurance. (See compl. ¶ 240-47.) Plaintiff makes no effort to distinguish his breach of contract claim for lender-placed

insurance and his RICO claim for lender-placed insurance.

Accordingly, defendants' motions to dismiss plaintiff's RICO claim will be granted.

Because the complaint fails to sufficiently allege a RICO claim under 18 U.S.C. § 1962(c), plaintiff's claim under § 1962(d) for conspiracy to commit a RICO violation also fails. See Turner v. Cook, 362 F.3d 1219, 1231 n. 17 (9th Cir. 2004) (dismissing conspiracy to commit RICO claim because plaintiffs failed to sufficiently allege RICO claim).

F. Unjust Enrichment

In the alternative to his claims for breach of contract and implied covenant of good faith and fair dealing, plaintiff brings a separate claim for unjust enrichment against Bank of America. "There is not a standalone cause of action for 'unjust enrichment' which is synonymous with restitution." Astiana v. Hain Celestial Grp., Inc., 783 F.3d 753, 762 (9th Cir. 2015). Rather, it "describe[s] the theory underlying a claim that a defendant has been unjustly conferred a benefit through mistake, coercion, or request" and the "return of that benefit is typically sought in a quasi-contract cause of action." Id. Here, both parties agree that there is an existing contract which is at issue, the deed of trust, so there is no claim to be made in quasi-contract. Accordingly, the court will grant Bank of America's motion to dismiss plaintiff's unjust enrichment "claim."

G. California Unfair Competition Law

California's Unfair Competition Law ("UCL") "prohibits any unfair competition, which means 'any unlawful, unfair or

fraudulent business act or practice.'" In re Pomona Valley Med. Grp., Inc., 476 F.3d 665, 674 (9th Cir. 2007) (quoting Cal. Bus. & Prof. Code § 17200, et seq.). Plaintiff has alleged that Bank of America was receiving kickbacks for placing insurance on borrowers' property, without disclosing any such kickbacks to borrowers, and Bank of America was falsifying property inspections and still charging borrowers for them. At the pleading stage, plaintiff sufficiently alleges the UCL claim given plaintiff's remaining claims in this action and the conduct by Bank of America described within the complaint.

IT IS THEREFORE ORDERED that:

(1) Bank of America's motion to dismiss plaintiff's breach of contract claim be, and the same hereby is, DENIED;

(2) Bank of America's motion to dismiss plaintiff's claim for breach of the implied covenant of good faith and fair dealing be, and the same hereby is, GRANTED;

(3) Bank of America's motion to dismiss plaintiff's claim under the Fair Debt Collection Practices Act be, and the same hereby is, GRANTED;

(4) Bank of America's motion to dismiss plaintiff's claim under the Truth in Lending Act be, and the same hereby is, GRANTED in part with respect to the imposition of property-inspection fees and all alleged violations occurring before October 29, 2020, and DENIED in all other respects;

(5) Bank of America's motion to dismiss and Integon's motion to dismiss plaintiff's claim under the Racketeer Influenced and Corrupt Organizations Act, 15 U.S.C. § 1962(c) be, and the same hereby are, GRANTED;

(6) Bank of America's motion to dismiss and Integon's motion to dismiss plaintiff's conspiracy claim under the Racketeer Influenced and Corrupt Organizations Act, 15 U.S.C. § 1962(d) be, and the same hereby are, GRANTED;

(7) Bank of America's motion to dismiss plaintiff's claim under the Rosenthal Fair Debt Collection Practices Act be, and the same hereby is, GRANTED;

(8) Bank of America's motion to dismiss plaintiff's unjust enrichment claim be, and the same hereby, is GRANTED; and

(9) Bank of America's motion to dismiss plaintiff's claim for violations of the California Unfair Competition Law, be and the same hereby, is DENIED.

Plaintiff has twenty days from the date of this Order to file a second amended complaint, if he can do so consistent with this Order. In deciding whether to file a second amended complaint, counsel is reminded that the purpose of a complaint is not to see how many claims can be constructed out of a single set of facts, but to plead only such claims as may improve plaintiff's prospects of prevailing at trial.

Dated: May 5, 2022

WILLIAM B. SHUBB
UNITED STATES DISTRICT JUDGE