

United States District Court
For the Northern District of California

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

MIRLA PALMA,

Plaintiff,

v.

HOMEcomings, et. al.,

Defendants

No. C-08-4780 MMC

**ORDER DIRECTING PLAINTIFF TO
SHOW CAUSE WHY COMPLAINT
SHOULD NOT BE DISMISSED**

Before the Court is plaintiff Mirla Palma’s complaint, filed October 17, 2008.¹ Having read and considered the complaint, it appears to the Court that plaintiff has failed to state a claim upon which relief could be granted.

As to the First Cause of Action, a claim for “breach of contract/covenant of good faith and fair lending,” plaintiff fails to allege that she entered into a contract with any defendant, and fails to allege, even assuming a contract was formed, that any defendant breached a provision of such contract.

As to the Second Cause of Action, a claim for “fraud and racketeering,” plaintiff has failed to plead such claim with specificity, as is required by Rule 9(b) of the Federal Rules of Civil Procedure. In particular, plaintiff has failed to identify a false or misleading statement made by a defendant, has failed to identify the speaker of any such statement,

¹The instant action was reassigned to the undersigned on November 24, 2008.

1 has failed to state when and where any such statement was made, and has failed to state
2 that she relied to her detriment on any such statement.

3 As to the Third Cause of Action, a claim for “usury and racketeering,” plaintiff does
4 not allege that she was charged any particular rate of interest by a defendant, let alone a
5 rate that is usurious; plaintiff’s conclusory reference to defendants “charging excessive
6 interest” is insufficient.

7 As to the Fourth Cause of Action, a claim for “intentional infliction of severe mental
8 and emotional distress,” plaintiff has failed to allege that any defendant committed an act
9 that can be characterized as extreme and outrageous, or that she incurred severe
10 emotional distress.

11 Finally, to the extent plaintiff, by including the term “42. U.S.C. 1983” in the caption
12 of her complaint, may be attempting to state a claim under 42 U.S.C. § 1983, plaintiff has
13 failed to allege that she was deprived of any federal right and that any such deprivation
14 occurred under color of state law.

15 Accordingly, plaintiff is hereby ORDERED TO SHOW CAUSE, in writing and no later
16 than December 30, 2008, why her complaint should not be dismissed. See Wong v. Bell,
17 642 F. 2d 359, 361 (9th Cir. 1981) (holding “trial court may act on its own initiative to note
18 the inadequacy of a complaint and dismiss it for failure to state a claim”).

19 **IT IS SO ORDERED.**

20
21 Dated: December 8, 2008


MAXINE M. CHESNEY
United States District Judge