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UNITED STATES DISTRICT COURT
Northern District of California

MARIA C. JIMENEZ,

No. C 09-00146 MEJ

Plaintiff,

v.

HOMEcomings FINANCIAL,

Defendant.

**ORDER DENYING MOTION TO
DISMISS [Dkt. #17]; ORDER
GRANTING PLAINTIFF'S REQUEST
TO FILE SECOND AMENDED
COMPLAINT [Dkt. #30]; ORDER
SETTING BRIEFING SCHEDULE
AND HEARING DATE**

I. INTRODUCTION

Pending before the Court is Defendant Homecomings Financial's Motion to Dismiss Plaintiff's First Amended Complaint for Failure to State a Claim (Dkt. #17). After Defendant filed its Motion, on May 15, 2009, Plaintiff *pro se* Maria Jimenez filed a Motion to Amend Complaint (Dkt. #30) and lodged a proposed Amended Complaint (Dkt. #31, referred to herein as the proposed "Second Amended Complaint"). In light of Defendant's pending Motion to Dismiss, the Court denied Plaintiff's Motion to Amend without prejudice. (Dkt. #32). On June 11, 2009, the Court held a hearing on Defendant's Motion. The Court now rules as follows.

II. DISCUSSION

In its Motion, Defendant argues that: (1) Plaintiff's First Amended Complaint fails to conform to the pleading requirements set forth in Rule 8 of the Federal Rules of Civil Procedure; and (2) the First Amended Complaint fails to state a claim upon which this Court can grant relief. Reviewing Plaintiff's First Amended Complaint (Dkt. #13), it is 48 pages long (excluding exhibits) and mainly consists of legal argument and citations to various legal authorities and legislative documents. In her First Amended Complaint, Plaintiff asserts two claims. The first claim is labeled, "Quiet Title, Abuse of Process," and contains sixteen subparts, purportedly asserting other claims.

1 The second claim is labeled, “Slander of Title, Fraudulent Conversion,” and contains two subparts.
2 Defendant argues that neither of Plaintiff’s claims, or any of their subparts, state a viable claim for
3 relief.

4 In reviewing a 12(b)(6) motion, the Court must examine whether Plaintiff could cure any
5 deficiencies in her allegations by amending her pleading. *See DeSoto v. Yellow Freight Sys.*, 957
6 F.2d 655, 658, (9th Cir. 1992). With that in mind, the Court notes that the Second Amended
7 Complaint that Plaintiff submitted on May 15th sets forth four specific claims for relief: (1) quiet
8 title; (2) wrongful foreclosure; (3) violation of California Business and Professions Code § 17200;
9 and (4) fraudulent misrepresentation. The proposed Second Amended Complaint also sets forth
10 short and plain factual allegations in support of each claim. Taken together, because Plaintiff’s
11 proposed Second Amended Complaint conforms to Rule 8’s pleading requirements and sets forth
12 new, refined factual allegations and claims for relief, the Court finds good cause to amend its prior
13 ruling denying without prejudice Plaintiff’s Motion for Leave to File Amended Complaint (Dkt.
14 #32). *See Fed. R. Civ. P. 60(b)(6)*. The Court will therefore grant Plaintiff’s Motion for Leave to
15 file the Second Amended Complaint (Dkt. #30).

16 Further, once filed, the Second Amended Complaint supercedes Plaintiff’s First Amended
17 Complaint. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997). Consequently,
18 Defendant’s pending Motion to Dismiss Plaintiff’s First Amended Complaint is rendered moot. The
19 Court will allow Defendant to file a new motion with respect to Plaintiff’s Second Amended
20 Complaint in accordance with the deadlines set forth below.

21 III. CONCLUSION

22 For the reasons stated above, the Court **GRANTS** Plaintiff’s Motion for Leave to file her
23 proposed Second Amended Complaint (Dkt. #30). **Plaintiff’s Second Amended Complaint (Dkt.**
24 **#31) shall be deemed filed as of the filing date of this Order.**

25 Further, the Court **DENIES AS MOOT** Defendant’s Motion to Dismiss (Dkt. #17) and
26 **WITHOUT PREJUDICE** to Defendant filing a new motion to dismiss Plaintiff’s Second Amended
27 Complaint.

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Defendant shall file any motion to dismiss Plaintiff's Second Amended Complaint by **July 13, 2009**. Plaintiff shall file her Opposition by **August 3, 2009**. Defendant shall file its Reply by **August 10, 2009**.

The Court sets this matter for hearing on **August 13, 2009** at **10:00 a.m.** in Courtroom B.

IT IS SO ORDERED.

Dated: June 11, 2009



Maria-Elena James
United States Magistrate Judge