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

ESTIVA CORAZON, an individual,	)	Case No. 11-00542 SC
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANT'S
	)	MOTION TO DISMISS; DENYING
v.	)	DEFENDANT'S MOTION TO
	)	STRIKE; DENYING DEFENDANT'S
AURORA LOAN SERVICES, LLC, a	)	MOTION TO EXPUNGE LIS
limited liability company, and	)	<u>PENDENS</u>
DOES 1 through 50, inclusive,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

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**I. INTRODUCTION**

On January 5, 2011, Plaintiff Estiva Corazon ("Plaintiff" or "Corazon") filed this action in San Francisco County Superior Court against Defendant Aurora Loan Services, LLC ("Aurora") and fifty Doe defendants. ECF No. 1 ("Notice of Removal") Ex. 1 ("Compl."). Aurora removed the action on February 4, 2011. See Notice of Removal. Aurora now moves to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), to strike certain portions of the Complaint pursuant to Federal Rule of Civil Procedure 12(f), and to expunge Plaintiff's lis pendens. ECF No. 4 ("Mot."). The Motion is fully briefed. ECF Nos. 13, 15 ("Opp'n" and "Reply," respectively). Pursuant to Civil Local Rule 7-1(b),

1 the Court finds the Motion suitable for determination without oral  
2 argument. For the reasons stated below, the Court GRANTS Aurora's  
3 Motion to Dismiss, DENIES AS MOOT Aurora's Motion to Strike, and  
4 DENIES WITHOUT PREJUDICE Aurora's Motion to Expunge Lis Pendens.

5  
6 **II. BACKGROUND**

7 This action concerns alleged illegal business practices  
8 relating to a residential mortgage loan. See Compl. The following  
9 alleged facts are taken largely from the Complaint, with occasional  
10 supplementation from judicially noticed documents. The lack of  
11 specifics in some places is due to the dearth of specifics in the  
12 Complaint.

13 Plaintiff owns the real property located at 2 Ulloa Street,  
14 San Francisco, California. Id. ¶ 2. She purchased the property in  
15 June 2007 using funds borrowed from Residential Mortgage Capital  
16 ("RMC"). Id. ¶ 31. The loan terms provided for an original  
17 principal balance of \$990,000 with an interest rate fixed at 7.125  
18 percent for a five-year introductory period and subject to  
19 adjustment thereafter. Id. As security for the loan, Plaintiff  
20 executed a deed of trust on the property. Request for Judicial  
21 Notice ("RJN") Ex. 1 ("Deed of Trust").<sup>1</sup> The Deed of Trust  
22 identified RMC as the lender, Mortgage Electronic Registration

23  
24 <sup>1</sup> Defendant asks the Court to take judicial notice of various  
25 documents pertaining to Plaintiff's loan. ECF No. 5. Plaintiff  
26 does not oppose the RJN. While generally a court may not consider  
27 material beyond the facts alleged in the complaint when deciding a  
28 motion to dismiss, the Ninth Circuit has recognized an exception to  
[the] rule if "the plaintiff's claim depends on the contents of  
the document, the defendant attaches the document to its motion  
to dismiss, and the parties do not dispute the authenticity of the  
document." Knieval v. ESPN, 393 F.3d 1068, 1076 (9th Cir. 2005).  
Here, because Plaintiff's claims depend on the contents of the  
documents in question and Plaintiff does not dispute their  
authenticity, the Court GRANTS Defendant's RJN.

1 System, Inc. ("MERS") as the beneficiary, and First National Title  
2 as trustee. Id. at 1. On July 27, 2007, Aurora wrote to Plaintiff  
3 advising her that Aurora was being assigned the servicing rights of  
4 her loan with RMC. RJN Ex. 2 ("Notice of Assignment").

5 Plaintiff defaulted on her loan in January 2009. Compl. ¶ 35.  
6 Immediately thereafter, Plaintiff sought modification of her loan.  
7 She entered into two consecutive six-month forbearance agreements  
8 with an unspecified defendant,<sup>2</sup> which provided that Plaintiff would  
9 make certain payments while her application for loan modification  
10 was reviewed. Id. ¶¶ 37-40. Each time, her application was  
11 denied. Id. On October 27, 2009 a Notice of Default was recorded  
12 by the substituted trustee, Cal-Western Reconveyance Corporation  
13 ("CWRC"). Id. ¶ 46; RJN Ex. 3. On January 28, 2010, a Notice of  
14 Trustee's Sale was issued by CWRC indicating that the property  
15 would be sold on February 17, 2010. Id. ¶ 47; RJN Ex. 4. For  
16 reasons unknown to the Court, the scheduled trustee's sale did not  
17 take place. The trustee's sale date was rescheduled for January  
18 10, 2011. Id. ¶ 48.

19 In August 2010, Plaintiff and the unnamed defendant executed a  
20 third Special Forbearance Agreement, which provided for Plaintiff  
21 to make an initial payment of \$11,000 and pay off the remainder of  
22 her arrearage in monthly installments through February 2011. Id.  
23 ¶ 41. When Plaintiff made her January 2011 payment, it was  
24 rejected. Id. ¶ 42. She received a letter along with a return  
25 check stating that no forbearance agreement existed. Id.

26  
27 <sup>2</sup> As explained below, Plaintiff's Complaint consistently refers  
28 only to "Defendants" or "Defendant." At no point in the Complaint  
does Plaintiff distinguish which actions were allegedly taken by  
Aurora and which were allegedly performed by the numerous Doe  
defendants named in the Complaint.

1 On January 5, 2011, Plaintiff filed this action in San  
2 Francisco County Superior Court asserting the following claims: (1)  
3 violations of the Truth in Lending Act, 15 U.S.C. § 1601, et seq.;  
4 (2) violations of California Business and Professions Code § 17200,  
5 et seq.; (3) fraud; (4) breach of implied covenant of good faith  
6 and fair dealing; (5) conversion; (6) breach of fiduciary duty; (7)  
7 breach of contract; (8) violation of California Civil Code §  
8 2913.5; (9) promissory estoppel; (10) negligence; (11) predatory  
9 lending in violation of California Financial Code §§ 4970-4979.8;  
10 (12) misrepresentation; and (13) violation of California Civil Code  
11 § 1632. Thereafter, Plaintiff also filed a Notice of Pendency of  
12 Action, also known as a lis pendens, with the state court with  
13 respect to the property at issue. RJN Ex. 9 ("Lis Pendens").  
14 Aurora removed the case to this Court on February 4, 2011 and filed  
15 the instant Motion shortly thereafter.

16  
17 **III. LEGAL STANDARD**

18 **A. Motion to Dismiss**

19 A motion to dismiss under Federal Rule of Civil Procedure  
20 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.  
21 Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal can be based  
22 on the lack of a cognizable legal theory or the absence of  
23 sufficient facts alleged under a cognizable legal theory.  
24 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
25 1990). "When there are well-pleaded factual allegations, a court  
26 should assume their veracity and then determine whether they  
27 plausibly give rise to an entitlement to relief." Ashcroft v.  
28 Iqbal, 129 S. Ct. 1937, 1950 (2009). However, "the tenet that a

1 court must accept as true all of the allegations contained in a  
2 complaint is inapplicable to legal conclusions. Threadbare  
3 recitals of the elements of a cause of action, supported by mere  
4 conclusory statements, do not suffice." Iqbal, 129 S. Ct. at 1950  
5 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). A  
6 complaint need not contain "detailed factual allegations," but it  
7 must provide more than an "unadorned, the-defendant-unlawfully-  
8 harmed-me accusation." Id. at 1949. Thus, a motion to dismiss  
9 should be granted if the plaintiff fails to proffer "enough facts  
10 to . . . nudge[] [its] claims across the line from conceivable to  
11 plausible." Twombly, 550 U.S. at 570.

12 **B. Motion to Strike**

13 Rule 12(f) provides that "[t]he court may strike from a  
14 pleading an insufficient defense or any redundant, immaterial,  
15 impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Motions  
16 to strike are generally regarded with disfavor. Ganley v. County  
17 of San Mateo, No. 06-3923, 2007 WL 902551, at \*1 (N.D. Cal. Mar.  
18 22, 2007). The essential function of a Rule 12(f) motion is to  
19 "avoid the expenditure of time and money that must arise from  
20 litigating spurious issues by dispensing with those issues prior to  
21 trial." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir.  
22 1993), rev'd on other grounds, 510 U.S. 517 (1994).

23 **C. Motion to Expunge Lis Pendens**

24 Federal courts look to state law in matters pertaining to lis  
25 pendens. See 28 U.S.C. § 1964. Under California Code of Civil  
26 Procedure § 405.20, "[a] party to an action who asserts a real  
27 property claim may record a notice of pendency of action, [a lis  
28 pendens], in which that real property claim is alleged." The

1 purpose of a lis pendens is to give "constructive notice that an  
2 action has been filed affecting title or right to possession of the  
3 real property described in the notice." BGJ Assocs., LLC v. Super.  
4 Court, 75 Cal. App. 4th 952, 966 (Ct. App. 1999). "Its effect is  
5 that anyone acquiring an interest in the property after the action  
6 was filed will be bound by the judgment." Id. "Once a lis pendens  
7 is filed, it clouds the title and effectively prevents the  
8 property's transfer until the litigation is resolved or the lis  
9 pendens is expunged." Id. at 967.

10 "At any time after notice of pendency of action has been  
11 recorded, any party . . . may apply to the court in which the  
12 action is pending to expunge the notice." Cal. Code Civ. Proc. §  
13 405.30. Further, pursuant to California Code of Civil Procedure §§  
14 405.31 and 405.32, a court shall order that the notice be expunged  
15 if (1) "the court finds that the pleading on which the notice is  
16 based does not contain a real property claim" or (2) "the court  
17 finds that the claimant has not established by a preponderance of  
18 the evidence the probable validity of the real property claim."

19

20 **IV. DISCUSSION**

21 **A. Motion to Dismiss**

22 Plaintiff has named Aurora and fifty Doe defendants in her  
23 Complaint.<sup>3</sup> However, none of her allegations distinguishes among  
24 the defendants. The Complaint is rife with allegations of various  
25 wrongdoing by undifferentiated defendants, such as: "Defendants  
26 induced Plaintiff to accept this risky loan," Compl. ¶ 21;

27

28 <sup>3</sup> The only information provided in the Complaint as to the  
identities of the Doe defendants is the allegation that:  
"Defendants either: own, have an interest in, control, and/or  
service the Subject Loan." Compl. ¶ 15.

1 "Defendants' general business practice was to steer borrowers  
2 toward a risky loan without adequate disclosure," id. ¶ 20; and  
3 "Defendants have failed to properly service the Subject Loan," id.  
4 ¶ 23. Aurora is only mentioned by name once in the entire  
5 Complaint -- in paragraph four -- wherein Plaintiff alleges that  
6 Aurora does business in San Francisco County in the State of  
7 California. Id. ¶ 4.

8 Aurora argues that Plaintiff's failure to differentiate among  
9 the defendants fails to provide Aurora with proper notice of the  
10 allegations against it as required by Federal Rule of Civil  
11 Procedure 8. Mot. at 6. Aurora contends that this "improper  
12 lumping of defendants" is alone sufficient grounds for dismissal of  
13 the Complaint. Id.

14 Plaintiff argues in response that "Aurora, the Defendant, is  
15 correctly named in the Complaint." Opp'n at 7. This assertion  
16 does not properly respond to Aurora's challenge to the Complaint.  
17 According to Aurora, the problem with the Complaint is not that  
18 Aurora is not a proper defendant, but rather that the Complaint  
19 does not provide Aurora with fair notice of the basis for the  
20 allegations against it.

21 The Court agrees with Aurora. "Undifferentiated pleading  
22 against multiple defendants is improper." Aaron v. Aguirre, No.  
23 06-CV-1451, 2007 U.S. Dist LEXIS 16667, at \*75 n.6 (S.D. Cal. Mar.  
24 8, 2007); see also Gauvin v. Trombatore, 682 F. Supp. 1067, 1071  
25 (N.D. Cal. 1988) (lumping together multiple defendants in one broad  
26 allegation fails to satisfy notice requirement of Federal Rule of  
27 Civil Procedure 8(a)(2)). Rule 8(a)(2) requires a short and plain  
28 statement of the claim to put defendants on sufficient notice of

1 the allegations against them. Here, Plaintiff simply refers to  
2 "Defendants" in nearly all of her allegations. In the few  
3 allegations where she alleges misconduct by a singular defendant,  
4 she fails to specify which one. Some of these allegations against  
5 a singular defendant could be fairly read to pertain to Aurora as  
6 servicer of Plaintiff's loan. E.g., Compl. ¶ 43 ("Defendant has  
7 accepted payments from the Plaintiff in the past and are [sic] now  
8 claiming that there is no Agreement between the Plaintiff and  
9 Defendant"). Another, however, refers to the "Defendant" at issue  
10 as Plaintiff's "lender," which Aurora was not, and refers to  
11 misconduct in the origination of the loan. See id. ¶ 45  
12 ("Defendant failed to act as a reasonable lender by placing the  
13 Plaintiff in risky, unreasonable, and unaffordable loans.").  
14 Aurora should not be required to guess which allegations pertain to  
15 it. By failing to differentiate among defendants or specify which  
16 defendant is the subject of Plaintiff's various allegations,  
17 Plaintiff's Complaint violates Rule 8(a)(2) because it fails to  
18 provide Aurora with fair notice of its alleged misconduct. See In  
19 re Sagent Tech., Inc., 278 F. Supp. 2d 1079, 1094 (N.D. Cal. 2003)  
20 ("[T]he complaint fails to state a claim because plaintiffs do not  
21 indicate which individual defendant or defendants were responsible  
22 for which alleged wrongful act.")

23 Plaintiff's failure to differentiate among defendants is  
24 particularly troubling because many of her allegations pertain to  
25 the origination, not servicing, of her loan. See, e.g., Compl.  
26 ¶ 19 ("Defendants indicated Plaintiff was properly qualified for  
27 the Subject Loan"); ¶ 20 ("Defendants' general business practice  
28 was to steer borrowers toward a risky loan without adequate



1 disclosure of the real risks"); ¶ 21 ("Defendants induced Plaintiff  
2 to accept this risky loan"). Plaintiff pleads no facts showing how  
3 Aurora, her loan servicer, was involved in the origination of her  
4 loan. Instead, she alleges without factual support: "Defendants  
5 may not have been directly involved in the origination of the  
6 Subject Loan, but . . . the actions of each party are imputed to  
7 the Defendants." Id. ¶ 18.

8 Aurora further contends that the Complaint is a formulaic  
9 pleading that fails to provide sufficient factual support for its  
10 claims. Mot. at 20. Plaintiff argues in response that the Court  
11 must accept as true the allegations of the Complaint and draw  
12 reasonable inferences in the Plaintiff's favor. Opp'n at 3 (citing  
13 Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005)).  
14 Plaintiff further states that she intends to set forth facts in  
15 support of her allegations at trial and intends to develop those  
16 facts through discovery. Opp'n at 4.

17 The Court finds that Plaintiff's Complaint fails to plead  
18 sufficient facts to state a plausible claim for relief under the  
19 standard articulated in Iqbal. Under Iqbal, the Court need only  
20 accept as true well-pleaded factual allegations; it need not accept  
21 as true "naked assertions devoid of further factual enhancement."  
22 Iqbal, 129 S. Ct. at 1949. Plaintiff's Complaint is rife with such  
23 naked assertions. Indeed, aside from the two-page section entitled  
24 "Specific Allegations," most of the twenty-five page Complaint  
25 appears to contain boilerplate assertions untailed to the facts  
26 of this case. For example, Plaintiff alleges that "Defendants have  
27 failed to properly service the Subject Loan, including . . .  
28 pressuring homeowners facing imminent foreclosure to enter into

1 [certain] contracts with oppressive terms." Compl. ¶ 23. This  
2 statement is a mere generality with no specifics relating to the  
3 instant case. It has long been clear that Rule 8 requires "more  
4 than empty boilerplate." Gen-Probe, Inc. v. Amoco Corp., 926 F.  
5 Supp. 948, 962 (S.D. Cal. 1996). Furthermore, even the allegations  
6 within the section entitled "Specific Allegations" fail to specify  
7 the particular defendant to which they pertain.

8       Once a plaintiff's well-pleaded complaint survives a motion to  
9 dismiss, then the plaintiff is indeed entitled to develop its facts  
10 for trial through the discovery process. However, federal pleading  
11 requirements mandate that Plaintiff provide at least a modicum of  
12 factual support for her claims even at the pre-discovery stage.  
13 Plaintiff must plead "enough facts to . . . nudge[] [her] claims  
14 across the line from conceivable to plausible." Twombly, 550 U.S.  
15 at 570. The Court finds that in this case Plaintiff has failed to  
16 do so.

17       Having reviewed each of Plaintiff's thirteen causes of action,  
18 the Court finds the allegations supporting them to lack the  
19 specificity required to state a proper claim for relief.

20 Plaintiff's failure to indicate which defendant was allegedly  
21 responsible for which wrongful act and to provide well-pleaded  
22 factual allegations in support of each cause of action renders the  
23 Complaint deficient under Rule 8. Accordingly, the Court GRANTS  
24 Aurora's Motion and DISMISSES THE COMPLAINT WITH LEAVE TO AMEND.

25       Lastly, the Court reminds Plaintiff that Federal Rule of Civil  
26 Procedure 11(b)(3) requires the signatory to a complaint to certify  
27 that "the allegations and other factual contentions have  
28 evidentiary support or, if specifically so identified, are likely

1 to have evidentiary support after a reasonable opportunity for  
2 further investigation or discovery." Fed. R. Civ. P. 11(b)(3).  
3 This certification requirement imposes "an affirmative duty to  
4 conduct a reasonable inquiry into the facts and the law before  
5 filing." Business Guides, Inc. v. Chromatic Communications Enter.,  
6 111 S. Ct. 922 (1991) (upholding sanctions against party for filing  
7 complaint of copyright infringement with no factual basis).

8 **B. Motion to Strike**

9 In light of this Court's dismissal of Plaintiff's Complaint,  
10 the Court DENIES AS MOOT Defendant's Motion to Strike.

11 **C. Motion to Expunge Lis Pendens**

12 The Court DENIES Aurora's Motion to Expunge the Lis Pendens  
13 WITHOUT PREJUDICE until the Court has had an opportunity to  
14 consider the merits of Plaintiff's amended complaint, if she  
15 chooses to file one. See, e.g., Edwards v. Aurora Loan Servs.,  
16 LLC, No. 10-CV-00092, 2010 U.S. Dist. LEXIS 68638, at \*9 (E.D. Cal.  
17 July 9, 2010) (dismissing plaintiff's complaint but denying motion  
18 to expunge lis pendens pending filing of amended complaint); Quiroz  
19 v. Countrywide Bank, N.A., No. CV-09-5855, 2009 U.S. Dist. LEXIS  
20 111881, \*18 (C.D. Cal. Nov. 16, 2009) (same). Defendant may timely  
21 renew its Motion to Dismiss and/or Expunge Lis Pendens following  
22 Plaintiff's filing of an amended complaint.

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**V. CONCLUSION**

For the foregoing reasons, the Court DISMISSES Plaintiff Estiva Corazon's Complaint in its entirety WITH LEAVE TO AMEND. The Court DENIES AS MOOT Defendant Aurora Loan Services, LLC's Motion to Strike and DENIES WITHOUT PREJUDICE Defendant's Motion to Expunge Lis Pendens. If Plaintiff chooses to file an amended complaint, it shall be filed within thirty (30) days of this Order. In the event that Plaintiff does not amend her complaint within thirty (30) days, the Court will dismiss this action WITH PREJUDICE.

IT IS SO ORDERED.

Dated: May 5, 2011

  
UNITED STATES DISTRICT JUDGE