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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
v.	)	PLAINTIFF'S AMENDED
	)	COMPLAINT AND EXPUNGE LIS
AURORA LOAN SERVICES, LLC, a	)	<u>PENDENS</u>
limited liability company, and	)	
DOES 1 through 50, inclusive,	)	
	)	
Defendants.	)	
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**I. INTRODUCTION**

Before the Court is a Motion to Dismiss Plaintiff's First Amended Complaint ("FAC") and to Expunge Lis Pendens filed by Defendant Aurora Loan Services, LLC ("Defendant" or "Aurora") against Plaintiff Estiva Corazon ("Plaintiff"). ECF No. 19 ("Mot."). The Motion is fully briefed. ECF Nos. 21 ("Opp'n"), 22 ("Reply"). For the following reasons, the Court GRANTS Defendant's Motion.

**II. BACKGROUND**

This action concerns alleged illegal business practices relating to a residential mortgage loan. On January 5, 2011,

1 Plaintiff filed suit in San Francisco County Superior Court against  
2 Aurora and fifty Doe defendants. ECF No. 1 ("Notice of Removal")  
3 Ex. 1 ("Compl."). Plaintiff also filed a Notice of Pendency of  
4 Action, or lis pendens, with the state court with respect to the  
5 property at issue. Request for Judicial Notice ("RJN") Ex. 10  
6 ("Lis Pendens").<sup>1</sup> Aurora removed the action on February 4, 2011.  
7 See Notice of Removal. On May 5, 2011, the Court granted Aurora's  
8 motion to dismiss the complaint with leave to amend. ECF No. 16  
9 ("May 2011 Order"). Plaintiff filed her FAC on June 3, 2011. ECF  
10 No. 18. Aurora now moves to dismiss the FAC under Federal Rule of  
11 Civil Procedure 12(b)(6).

12 The following alleged facts are drawn from Plaintiff's FAC.  
13 Plaintiff owns the real property located at 2 Ulloa Street, San  
14 Francisco, California. FAC ¶¶ 2, 15. She purchased the property  
15 in June 2007 using funds borrowed from Residential Mortgage Capital  
16 ("RMC"). Id. ¶ 15. 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. Plaintiff's initial monthly payment  
20 was \$3,437. Id. ¶ 18.

21 As security for the loan, Plaintiff executed a deed of trust  
22 on the property. RJN Ex. 1 ("Deed of Trust"). The Deed of Trust

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23 <sup>1</sup> Defendant asks the Court to take judicial notice of various  
24 documents pertaining to Plaintiff's loan. ECF No. 20. Plaintiff  
25 does not oppose the request. While generally a court may not  
26 consider material beyond the facts alleged in the complaint when  
27 deciding a motion to dismiss, the Ninth Circuit has recognized an  
28 exception to this 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 identified RMC as the lender, Mortgage Electronic Registration  
2 System, Inc. ("MERS") as the beneficiary, and First National Title  
3 as trustee. Id. at 1. On July 27, 2007, Aurora wrote to Plaintiff  
4 advising her that Aurora was being assigned the servicing rights of  
5 her loan with RMC. RJN Ex. 2 ("Notice of Assignment").

6 In January 2009, Plaintiff contacted Aurora to request a loan  
7 modification because she was having difficulties making her loan  
8 payments. FAC ¶¶ 19, 20. In February 2009, she entered into a  
9 six-month forbearance agreement with Aurora, which provided that  
10 she would make lower monthly payments of \$3,400 while her  
11 application for loan modification was reviewed. Id. ¶¶ 21.  
12 Plaintiff made the agreed upon payments, but her modification  
13 application was denied. Id.

14 On October 27, 2009, a Notice of Default was recorded by the  
15 substituted trustee, Cal-Western Reconveyance Corporation ("CWRC").  
16 Id. ¶ 30; RJN Ex. 3. On January 28, 2010, a Notice of Trustee's  
17 Sale was issued by CWRC indicating that the property would be sold  
18 on February 17, 2010. Id. ¶ 31; RJN Ex. 4. For reasons unknown to  
19 the Court, the scheduled trustee's sale did not take place.

20 In February 2010, Plaintiff again entered into a six-month  
21 forbearance agreement with Aurora while Aurora again reviewed her  
22 request for a loan modification. Id. ¶ 22. Plaintiff made the  
23 agreed upon forbearance payments. Id. ¶ 23. In July 2010, at the  
24 end of the forbearance period, Plaintiff was informed that her  
25 request for modification had again been denied. Id. ¶ 24.

26 In August 2010, Plaintiff and Aurora executed a third and  
27 final forbearance agreement, which provided for Plaintiff to make  
28 an initial payment of \$11,000 and make monthly payments of \$4,885

1 through February 2011.<sup>2</sup> Id. ¶ 25. Plaintiff alleges that she made  
2 these payments through December 2010 and the payments were accepted  
3 by Aurora. Id. ¶ 25. She alleges that her January 2011 payment,  
4 however, was rejected and returned to her along with a letter  
5 stating that no August 2010 forbearance agreement existed.<sup>3</sup> Id. A  
6 Trustee Sale date was then set for January 10, 2011. FAC ¶ 32.  
7 The FAC does not address whether or not the sale took place.

8 On April 26, 2011, Plaintiff filed for bankruptcy in the  
9 United States Bankruptcy Court for the Northern District of  
10 California. RJN Ex. 7 ("Bankr. Pet."); Opp'n at 6.

11 In her FAC, Plaintiff asserts the following seven claims: (1)  
12 fraud; (2) violations of California Business and Professions Code §  
13 17200 ("UCL"), et seq.; (3) breach of the implied covenant of good  
14 faith and fair dealing; (4) violation of California Civil Code §  
15 2923.5; (5) promissory estoppel; (6) negligence; and (7)  
16 misrepresentation.

17 In its Motion, Defendant argues that Plaintiff has failed to  
18 cure the pleading deficiencies in its original complaint and asks  
19 the Court to dismiss the FAC with prejudice. Reply at 8.

20

21 **III. LEGAL STANDARD**

22 A motion to dismiss under Federal Rule of Civil Procedure  
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24 <sup>2</sup> Although not stated in the FAC, Plaintiff's Opposition states  
25 that these payments would have paid off Plaintiff's arrearage in  
full. Opp'n at 3.

26 <sup>3</sup> Plaintiff's Opposition contradicts the allegation that Aurora  
27 accepted all payments until the January 2011 payment. It states:  
28 "the Defendant frequently rejected the Plaintiff's payments under  
the Special Forbearance Agreement, claiming that no such agreement  
exi[s]ted." Opp'n at 7. Moreover, the portions of the FAC  
Plaintiff cites in support of this statement are entirely off  
point.

1 12(b)(6) "tests the legal sufficiency of a claim." Navarro v.  
2 Block, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal can be based  
3 on the lack of a cognizable legal theory or the absence of  
4 sufficient facts alleged under a cognizable legal theory.  
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir.  
6 1990). "When there are well-pleaded factual allegations, a court  
7 should assume their veracity and then determine whether they  
8 plausibly give rise to an entitlement to relief." Ashcroft v.  
9 Iqbal, 129 S. Ct. 1937, 1950 (2009). However, "the tenet that a  
10 court must accept as true all of the allegations contained in a  
11 complaint is inapplicable to legal conclusions. Threadbare  
12 recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice." Iqbal, 129 S. Ct. at 1950  
14 (citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)). A  
15 complaint need not contain "detailed factual allegations," but it  
16 must provide more than an "unadorned, the-defendant-unlawfully-  
17 harmed-me accusation." Id. at 1949. Thus, a motion to dismiss  
18 should be granted if the plaintiff fails to proffer "enough facts  
19 to . . . nudge[] [its] claims across the line from conceivable to  
20 plausible." Twombly, 550 U.S. at 570.

21

22 **IV. DISCUSSION**

23 In its May 2011 Order, the Court held that Plaintiff had  
24 failed to satisfy the notice requirement of Federal Rule of Civil  
25 Procedure 8(a)(2) because her allegations lumped together Aurora  
26 and fifty Doe defendants without specifying which actions were  
27 allegedly taken by Aurora. May 2011 Order at 7-8. The Court also  
28 held that Plaintiff had failed to plead sufficient facts to state a

1 plausible claim for relief under Iqbal. Id. at 9-10. In her FAC,  
2 Plaintiff has at least specified that all references to "Defendant"  
3 refer to Aurora, FAC ¶ 4, and has specified that each claim is  
4 asserted against Aurora in particular. See FAC. These changes,  
5 while minor, suffice to cure the "lumping" deficiency from which  
6 Plaintiff's initial complaint suffered.

7        Nevertheless, as Defendant argues, Plaintiff has pleaded no  
8 additional facts in her FAC. She has deleted several causes of  
9 action. Aside from this change, she has merely rearranged the  
10 order of the allegations from her original complaint. Thus, the  
11 same observation the Court made regarding the initial complaint  
12 applies to the FAC as well: "aside from the two-page section  
13 entitled 'Specific Allegations,' most of the . . . Complaint  
14 appears to contain boilerplate assertions untailed to the facts  
15 of this case." May 2011 Order at 9. Indeed, Kenneth Graham  
16 ("Graham"), Plaintiff's attorney, has used nearly identical  
17 complaints in a multitude of cases in this district. For example,  
18 the complaint filed by Graham in Melegrito v. Citimortgage, Inc.,  
19 No. C-11-1765 LB, 2011 U.S. Dist. LEXIS 60447, is almost a word-  
20 for-word copy of the complaint and FAC filed in the instant case,  
21 except for the two-page "Specific Allegations" section. Id. at \*3  
22 n.2 (collecting cases in which Graham has filed nearly identical  
23 complaints).

24        As explained in detail below, the FAC, like its predecessor,  
25 fails to state a claim that is plausible on its face.

26        **A. Claims Pertaining to Origination of the Loan**

27        Several of Plaintiff's claims allege misconduct in the  
28 origination of Plaintiff's loan. Defendant argues that all claims

1 pertaining to the origination of the loan should be dismissed  
2 because Plaintiff has pleaded no facts suggesting that Aurora was  
3 involved in the origination of the loan in any way. The Court  
4 agrees.

5 In its May 2011 Order, the Court stated "Plaintiff pleads no  
6 facts showing how Aurora . . . was involved in the origination of  
7 her loan. Instead, she alleges without factual support:  
8 'Defendants may not have been directly involved in the origination  
9 of the Subject Loan, but . . . the actions of each party are  
10 imputed to the Defendants.'" May 2011 Order at 9. Plaintiff's FAC  
11 suffers from the same deficiency. Plaintiff alleges that Aurora  
12 was her loan servicer and "acquired the Subject Loan from RMC."  
13 FAC ¶ 16. She then alleges that "each Defendant, not directly or  
14 otherwise involved in the origination . . . [of] the Subject Loan,  
15 are liable, such as for example, liable as successors-in-interest."  
16 Id. ¶ 11. She pleads no facts to support the allegation that  
17 Aurora is the successor-in-interest of RMC. Such naked legal  
18 conclusions, unsupported by facts, fail to state a plausible claim  
19 under Iqbal.

20 Because the Court has already granted Plaintiff leave to amend  
21 her complaint once to address this shortcoming, the Court DISMISSES  
22 WITH PREJUDICE all of Plaintiff's claims pertaining to misconduct  
23 in the origination of her loan. Plaintiff's UCL claim, which is  
24 premised on allegations that Defendant made misleading statements  
25 "to induce Plaintiff to enter into the subject loan" and engaged in  
26 a wrongful practice of "recklessly granting subprime loans," is  
27 therefore DISMISSED WITH PREJUDICE. FAC ¶¶ 63, 64. Likewise,  
28 Plaintiff's negligence claim, which alleges that Plaintiff breached

1 its "duty of care to act as a reasonable lender in lending to  
2 Plaintiff and to not place Plaintiff into risky or unaffordable  
3 loan," is DISMISSED WITH PREJUDICE. FAC ¶ 87. Plaintiff's fraud  
4 and misrepresentation claims are based partially on alleged  
5 misconduct in June 2007 pertaining to the origination of her loan  
6 and partially on later alleged misconduct pertaining to the alleged  
7 August 2010 forbearance agreement. Plaintiff's fraud and  
8 misrepresentation allegations pertaining to the origination of her  
9 loan are DISMISSED WITH PREJUDICE. The Court addresses the fraud  
10 and misrepresentation allegations not related to the origination of  
11 the loan below.

12 **B. Fraud and Misrepresentation Claims**

13 Having already dismissed Plaintiff's allegations of misconduct  
14 in connection with the origination of her loan, the Court now  
15 addresses Defendant's challenge to Plaintiff's remaining  
16 allegations of fraud and misrepresentation. The remaining basis  
17 for Plaintiff's fraud and misrepresentation claims is the  
18 allegation that Aurora falsely represented that there was no August  
19 2010 forbearance agreement after already accepting payments  
20 pursuant to such an agreement. FAC ¶¶ 50, 97.

21 To state a claim for fraud under California law, Plaintiff  
22 must allege (1) a misrepresentation; (2) knowledge of falsity; (3)  
23 intent to induce reliance; (4) justifiable reliance; and (5)  
24 resulting damage. Lazar v. Superior Court, 12 Cal. 4th 631, 638  
25 (1996). To state a claim for negligent misrepresentation,  
26 Plaintiff must allege: (1) a misrepresentation of material fact;  
27 (2) without a reasonable ground for believing it to be true; (3)  
28 with intent to induce the plaintiff's reliance on the fact



1 misrepresented; (4) ignorance of the truth and justifiable reliance  
2 on the misrepresentation by the plaintiff; and (5) resulting  
3 damage. Shamsian v. Atlantic Richfield Co., 107 Cal. App. 4th 967,  
4 983 (Ct. App. 2003). Aurora argues that Plaintiff has failed to  
5 plead these claims with the requisite specificity for claims  
6 sounding in fraud. Mot. at 11. The Court agrees.

7 Under Federal Rule of Civil Procedure 9(b), claims sounding in  
8 fraud are subject to a heightened pleading standard. "To satisfy  
9 Rule 9(b), a pleading must identify the who, what, when, where, and  
10 how of the misconduct charged, as well as what is false or  
11 misleading about [the purportedly fraudulent] statement, and why it  
12 is false." Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.,  
13 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks  
14 omitted). Here, Plaintiff alleges that in August 2010 she entered  
15 into a forbearance agreement with Aurora. She alleges that she  
16 made monthly payments in accordance with this agreement and that  
17 Aurora accepted these payments until January 2011. Her January  
18 2011 payment was allegedly returned, along with a letter from  
19 Defendant stating that no forbearance agreement existed. Plaintiff  
20 alleges that the statement contained in the letter declaring that  
21 no forbearance agreement existed was false.

22 Plaintiff has pleaded what the alleged misstatement was, when  
23 it was made, and why it was allegedly false. She has not pleaded  
24 facts as to who made the alleged false statement. Plaintiff argues  
25 that she need not identify who made the statement because the  
26 heightened pleading standard is relaxed when "the defendant must  
27 necessarily possess full information concerning the facts of the  
28 controversy" or "when the facts lie more in the knowledge of the

1 opposite party." FAC ¶ 59; Opp'n at 8.<sup>4</sup> While this is a correct  
2 statement of law, Susilo v. Wells Fargo Bank, N.A., --- F. Supp. 2d  
3 ---, 2011 WL 2471167, at \*10 (C.D. Cal. June 21, 2011), Plaintiff's  
4 attempt to invoke it here is peculiar given that Plaintiff  
5 allegedly received a letter containing the false statement at  
6 issue. If Plaintiff received such a letter, then she should be in  
7 possession of the requisite facts, including who wrote the letter.

8 Plaintiff has also failed to plead detrimental reliance with  
9 the requisite specificity. She simply alleges that "Defendant  
10 falsely represented that Plaintiff did not have August 2010  
11 Agreement with Defendant," and that Plaintiff "relied on these  
12 statements" and by foregoing "other available options." FAC ¶¶ 52,  
13 53. Such naked allegations are insufficient to satisfy Rule 9(b).

14 As the Court has already dismissed Plaintiff's complaint once  
15 for failure to plead sufficient facts to state a plausible claim,  
16 the Court DISMISSES WITH PREJUDICE Plaintiff's claims for fraud and  
17 misrepresentation.

18 **C. Bad Faith Claim**

19 Plaintiff's third claim is for breach of the implied covenant  
20 of good faith and fair dealing. "To establish a breach of an  
21 implied covenant of good faith and fair dealing, a plaintiff must  
22 establish the existence of a contractual obligation, along with  
23 conduct that frustrates the other party's rights to benefit from  
24 the contract." Fortaleza v. PNC Fin. Servs. Group, Inc., 642 F.  
25 Supp. 2d 1012, 1021-22 (N.D. Cal. 2009). Plaintiff fails to plead  
26 the existence of a contract between herself and Aurora. Rather,  
27 she simply alleges that Aurora owed her a duty of good faith under

28 \_\_\_\_\_  
<sup>4</sup> This argument is primarily set forth in the FAC itself, and  
alluded to in Plaintiff's Opposition.

1 the "loan contracts." FAC ¶ 68. However, a loan servicer is not a  
2 party to the mortgage itself. Conder v. Home Sav. Of Am., 680 F.  
3 Supp. 2d 1168, 1174; see also Lomboy v. SCME Mortg. Bankers, No. C-  
4 09-1160 SC, 2009 U.S. Dist. LEXIS 44158, at \*13 (N.D. Cal. May 26,  
5 2009) ("As a loan servicer, Aurora is not a party to the deed of  
6 trust itself."). The Court therefore DISMISSES WITH PREJUDICE  
7 Plaintiff's claim for breach of the covenant of good faith and fair  
8 dealing.

9 **D. Violation of California Civil Code § 2923.5**

10 Plaintiff's fourth claim alleges that Aurora violated sections  
11 2923.5(b), 2923.5(a)(2), and 2923.5(g) of the California Civil  
12 Code. FAC ¶¶ 72-76.

13 Section 2923.5(a)(2) requires a "mortgagee, trustee,  
14 beneficiary, or authorized agent" seeking to file a notice of  
15 default to first contact the borrower in person or by telephone "in  
16 order to assess the borrower's financial situation and explore  
17 options for the borrower to avoid foreclosure." Cal. Civ. Code §  
18 2923.5(a)(2). The lender's obligations to "assess" the borrower's  
19 financial situation and "explore" options to avoid foreclosure can  
20 be satisfied by simply asking the borrower "why can't you make your  
21 payments?" and "telling the borrower the traditional ways that  
22 foreclosure can be avoided (e.g., deeds 'in lieu,' workouts, or  
23 short sales)." Mabry v. Super. Ct., 185 Cal. App. 4th 208, 232  
24 (Ct. App. 2010).

25 Section 2923.5(b) requires a default notice to include a  
26 declaration "from the mortgagee, beneficiary, or authorized agent"  
27 of compliance with section 2923.5. Section 2923.5(g) provides that  
28 a notice of default may be filed even if the borrower has not been

1 contacted as required by section 2923.5(a)(2) provided that the  
2 failure to contact the borrower occurred despite the due diligence  
3 of the mortgagee, trustee, beneficiary, or authorized agent.

4 Here, the Notice of Default clearly contains a declaration of  
5 compliance with section 2923.5 as required by section 2923.5(b).  
6 Notice of Default. Plaintiff's allegations that Defendant violated  
7 section 2923.5(b) therefore fail.

8 Defendant argues that Plaintiff's allegations that Defendant  
9 violated section 2923.5(a)(2) by failing to contact her to assess  
10 her financial situation and explore options to avoid foreclosure  
11 also fail because Plaintiff admits in her FAC that Aurora entered  
12 into at least two forbearance agreements with her. The Court  
13 agrees. Plaintiff's allegations that Defendant entered into  
14 multiple forbearance agreements with her and yet failed to satisfy  
15 its minimal obligations under 2923.5(a)(2) do not cross the line  
16 from conceivable to plausible as required by Iqbal.

17 Accordingly, the Court DISMISSES WITH PREJUDICE Plaintiff's  
18 claim for violation of section 2923.5.<sup>5</sup>

19 **E. Promissory Estoppel**

20 In her promissory estoppel claim, Plaintiff reiterates her  
21 allegations that Defendant entered into a third forbearance  
22 agreement in August 2010 and then denied the existence of that  
23 agreement when Plaintiff tried to make her January 2011 payment.  
24 FAC ¶ 80. She further alleges that "Defendants broke a clear  
25 promise made to the Plaintiff not to foreclose upon the Subject  
26 Property, as long the Plaintiff made payments according to the

27 \_\_\_\_\_  
28 <sup>5</sup> The Court need not address Plaintiff's allegations that Defendant failed to satisfy its due diligence requirements under section 2923.5(g) because these requirements only pertain to situations in which section 2923.5(a)(2) is not satisfied.

1 Special Forbearance Agreement." Id. ¶ 81.

2 Defendant argues that Plaintiff's promissory estoppel claim  
3 should be dismissed because it is based on a promise allegedly  
4 contained in a special forbearance agreement between the parties.  
5 Defendant argues that any such agreement would have been an express  
6 contract, and a promissory estoppel claim cannot be premised on a  
7 bargain made as part of a contract. Opp'n at 15 (citing Philips  
8 Medical Capital, LLC v. Medical Insights Diagnostics Ctr., Inc.,  
9 471 F. Supp. 2d 1035 (N.D. Cal. 2007) ("[W]hen the promisee's  
10 reliance was bargained for, the law of consideration applies; and  
11 it is only where the reliance was unbargained for that there is  
12 room for application of the doctrine of promissory estoppel . . .  
13 [P]romissory estoppel has no application when parties have entered  
14 into an enforceable agreement.")) (internal citations omitted).

15 Plaintiff does not address Defendant's argument that the  
16 alleged promise cannot support a promissory estoppel claim because  
17 it was allegedly part of a contract. Rather, she cites Garcia v.  
18 World Savings, FSB, 183 Cal. App. 4th 1031, 1045 (Ct. App. 2010),  
19 for the proposition that "to be enforceable, a promise need only be  
20 definite enough that a court can determine the scope of the duty,  
21 and the limits of performance must be sufficiently defined to  
22 provide a rational basis for the assessment of damages." Opp'n at  
23 10. Plaintiff argues that Defendant's promise to work with her on  
24 a loan modification once she made all her payments under the  
25 alleged August 2010 forbearance agreement met these requirements.  
26 Id.

27 It is unclear from Plaintiff's FAC whether she is alleging  
28 that Aurora promised not to foreclose on her property as part of

1 the alleged forbearance agreement, or whether the alleged promise  
2 was made separately from the agreement. Because of this pleading  
3 deficiency, the Court cannot determine whether Plaintiff's claim  
4 survives Defendant's challenge. What is clear, however, is that  
5 Plaintiff has again failed to plead sufficient facts to give rise  
6 to a plausible claim to relief. Because Plaintiff provides no  
7 details whatsoever about the alleged promise, which is not even  
8 mentioned until paragraph eighty-one of the FAC, she has failed to  
9 plead sufficient facts to state a plausible claim for promissory  
10 estoppel.

11 "[A] district court has broad discretion . . . to deny leave  
12 to amend, particularly where the court has already given a  
13 plaintiff one or more opportunities to amend his complaint." Mir  
14 v. Fosburg, 646 F.2d 342, 347 (9th Cir. 1980). The Court has  
15 already granted Plaintiff leave to amend once, and Plaintiff's FAC  
16 shows little effort to rectify the rampant pleading deficiencies  
17 that plagued the original complaint. Instead, Plaintiff has  
18 rearranged the original complaint, deleted some portions, and re-  
19 filed essentially the same document. Accordingly, the Court will  
20 not grant Plaintiff leave to amend her promissory estoppel claim  
21 and DISMISSES the claim WITH PREJUDICE.

22 **F. Motion to Expunge Lis Pendens**

23 Defendant moves the Court to expunge the lis pendens clouding  
24 title to the property at issue. "At any time after notice of  
25 pendency of action has been recorded, any party . . . may apply to  
26 the court in which the action is pending to expunge the notice."  
27 Cal. Civ. Proc. Code § 405.30. Pursuant to California Code of  
28 Civil Procedure §§ 405.31 and 405.32, a court shall order that the

1 notice be expunged if (1) "the court finds that the pleading on  
2 which the notice is based does not contain a real property claim"  
3 or (2) "the court finds that the claimant has not established by a  
4 preponderance of the evidence the probable validity of the real  
5 property claim."

6 Because Plaintiff has failed to state a claim upon which  
7 relief may be granted, the pleading on which the lis pendens was  
8 based does not contain a real property claim. Accordingly, the  
9 Court ORDERS that the lis pendens shall be expunged in accordance  
10 with California Code of Civil Procedure §§ 405.31 and 405.32.

11

12 **V. CONCLUSION**

13 For the foregoing reasons, the Court GRANTS the Motion to  
14 Dismiss filed by Defendant Aurora Loan Services, LLC and DISMISSES  
15 Plaintiff Estiva Corazon's First Amended Complaint in its entirety  
16 WITH PREJUDICE. The Court also GRANTS Defendant's Motion to  
17 Expunge Lis Pendens and ORDERS that Plaintiff's lis pendens shall  
18 be expunged in accordance with California Code of Civil Procedure  
19 §§ 405.31 and 405.32.

20

21 IT IS SO ORDERED.

22

23 Dated: August 30, 2011

24

  
UNITED STATES DISTRICT JUDGE

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