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United States District Court
For the Northern District of California

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

DEBRA LAINE,

No. C 13-4109 SI

Plaintiff,

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS WITH LEAVE
TO AMEND AND DENYING
PLAINTIFF’S MOTION FOR A
TEMPORARY RESTRAINING ORDER
AND/OR PERMANENT INJUNCTION**

v.

WELLS FARGO BANK & CO., DOES 1-20,

Defendants.

Defendant’s motion to dismiss the complaint and plaintiff’s motion for a temporary restraining order and/or for a preliminary injunction are scheduled for a hearing on November 15, 2013. Pursuant to Civil Local Rule 7-1(b), the Court determines that the matters are appropriate for resolution without oral argument and VACATES the hearing. Having considered the papers submitted, and for good cause shown, the Court GRANTS defendants’ motion to dismiss and DENIES plaintiff’s motion for a temporary restraining order. The Court GRANTS plaintiff leave to amend the complaint. If plaintiff chooses to amend the complaint, the amended complaint shall be filed no later than **November 26, 2013**.

BACKGROUND

In June 2004, plaintiff and her former husband obtained a loan from World Savings Bank, FSB in the amount of \$361,000. The loan was secured by a deed of trust against real property located at 5450

1 Betty Circle, Livermore, California (the “subject property”). Docket No. 2, Ex. 3.¹

2 On December 31, 2007, World Savings Bank, FSB changed its name to Wachovia Mortgage,
3 FSB. *Id.*, Ex. 4 at 2. In April 2009, plaintiff and her former husband received a loan modification from
4 Wachovia Mortgage, FSB. Docket No. 18, Ex. A. In November 2009, Wachovia Mortgage, FSB
5 changed its name to Wells Fargo Bank Southwest, N.A., before merging with Wells Fargo Bank, N.A.
6 Docket No. 2, Ex. 4 at 7. Plaintiff and her former husband received a second loan modification in
7 November 2009 from Wells Fargo Bank, N.A. Docket No. 18, Ex. B.

8 The complaint alleges that in late 2012, plaintiff and her husband decided to divorce. Compl.
9 ¶ 15. The complaint does not state when the divorce became final, but does allege that plaintiff’s
10 former husband gave plaintiff an Interspousal Transfer Deed for the subject property, and that deed was
11 recorded on March 1, 2013 in Alameda County. *Id.* According to the complaint, sometime in 2012
12 plaintiff’s former husband lost his job and he could not help pay the mortgage payments or legal bills
13 incurred as a result of the divorce. *Id.* The complaint also alleges that when plaintiff’s husband lost his
14 job, plaintiff lost her medical insurance. *Id.* ¶ 16. The complaint alleges that “[p]laintiff’s increased
15 medical bills and attorney bills caused her to default on her loan payments in about November of 2012.”

17 ¹ In connection with the filing of the complaint, plaintiff filed copies of documents reflecting
18 certain public records of the Alameda County Recorder’s Office regarding the subject property, as well
19 as copies of correspondence between plaintiff and Wells Fargo. Docket No. 2, Ex. 1-4, 7-10. All of
20 these documents are referenced in the complaint, and defendant does not dispute their authenticity. The
21 Court takes judicial notice of these documents. *See Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994)
22 (“[W]e hold that documents whose contents are alleged in a complaint and whose authenticity no party
23 questions, but which are not physically attached to the pleading, may be considered in Ruling on a 12(b)
24 motion to dismiss.”).

21 However, the Court does not take judicial notice of Exhibits 5 and 6 to plaintiff’s declaration –
22 a news article and a Wall Street Journal blog article – because those documents are outside the scope
23 of the complaint and do not contain adjudicative facts appropriate for judicial notice at the pleadings
24 stage.

23 Plaintiff also seeks judicial notice of a “compilation” of various documents that she states came
24 from the SEC, Office of Thrift Supervision, and the FDIC. Docket No. 20. Defendant objects to the
25 request on the ground that the documents’ authenticity and origin cannot be readily determined, and that
26 the contents of the documents are subject to interpretation. The Court agrees with defendant’s
27 objections and does not take judicial notice of these documents.

26 Finally, defendant seeks judicial notice of two loan modification agreements showing that
27 plaintiff and her former husband received loan modifications in 2009. Plaintiff does not dispute the
28 authenticity of these documents, and the Court finds that the documents are suitable matter for judicial
notice under Federal Rule of Evidence 201.

1 *Id.* ¶ 17.

2 Plaintiff failed to make her November 2012 payment, and the complaint alleges that in that same
3 month “plaintiff began working with Josh Reeves, Home Preservation Specialist, Wells Fargo Home
4 Mortgage to modify her loan. However, Mr. Reeves told plaintiff that the loan modification could not
5 proceed until plaintiff could provide proof of her divorce.” *Id.* ¶ 18. The complaint does not state
6 whether or when plaintiff provided Wells Fargo with proof of her divorce, or whether plaintiff in fact
7 applied for a loan modification in November 2012.

8 The complaint alleges that in January and February of 2013, plaintiff made two house payments,
9 but then missed several more mortgage payments because her medical creditors were threatening to take
10 action against her. *Id.* ¶ 19. On May 28, 2013, a Substitution of Trustee was recorded substituting
11 Regional Services Corporation as the Trustee under the Deed of Trust. Docket No. 2, Ex. 7. The
12 Substitution of Trustee states that World Savings Bank, FSB, its successors and/or assignees was the
13 original beneficiary under the Deed of Trust and that Wells Fargo Bank, N.A. was the current
14 beneficiary. *Id.* That same day, Regional Services Corporation recorded a Notice of Default, stating
15 that plaintiff owed \$14,043.14 in arrears. *Id.*, Ex. 8. The complaint alleges that on that also on that same
16 day, plaintiff “attempted to again start a loan modification” but that a Wells Fargo representative named
17 “Roberto” informed told her that Wells Fargo would not start the modification process because plaintiff
18 did not yet have her divorce decree. Compl. ¶ 22.

19 On June 3, 2013, plaintiff sent Wells Fargo a mortgage payment. *Id.* ¶ 23. On June 7, 2013,
20 Wells Fargo sent plaintiff a letter stating it was returning plaintiff’s check because the amount of the
21 payment was less than the amount required to bring the loan current. *Id.* On June 12, 2013, plaintiff
22 spoke to Roberto again about applying for a loan modification, and Roberto again informed her that
23 plaintiff needed proof of her divorce in order to apply for the modification. *Id.* ¶ 24.

24 The complaint alleges that on June 14, 2013, plaintiff sent Wells Fargo Home Mortgage “a
25 Qualified Written Request pursuant to 12 U.S.C. § 2605 [of the Real Estate Settlement Procedures Act]
26 and Cal. Civ. Code § 2913.55 and § 2913.55 requesting a written itemization of the unpaid principal for
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1 the loan.” *Id.* ¶ 25 & Docket No. 2, Ex. 10. Pursuant to Cal. Civ. Code § 2913.55, “plaintiff also asked
2 for a copy of the promissory note or other evidence of indebtedness, a copy of the deed of trust, and a
3 copy of any assignment of the deed of trust required to demonstrate the right of the mortgage servicer
4 to foreclose.” Compl. ¶ 25.

5 Wells Fargo responded to plaintiff in a letter dated June 24, 2013. Docket No. 2, Ex. 1. The
6 letter stated that it appeared plaintiff’s letter “is more of an attempt at discovery” rather than a
7 “Qualified Written Request” under RESPA. *Id.* Wells Fargo also enclosed a copy of the Note and Deed
8 of Trust with the June 24, 2013 letter, and the letter stated that a complete loan history would follow
9 under separate cover. *Id.* With regard to the ownership and servicing history of plaintiff’s loan, the
10 June 24, 2013 letter stated,

11 The loan is owned by Wells Fargo Bank, N.A. successor by merger with Wells Fargo
12 Bank Southwest, N.A., formerly known as Wachovia Mortgage, FSB; formerly known
13 as World Savings Bank, FSB. Please see the attached correspondence from the Office
14 of Thrift Supervision and Comptroller of the Currency recognizing the name changes.
15 The servicing of the loan is performed under Wells Fargo Home Mortgage, a division
16 of Wells Fargo Bank, N.A. Thus, Wells Fargo Bank, N.A. is both the servicer and
17 owner of the loan. The Note and Deed of Trust are held by the Custodian of Records
18 at 4101 Wiseman Blvd., San Antonio, TX 78251.

19 *Id.*

20 In July of 2013, plaintiff began the process of applying for a loan modification. Compl. ¶¶ 29-
21 30. On or about August 17, 2013, plaintiff faxed Wells Fargo her application for a loan modification.
22 *Id.* ¶ 33. Several days later, plaintiff faxed her application a second time because Wells Fargo stated
23 it had not received the entire application. *Id.* ¶¶ 34-36. Wells Fargo told plaintiff that it needed
24 additional information in order to process her application. *Id.* ¶¶ 36, 40, 42. The complaint alleges that
25 plaintiff provided the additional information on August 28, 2013, September 3, 2013, and September
26 4, 2013. *Id.* ¶¶ 37, 41, 43.

27 On August 29, 2013, a notice of trustee’s sale was recorded. Docket No. 2, Ex. 9. A sale was
28 scheduled for September 24, 2013. Compl. ¶ 43.

Plaintiff filed this lawsuit *in pro per* on September 5, 2013. Plaintiff also filed a motion for a
temporary restraining order and/or a permanent injunction, and defendant moved to dismiss the

1 complaint.²

2 The complaint alleges that Wells Fargo does not have the right to foreclose on the subject
3 property because World Savings Bank, FSB is the holder of the note. The complaint alleges that “The
4 Deed of Trust shows that World Savings Bank FSB is the beneficiary (lender) and not Wells Fargo as
5 stated in the Substitution of Trustee.” *Id.* ¶ 57. The complaint alleges that the Notice of Default “is
6 false because the documents provided by Wells Fargo do not establish that the note was transferred or
7 assigned to Wells Fargo.” *Id.* The complaint alleges that the Notice of Default, Substitution of Trustee
8 and Notice of Trustee’s Sale contain fraudulent statements and are void as a result. *Id.* The complaint
9 also alleges that Wells Fargo knew or should have known “that the documents they provided do not
10 establish, pursuant to the California Commercial Code, that they own plaintiff’s loan or have a right to
11 enforce the note.” *Id.* ¶ 58. The complaint also alleges that Wells Fargo did not provide all of the
12 information that plaintiff requested in her Qualified Written Request, and that because Wells Fargo did
13 not provide the information, plaintiff lost an opportunity with a “private investor who wanted to take
14 a second position on the loan and take it out of default and to provide plaintiff with \$50,000.” *Id.* ¶ 78.
15 The complaint also alleges that Wells Fargo violated the California Homeowner Bill of Rights by
16 foreclosing on the subject property when plaintiff was in the process of seeking a loan modification.

17 The complaint alleges claims for fraud, negligence, unfair business practices, negligent and
18 intentional infliction of emotional distress, and violations of RESPA, the California Home Owner’s Bill
19 of Rights, and Cal. Civ. Code §§ 1511 and 1512.

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21 **LEGAL STANDARDS**

22 **I. Rule 12(b)(b)**

23 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it
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25 ² Immediately after the filing of the complaint, the Court referred the parties to the Court’s
26 alternative dispute resolution program, and defendant agreed to postpone the sale of the subject property
27 while the parties engaged in ADR. Those efforts have thus far proven unsuccessful, and thus the Court
28 proceeded with the pending motions.

1 fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss,
2 the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
3 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This “facial plausibility” standard requires the plaintiff
4 to allege facts that add up to “more than a sheer possibility that a defendant has acted unlawfully.”
5 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While courts do not require “heightened fact pleading of
6 specifics,” a plaintiff must allege facts sufficient to “raise a right to relief above the speculative level.”
7 *Twombly*, 550 U.S. at 555, 570.

8 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the court
9 must assume that the plaintiff’s allegations are true and must draw all reasonable inferences in the
10 plaintiff’s favor. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the
11 court is not required to accept as true “allegations that are merely conclusory, unwarranted deductions
12 of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

13 Pro se complaints are held to “less stringent standards than formal pleadings drafted by lawyers.”
14 *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Where a plaintiff is proceeding *pro se*, the Court has an
15 obligation to construe the pleadings liberally and to afford the plaintiff the benefit of any doubt. *Bretz*
16 *v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985) (en banc). However, *pro se* pleadings must still
17 allege facts sufficient to allow a reviewing court to determine whether a claim has been stated. *Ivey v.*
18 *Bd. of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

19 If the Court dismisses the complaint, it must then decide whether to grant leave to amend. The
20 Ninth Circuit has “repeatedly held that a district court should grant leave to amend even if no request
21 to amend the pleading was made, unless it determines that the pleading could not possibly be cured by
22 the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (citations and internal
23 quotation marks omitted).

24 25 **II. Temporary restraining order/preliminary injunction**

26 In order to obtain a temporary restraining order or a preliminary injunction, plaintiff “must
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1 establish that she is likely to succeed on the merits, that he is likely to suffer irreparable harm in the
2 absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
3 the public interest.” *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 20 (2008) (citations
4 omitted); *see also Jones v. H.S.B.C. (USA)*, 844 F. Supp. 2d 1099, 1099 (S.D. Cal. 2012) (standard for
5 granting a temporary restraining order is similar to standard for granting a preliminary injunction).

7 DISCUSSION

8 I. Defendant’s motion to dismiss the complaint

9 Defendant moves to dismiss the claims alleged in the complaint on the ground that they are
10 either federally preempted by the Home Owners’ Loan Act (“HOLA”), 12 U.S.C. § 1461, *et seq.*, and
11 the regulations promulgated pursuant to that statute by the Office of Thrift Supervision (“OTS”); or that
12 the complaint fails to allege the elements of each claim.

13 In response, plaintiff withdrew her claim under the California Homeowner Bill of Rights.
14 Docket No. 19 at 14:18-20, and accordingly the Court does not address that claim. As to the remaining
15 claims, plaintiff’s opposition confirms that all of the remaining claims except for the RESPA claim are
16 premised on the theory that “by the time this action commenced, Wells Fargo was not the mortgagee,
17 creditor, beneficiary, holder or nonholder in possession with rights of a holder for plaintiff’s note,” *id.*
18 at 1:28-2:2, and that Wells Fargo is required to comply with the California Commercial Code regarding
19 negotiable instruments in order to demonstrate that it has the right to foreclose on the subject property.³

20 Relatedly, plaintiff draws a distinction between a “note” and a “mortgage” to argue that while HOLA
21 preempts state law claims relating to the origination, transfer, or servicing of mortgages, her claims are
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24 ³ The complaint alleges a claim for negligence based on both wrongful foreclosure and negligent
25 processing of plaintiff’s loan modification applications. However, in response to defendant’s motion
26 to dismiss, plaintiff states in her opposition that the negligence claim “is not based on loan modification
27 processing. Plaintiff’s claim is based on negligently recording, publishing, posting, and mailing
28 foreclosure documents that contain false information.” Docket No. 19 at 10:10-14. With respect to the
unfair competition claim, the complaint’s allegations for that claim incorporate all previous allegations,
and plaintiff’s opposition defends the unfair competition claim on the wrongful foreclosure theory. *Id.*
at 15:20-23.

1 not preempted because this case involves a “note” and not a “mortgage.”⁴

2
3 **A. State law claims based on wrongful foreclosure**

4 Defendant argues that all of plaintiff’s state law claims are preempted by the Home Owners’
5 Loan Act (“HOLA”), 12 U.S.C. § 1461, *et seq.*, and the regulations promulgated pursuant to that statute
6 by the Office of Thrift Supervision (“OTS”). HOLA was enacted in 1933 to regulate federally chartered
7 savings associations. It was a “radical and comprehensive response to the inadequacies of the existing
8 state system,’ and [is] ‘so pervasive as to leave no room for state regulatory control.’” *Silvas v. E*Trade*
9 *Mortg. Corp.*, 514 F.3d 1001, 1004-05 (9th Cir. 2008) (citing *Conference of Fed. Sav. & Loan Ass’ns*
10 *v. Stein*, 604 F.2d 1256, 1257, 1260 (9th Cir. 1979)). Plaintiff’s loan originated with World Savings
11 Bank, a federal savings bank. See Docket No. 2, Ex. 2. Numerous courts have held that HOLA applies
12 to Wells Fargo as the successor to World Savings Bank and Wachovia. *See Castillo v. Wachovia*
13 *Mortg.*, No. C-12-0101 EMC, 2012 WL 1213296, at *4 (N.D. Cal. Nov. 13, 2012) (collecting cases).

14 Pursuant to 12 U.S.C. § 1464, the OTS issued 12 C.F.R. § 560.2, which provides that certain
15 types of state laws are preempted by HOLA. Paragraph (b) of § 560.2 provides a non-exhaustive list
16 of such laws, including state laws that purport to impose requirements regarding “processing,
17 origination, servicing, sale or purchase of, or investment or participation in, mortgages[.]” 12 C.F.R.
18 § 560.2(b)(10).

19 A state law of general applicability may also be preempted by HOLA “as applied”:

20 [T]he first step will be to determine whether the type of law in question is listed in

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22 ⁴ In its reply, defendant asserts that based upon the arguments in plaintiff’s opposition brief, it
23 appears that plaintiff is being assisted by a non-attorney, Denny R. Becker. Mr. Becker has filed
24 several *pro se* complaints in the Eastern District of California, and he has advanced the same arguments
25 regarding wrongful foreclosure and a “note” versus a “mortgage” in those cases. *See Becker v. Wells*
26 *Fargo Bank, N.A.*, No. 10-cv-2799 LKK/KJN (E.D. Cal.); *Becker v. Wells Fargo Bank, N.A.*, No. 12-cv-
27 501 KJM CKD (E.D. Cal.). The Court advises plaintiff that assistance is available at the Northern
28 District’s Pro Se Help Desk (415-782-8982), and see also <http://cand.uscourts.gov/helpcentersf>.
Plaintiff is also cautioned that “[w]hile a non-attorney may appear pro se on his own behalf, [h]e has
no authority to appear as an attorney for others than himself.” *Johns v. Cnty. of San Diego*, 114 F.3d
874, 876 (1997) (citations and internal quotation marks omitted).

1 paragraph (b) [of 12 C.F.R. § 560.2]. If so, the analysis will end there; the law is
2 preempted. If the law is not covered by paragraph (b), the next question is whether the
3 law affects lending. If it does, then, in accordance with paragraph (a), the presumption
4 arises that the law is preempted. This presumption can be reversed only if the law can
clearly be shown to fit within the confines of paragraph (c). For these purposes,
paragraph (c) is intended to be interpreted narrowly. Any doubt should be resolved in
favor of preemption.

5 *Silvas*, 514 F.3d at 1004-06 (quoting OTS, Final Rule, 61 Fed. Reg. 50951, 50966-67 (Sept. 30, 1996)).

6 Defendant contends that all of plaintiff's state law causes of action are preempted under
7 paragraph (b)(10) because they rely exclusively on allegations of improper foreclosure, which involves
8 the "Processing, origination, servicing, sale or purchase of, or investment or participation in,
9 mortgages." 12 C.F.R. § 560.2(b)(10). Numerous district courts in this circuit "have previously
10 determined that HOLA preempts claims based on the proposition that a lender wrongfully securitized
11 a loan and that it may not foreclose because it does not 'hold the note.'" *Thomas v. Deutsche Bank Nat.*
12 *Trust*, No. C 12-00472 CRB, 2012 WL 1600434, at *3 (N.D. Cal. May 7, 2012) (in case where
13 plaintiff's loan originated with World Savings Bank, dismissing as preempted under HOLA claims
14 alleging that Wells Fargo did not purchase the plaintiff's note or mortgage from Wachovia); *see also*
15 *Hague v. Wells Fargo Bank, N.A.*, C No. 11-2366 TEH, 2011 WL 6055759, at *5 (N.D. Cal. Dec. 6,
16 2011) ("[t]he fact that the [Plaintiff] challenge[s] the securitization of the [Plaintiff's] mortgage would
17 seem to fall squarely within § 560.2(b)(10)'s specific preemption of state claims that deal with
18 'investment' in mortgages."; *Dubose v. Suntrust Mortg., Inc.*, No. 11-3264 EJD, 2012 WL 1376983,
19 at *4 (N.D. Cal. Apr. 19, 2012) (discussing cases rejecting theories of liability based on securitization
20 of the underlying debt); *Unlu v. Wells Fargo Bank N.A.*, No. 10-5422 EJD, 2011 WL 6141036, at *7
21 (N.D. Cal. Dec. 9, 2011) (denying leave to amend to challenge securitization of mortgage because
22 amended claim would "seem to fall squarely within § 560.2(b)(10)'s specific preemption of state claims
23 that deal with 'investment' in mortgages"); *Nguyen v. Wells Fargo Bank, N.A.*, 749 F. Supp. 2d 1022,
24 1031-33 (N.D. Cal. 2010) (dismissing as preempted claims alleging improper foreclosure due to
25 wrongful transfer of the deed).

26 The Court finds the reasoning of these cases persuasive and holds that all of plaintiff's state law
27 claims are preempted because those claims allege that defendant has no right to foreclose on the subject
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1 property because defendant does not possess the promissory note and the substitution of Regional
2 Trustee Services Corporation as trustee was invalid. These claims are predicated upon alleged
3 improprieties in the foreclosure procedure used by defendant and therefore affect lending because they
4 involve the “processing, origination, servicing, sale or purchase of, or investment or participation in,
5 mortgages,” as defined in 12 C.F.R. § 560.2(b)(10). Under *Silvas*, this raises a presumption that the
6 claim is preempted, which can be overcome only if it can be clearly shown that the claim fits within the
7 confines of paragraph (c). Plaintiff has not done so. Plaintiff’s allegations that defendant has no right
8 to foreclose due to violations of the California Commercial Code and the California Civil Code do not
9 defeat preemption. *See Fowler v. Wells Fargo Bank*, C 12-04869 DMR, 2012 5503538, at *8 (N.D. Cal.
10 Nov. 13, 2012) (dismissing as preempted wrongful foreclosure claim alleging that deed of trust was
11 voidable under California Commercial Code); *cf. also Coavilla v. Wells Fargo Bank, N.A.*, C 13-1003
12 JSC, 2013 WL 2153855, at *3-4 (N.D. Cal. May 16, 2013) (dismissing claims alleging defendant lacked
13 standing to foreclose based on violations of the California Commercial Code because, *inter alia*,
14 “California’s nonjudicial foreclosure statutes . . . exclusively govern nonjudicial foreclosures.”) (internal
15 citations omitted).

16 Accordingly, defendant’s motion to dismiss based on preemption by HOLA is GRANTED as
17 to plaintiff’s claims for fraud, negligence, unfair business practices, negligent and intentional infliction
18 of emotional distress, and Cal. Civ. Code §§ 1511 and 1512.⁵ The Court will GRANT plaintiff leave
19 to amend if plaintiff wishes to allege state law claims that are not based on the theory of wrongful
20 foreclosure articulated in the complaint and plaintiff’s opposition.

21
22 **B. RESPA claim**

23 Under RESPA, a loan servicer has a duty to respond to a borrower’s “qualified written request”
24 (“QWR”) for “information relating to the servicing of [his] loan.” 12 U.S.C. § 2605(e)(1)(A). The

25
26 ⁵ The parties dispute whether there is a private right of action under Cal. Civ. Code §§ 1511 and
27 1512. The Court finds it unnecessary to resolve this question because, assuming *arguendo* that there
28 is a private right of action, plaintiff’s complaint and opposition make clear that this claim is based on
the theory that Wells Fargo does not own the note.

1 complaint alleges that defendant violated § 2605 by failing to respond to her June 14, 2013 Qualified
2 Written Request. Compl. ¶ 77. However, plaintiff has filed with the Court a copy of Wells Fargo's
3 response to the June 14, 2013 letter, in which Wells Fargo provided a copy of the Note and Deed of
4 Trust, stated that it would provide a copy of the entire loan history under separate cover, and responded
5 to plaintiff's questions regarding the ownership and servicing history of the loan. Docket No. 2, Ex. 1.
6 The Court will GRANT plaintiff leave to amend the RESPA claim to specify what information Wells
7 Fargo was required to provide under RESPA that Wells Fargo did not provide.⁶ *See Yossa v.*
8 *Countrywide Home Loans, Inc.*, No. CIV. S-12-0023 MCE GGH PS, 2012 WL 761991, at *3 (E.D. Cal.
9 Mar. 7, 2012) (dismissing RESPA claim with leave to amend where plaintiff did not specify what
10 information was not provided in response to a QWR).

11 The complaint also alleges that plaintiff sent a QWR on November 6, 2010 to request servicing
12 information and that Wells Fargo did not respond. The complaint does not specify what type of servicing
13 information plaintiff requested. It is also unclear whether plaintiff claims any pecuniary damages as a
14 result of this failure to respond. "Courts routinely hold that a claim based on a loan servicer's failure
15 to respond to a QWR must allege actual damages, as well as a causal relationship between the alleged
16 damages and the RESPA violation." *Pasillas v. Deutsche Bank National Trust Co.*, C 12-04123 LHK,
17 2013 WL 5225982, at *4 (N.D. Cal. Sept. 17, 2013) (internal citations omitted); *see also Allen v. United*
18 *Financial Mortg. Corp.*, C No. 09-2507 SC, 2010 WL 1135787, at *5 (N.D. Cal. Mar. 22, 2010)
19 (dismissing RESPA claim because "Even if Plaintiff is correct in claiming that Defendants' other
20 conduct resulted in his inability to pay his mortgage, this does not constitute a RESPA claim unless
21 Plaintiff can point to some colorable relationship between his injury and the actions or omissions that
22 allegedly violated RESPA."). The complaint does allege that plaintiff was damaged by the failure to
23 respond to the June 14, 2013 letter; however, as noted above, plaintiff must amend the complaint to
24 specify what information defendant did not provide in response to the June 14, 2013 letter, and allege

25
26 ⁶ Defendant contends that the June 14, 2013 letter was not a QWR because plaintiff mailed it
27 to Wells Fargo "c/o Regional Service Corporation," and not to Wells Fargo's designated address. The
28 Court finds that this argument raises factual issues that go beyond the pleadings, and the Court does not
dismiss the RESPA claim on this ground.

1 a causal relationship between the RESPA violation and plaintiff's damages.⁷

2
3 **II. Plaintiff's motion for a temporary restraining order and/or preliminary injunction**

4 The Court has dismissed the complaint with leave to amend, and thus plaintiff has not
5 demonstrated that she is likely to succeed on the merits. Accordingly, the Court DENIES plaintiff's
6 motion for a temporary restraining order and/or a preliminary injunction.

7
8 **CONCLUSION**

9 For the foregoing reasons and for good cause shown, the Court hereby GRANTS defendant's
10 motions to dismiss with leave to amend and DENIES plaintiff's motion for a temporary restraining
11 order and/or a preliminary injunction. Docket Nos. 3 & 17. **Should plaintiff choose to file an**
12 **amended complaint, it shall be consistent with the terms of this order and must be filed on or**
13 **before November 26, 2013.**

14
15 **IT IS SO ORDERED.**

16
17 Dated: November 14, 2013

18 
19 _____
20 SUSAN ILLSTON
21 United States District Judge

22
23
24 _____
25 ⁷ The complaint alleges that a "private investor" wanted to take a "second position" on
26 plaintiff's loan to take it out of default, and that as a result of defendant's failure to provide the
27 requested information, "the private investor did not take a second position on the loan and plaintiff lost
28 the \$50,000." Compl. ¶ 78. If plaintiff amends the RESPA claim, plaintiff must allege how the failure
to provide the information under RESPA led to the private investor not taking a second position on the
loan.