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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NORMA PRADO,

No. C-13-4536 EMC

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR RECONSIDERATION**

QUALITY LOAN SERVICE  
CORPORATION, *et al.*,

**(Docket No. 28)**

Defendants.

Plaintiff Norma Prado initiated this action against Defendants Aurora Loan Services LLC, Nationstar Mortgage LLC, and Quality Loan Service Corporation. In her complaint, she raised various claims but the thrust of her complaint was that Defendants had wrongfully foreclosed on her home. Defendants moved to dismiss. On January 6, 2014, the Court granted Defendants' motions and entered a final judgment in Defendants' favor. *See* Docket Nos. 25, 27 (order and judgment). Ms. Prado did not timely appeal the final judgment. However, on May 5, 2014, she filed the currently pending motion for reconsideration pursuant to Federal Rule of Civil Procedure 60(b).

Having considered the parties' submissions,<sup>1</sup> the Court hereby **DENIES** Ms. Prado's motion to reconsider.

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<sup>1</sup> Only Quality filed a written opposition to the motion for reconsideration.

1 I. DISCUSSION

2 A. Legal Standard

3 Federal Rule of Civil Procedure 60(b) provides that a “court may relieve a party . . . from a  
4 final judgment, order, or proceeding” for certain specified reasons. Fed. R. Civ. P. 60(b). Here, Ms.  
5 Prado has invoked the reasons identified in Rule 60(b)(1), (3), (4), and (6).

6 Under Rule 60(b)(1), relief may be obtained where there is “mistake, inadvertence, surprise,  
7 or excusable neglect.” Fed. R. Civ. P. 60(b)(1). Under Rule 60(b)(3), relief may be obtained where  
8 there is “fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by  
9 an opposing party.” Fed. R. Civ. P. 60(b)(3). Under Rule 60(b)(4), relief may be obtained where  
10 “the judgment is void.” Fed. R. Civ. P. 60(b)(4). Finally, under Rule 60(b)(6), relief may be  
11 obtained for “any other reason that justifies relief.” Fed. R. Civ. P. 60(b)(6).

12 B. Rule 60(b)(3), (4), and (6)

13 Ms. Prado has failed to establish that she is entitled to relief under Rule 60(b)(3), (4), or (6).

14 Under Rule 60(b)(3), a court may vacate a judgment that is obtained by fraud. Here, Ms.  
15 Prado claims that Defendants fraudulently foreclosed on her property. But she has failed to allege or  
16 otherwise show that Defendants engaged in any fraud in obtaining a judgment in this action. *See De*  
17 *Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000) (stating that, to prevail  
18 under Rule 60(b)(3), “the moving party must prove by clear and convincing evidence that the verdict  
19 was obtained through fraud, misrepresentation, or other misconduct and the conduct complained of  
20 prevented the losing party from fully and fairly presenting [its case]”; adding that the rule “is aimed  
21 at judgments which were unfairly obtained, not at those were are factually incorrect”).

22 Under Rule 60(b)(4), a court may vacate a judgment that is void. But “[a] final judgment is  
23 ‘void’ for purposes of Rule 60(b)(4) only if the court that considered it lacked jurisdiction, either as  
24 to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent  
25 with the due process of law.” *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999). Here, this  
26 Court did not lack jurisdiction over the case, nor did it act in a manner inconsistent with the due  
27 process of law. For example, it gave Ms. Prado a full opportunity to respond on the merits to  
28 Defendants’ motions to dismiss.

1 Finally, Rule 60(b)(6) “is to be ‘used sparingly as an equitable remedy to prevent manifest  
2 injustice.’” *Harvest v. Castro*, 531 F.3d 737, 749 (9th Cir. 2008). More important, Rule 60(b)(6)  
3 “applies only when the reason for granting relief is not covered by any of the other reasons set forth  
4 in Rule 60.” *Delay v. Gordon*, 475 F.3d 1039, 1044 (9th Cir. 2007). Here, Ms. Prado’s motion is  
5 fully covered by Rule 60(b)(1) – in essence, she argues that this Court made a mistake in granting  
6 Defendants’ motion.

7 C. Rule 60(b)(1)

8 The Ninth Circuit has specifically recognized that errors of law are cognizable under Rule  
9 60(b). *See Liberty Mut. Ins. Co. v. EEOC*, 691 F.2d 438, 441 (9th Cir. 1982). It has also noted that,  
10 where the legal error is a mistake by the court, Rule 60(b)(1) is applicable. *See id.*; *see also In re*  
11 *Int’l Fibercom, Inc.*, 503 F.3d 933, 941 n.7 (9th Cir. 2007).

12 Here, the Court has reviewed Ms. Prado’s motion and finds no basis for her assertion that it  
13 made a legal error. For example, Ms. Prado claims that the Court’s res judicata analysis was  
14 incorrect because the claims she asserted in the state court proceeding are different from the claims  
15 she asserted here. *See Mot.* at 2. But “[r]es judicata serve as a bar to all causes of action that were  
16 litigated or *that could have been litigated* in the first action.” *Allied Fire Prot. v. Diede Constr.*,  
17 *Inc.*, 127 Cal. App. 4th 150, 155 (2005) (emphasis added).

18 Ms. Prado also argues that MERS cannot serve as both a beneficiary and a nominee, but that  
19 is belied by the authority cited by the Court in its order. *See Docket No. 25* (Order at 3).

20 To the extent Ms. Prado contends that the Court erroneously construed her claim under the  
21 Federal Debt Collection Practices Act (“FDCPA”) to be a claim under the Real Estate Settlement  
22 Procedures Act (“RESPA”), the Court does not agree. First, Ms. Prado has failed to show that there  
23 is relief under the FDCPA for failure to respond to a qualified written request (as she alleges in her  
24 complaint). *See Compl.* at 21 (alleging that Defendants “received a copy of a ‘Written Notice of  
25 Dispute’ contained in a ‘Qualified Written Request’” and that, “[u]nder the law, they were given 30  
26 days to comply with the Federal Fair Debt Collection Practices Act (FDCPA) by answering all of  
27 the questions and mail them back to Plaintiffs”). Second, even if Ms. Prado had sent a statement to  
28 Defendants pursuant to the FDCPA, *e.g.*, disputing the validity of the debt or asking for the name

1 and address of the original creditor, *see* 15 U.S.C. § 1692g(a), she would fare no better for several  
2 reasons (and this assumes, as Ms. Prado contends, that mortgage foreclosure constitutes debt  
3 collection under the statute). *See* Mot. at 5 (citing Sixth Circuit decision, implicitly, *Glazer v. Chase*  
4 *Home Fin. LLC*, 704 F.3d 453 (6th Cir. 2013)). *But see* *Natividad v. Wells Fargo Bank, N.A.*, No.  
5 3:12-cv-03646 JSC, 2013 U.S. Dist. LEXIS 74067 (N.D. Cal. May 24, 2013) (acknowledging  
6 *Glazer* but disagreeing with it; ultimately concluding that not all action related to nonjudicial  
7 foreclosure is debt collection). For example:

- 8 • Ms. Prado allegedly sent letters to Defendants in July 2013, *see* Compl. at 12, but this was  
9 well after the sale of the real property at issue in August 2012. *See* Docket No. 10-1 (RJN,  
10 Exs. 8-9). Ms. Prado has failed to cite any authority showing that the FDCPA is applicable  
11 in such circumstances.
- 12 • Nationstar never appears to have demanded any money from Ms. Prado, either on its behalf  
13 or on the behalf of anyone else. Indeed, the judicially noticeable documents reflect that  
14 Nationstar simply obtained the real property at issue after the property was sold at the  
15 trustee’s sale.
- 16 • To the extent Aurora demanded payment from Ms. Prado, the FDCPA had no application to  
17 it because the statute “applies to those who collect debts on behalf of another; it does not  
18 encompass creditors who are collecting their own past due accounts.” *Lyons v. Bank of Am.,*  
19 *NA*, No. 11-01232 CW, 2011 U.S. Dist. LEXIS 90499, at \*34 (N.D. Cal. Aug. 15, 2011); *see*  
20 *also Brooks v. Citibank (S.D.), N.A.*, 345 Fed. Appx. 260, 262 (9th Cir. 2009) (stating that  
21 “[t]he text of the FDCPA as well as its legislative history make clear that Congress did not  
22 intend the Act to encompass creditors”).
- 23 • As for Quality Loan, there is nothing to support Ms. Prado’s contention that it is a debt  
24 collector. Under the FDCPA, a debt collector is defined as (1) “any person who uses any  
25 instrumentality of interstate commerce or the mails in any business the principal purpose of  
26 which is the collection of any debts, or who regularly collects or attempts to collect, directly  
27 or indirectly, debts owed or due or asserted to be owed or due another,” or (2) for purposes  
28 of 15 U.S.C. § 1692f(6), “any person who uses any instrumentality or interstate commerce or

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the mails in any business the principal purpose of which is the enforcement of security interests.” 15 U.S.C. § 1692a(6). Ms. Prado has never adequately alleged or otherwise offered evidence to show that the principal purpose of Quality Loan’s business is debt collection or enforcement of security interests.

**II. CONCLUSION**

For the foregoing reasons, Ms. Prado’s Rule 60(b) motion is denied.  
This order disposes of Docket No. 28.

IT IS SO ORDERED.

Dated: May 21, 2014

  
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EDWARD M. CHEN  
United States District Judge