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5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
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8 ALISON M. ABELS,

9 Plaintiff,

10 vs.

11 BANK OF AMERICA, N.A., et al.,

12 Defendants.
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Case No.: 11-CV-208 YGR

**ORDER GRANTING MOTION OF DEFENDANT
REALTIME RESOLUTIONS**

15 Plaintiff Alison Abels (“Abels”) brings this action against multiple defendants, including
16 moving defendant Realtime Resolutions (“Realtime”). The Court has previously granted motions to
17 dismiss filed by other defendants in this action, first on April 11, 2011, and then after the conclusion
18 of a bankruptcy stay, on March 2, 2012, each time granting Abels leave to amend. Plaintiff filed her
19 Second Amended Complaint on March 16, 2012. On April 5, 2012, Realtime filed a motion to
20 dismiss or for a more definite statement under Federal Rules of Civil Procedure 12(b)(6) and 12(e).
21 (Dkt. No. 71.)
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24 The motion came on for hearing on May 15, 2012, Plaintiff Alison Abels appeared in *pro*
25 *per*. Defendant Realtime appeared telephonically by counsel Matthew Van Fleet of Routh Crabtree
26 Olsen, P.S.
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United States District Court
Northern District of California

1 were denied. (Dkt. 87.) Plaintiff filed no response on the merits of Realtime’s Motion to Dismiss,
2 only the procedural argument that default judgment should be entered.

3 **STANDARDS APPLICABLE TO THE MOTION**

4 A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims alleged
5 in the complaint. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). To survive a
6 motion to dismiss for failure to state a claim, a complaint generally must satisfy only the minimal
7 notice pleading requirements to provide a “short and plain statement of the claim showing that the
8 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). Specific facts are unnecessary - the statement
9 need only give the defendant “fair notice of the claim and the grounds upon which it rests.” *Erickson*
10 *v. Pardus*, 551 U.S. 89, 93 (2007) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).
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12 All allegations of material fact are taken as true. *Id.* at 94. However, legally conclusory
13 statements not supported by actual factual allegations need not be accepted. *See Ashcroft v. Iqbal*,
14 556 U.S. 662, 678 (2009). A plaintiff’s obligation to set forth the basis for his entitlement to relief
15 “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of
16 action will not do.” *Twombly*, 550 U.S. at 555 (citations and quotations omitted). Rather, the
17 allegations in the complaint “must be enough to raise a right to relief above the speculative level.”
18 *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of
19 misconduct,” the complaint has not shown that the pleader is entitled to relief. *Iqbal*, 556 U.S. 679.
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22 **DISCUSSION**

23 The allegations in the Second Amended Complaint as against Realtime are few. Real Time is
24 listed as a defendant in the caption and in the opening paragraph of the complaint. (Dkt. 62, Second
25 Amended Complaint, at p.1, 2.) In the general allegations section, Realtime alleged to be one of
26 several defendants seeking to enforce the deed of trust without proper standing to do so, since
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1 Realtime is alleged not to be a “trustee, mortgagee, or beneficiary, nor are they authorized agents of the
2 trustee, mortgagee or beneficiary, nor are they in possession of the Note, or holders of the Note, or non-
3 holders of the Note entitled to payment, as required by the California Commercial Code §§ 3301 and
4 3309, and California Civil Code §2924 et seq.” (*Id.* at ¶58, 68.)

5 Thereafter, the Second Amended Complaint makes no specific mention of Realtime in
6 connection with any claim for relief except the Sixth Cause of Action for Violation of the Rosenthal
7 Fair Debt Collection Practices Act, California Civil Code §1788 *et seq.* This cause of action was
8 dismissed without leave to amend in connection with the first motion to dismiss because a loan
9 servicer is not a debt collector regulated by the Act, and foreclosure on a residential mortgage is not
10 “debt collection” under the Act. (Dkt. 21, p. 6, ¶6, citing *Gamboa v. Trustee Corps.*, 2009 WL
11 656285, *4 (N.D. Cal. March 12, 2009) (“[T]he law is clear that foreclosing on a property pursuant
12 to a deed of trust is not a debt collection within the meaning of the RFDCPA.”); *Ines v. Countrywide*
13 *Home Loans, Inc.*, 2009 WL 690108, *4 (S.D. Cal. Mar. 12, 2009). The same reasoning holds true
14 with respect to Realtime. *See also Gardner v. Am. Home Mortg. Servicing, Inc.*, 691 F. Supp. 2d
15 1192, 1198 (E.D. Cal. 2010) (foreclosure does not constitute debt collection and collection efforts
16 related to mortgage are outside the scope of the Act); *Rosal v. First Fed. Bank of California*, 671 F.
17 Supp. 2d 1111, 1135 (N.D. Cal. 2009) (same).²

18 Abels alleges “against all Defendants” the First Cause of Action for fraud, the Fifth Cause of
19 Action for Negligence, and the Seventh Cause of Action for Violation of the California Business and
20 Professions Code §17200 *et seq.* However, none of the allegations made in connection with those
21 claims makes any mention of any role played by Realtime. Nor do the general allegations about lack
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27 ² When Plaintiff repleaded this claim in her First Amended Complaint, the Court again
28 dismissed the claim without leave to amend in connection with the subsequent motion to dismiss by
BANA and Recontrust, for the same reasons. (Dkt. No. 61, 4:9-13.)

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of standing to enforce the deed of trust form the basis for any of those claims. In short, no claim is stated against Realtime.

CONCLUSION

The motion to dismiss is **GRANTED**. No further leave to amend is granted as it is clear that “allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.” *Bonanno v. Thomas*, 309 F.2d 320, 322 (9th Cir. 1962).

The Second Amended Complaint is **DISMISSED** in its entirety with prejudice. Defendant shall prepare and submit a proposed form of judgment of dismissal.

IT IS SO ORDERED.

Date: May 31, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE