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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA — SAN FRANCISCO DIVISION

CATHERINE KWON,

Plaintiff,

vs.

Case No. 3:14-cv-03602 EDL

**[PROPOSED] ORDER GRANTING
NATIONSTAR MORTGAGE LLC'S
MOTION TO DISMISS COMPLAINT
WITH PREJUDICE**

BANC OF AMERICA FUNDING AS
TRUSTEE OF MORTGAGE LOAN TRUST
2005-F MORTGAGE PASS-THROUGH
CERTIFICATES, 2005-F; COUNTRYWIDE
FINANCIAL CORPORATION;
COUNTRYWIDE HOME LOANS;
COUNTRYWIDE BANK; BANK OF
AMERICA CORPORATION; NATIONSTAR
MORTGAGE; RECONTRUST COMPANY,
N.A.; All persons unknown, claiming any
legal or equitable right, title, estate lien, or
interest in the Property described in this
complaint adverse to Plaintiff's title, or any
cloud on Plaintiff's title thereto; and DOES 1-
50, inclusive,

Date: December 3, 2014
Time: 9:00 a.m.
Dept.: Courtroom 3, 3rd Floor
Judge: Hon. Phyllis J. Hamilton

Defendants.

Action Filed: August 8, 2014

The Motion to Dismiss the Complaint for Failure State a Claim upon Which Relief May be
Granted ("Motion") filed by defendant Nationstar Mortgage LLC, incorrectly sued herein as
Nationstar Mortgage ("Nationstar"), came on regularly for hearing on December 3, 2014, in
Courtroom 3 of the above-captioned Court, the Honorable Phyllis J. Hamilton, presiding. Harold

1 R. Jones appeared on behalf of Nationstar. Plaintiff Catherine Kwon (“Plaintiff”) did not appear
2 or file an Opposition to Nationstar’s Motion. After full consideration of the pleadings, and oral
3 argument, the Court rules as follows:

4 The Court grants Nationstar’s Motion in its entirety. To survive a motion to dismiss, a
5 complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is
6 plausible on its face. Rule 12(b)(6); *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). A claim is
7 facially plausible when there are sufficient factual allegations to draw a reasonable inference that
8 defendants are liable for the misconduct alleged. While a court “must take all of the factual
9 allegations in the complaint as true,” it is “not bound to accept as true a legal conclusion couched
10 as a factual allegation.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “[C]onclusory
11 allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss for
12 failure to state a claim.” *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996) (citation
13 omitted).

14 The Complaint’s first cause of action for violation of the Truth in Lending Act, 15 U.S.C.
15 § 1601, *et. seq.*; second cause of action for breach of contract; third cause of action for breach of
16 fiduciary duty; fourth cause of action for common law fraud—inducement; fifth cause of action
17 for common law fraud—concealment; sixth cause of action for constructive fraud; seventh cause
18 of action for conspiracy; and eighth cause of action each arise from the origination of Plaintiff’s
19 mortgage loan. Nationstar did not participate in the origination of the loan. Accordingly, the
20 Court dismisses the Complaint’s first, second, third, fourth, fifth, sixth, seventh and eighth causes
21 of action with prejudice.

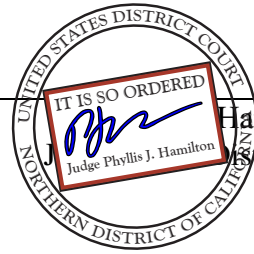
22 The Complaint’s ninth cause of action for slander of title, and tenth cause of action for
23 cancellation of instruments, each fail to allege sufficient factual matter, which if accepted as true,
24 state a claim for relief against Nationstar that is plausible on its face. Plaintiff has failed to
25 identify any fact(s) that would cure the deficiencies in these causes of action. Accordingly, the
26 Court concludes granting leave to amend the ninth and tenth causes of action would be futile.
27 *Dougherty v. City of Covina*, 654 F.3d 892, 901 (9th Cir. 2011)(holding where a “complaint is
28 dismissed for failure to state a claim upon which relief can be granted, leave to amend may be

1 denied, even if prior to a responsive pleading, if amendment of the complaint would be futile.”).
2 Accordingly, the Court dismisses the Complaint’s ninth and tenth causes of action with prejudice.

3 The Complaint is dismissed with prejudice as to Nationstar.

4 **IT IS SO ORDERED.**

5
6 DATED: December 17, 2014



Hamilton
District Court