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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MARK FEATHERS,  
Plaintiff,  
v.  
BANK OF AMERICA, N.A., et al.,  
Defendants.

Case No. [5:16-cv-00086-EJD](#)

**ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANTS'  
MOTION TO DISMISS; SETTING  
CASE MANAGEMENT CONFERENCE**

Re: Dkt. No. 40

**I. INTRODUCTION**

Plaintiff Mark Feathers (“Plaintiff”) brings this action against Bank of America, N.A., “Wells Fargo Bank through its wholly owned subsidiary Wells Fargo Home Mortgage,” and NBS Default Services, LLC (collectively “Defendants”) for alleged irregularities in the processing and servicing of the loan he obtained to purchase a home in Los Altos, California.

Defendant Bank of America, N.A., and Wells Fargo Bank, N.A. (wrongly sued as Wells Fargo Bank Through Its Wholly Owned Subsidiary Wells Fargo Home Mortgage) filed a Motion to Dismiss, and Defendant NBS Default Services, LLC filed a Joinder to the Motion to Dismiss. The Court finds it appropriate to take the motion under submission for decision without oral argument pursuant to Civil Local Rule 7-1(b). Having considered the Defendants’ Motion, Plaintiff’s Reply and Defendants’ Reply briefs, and for the reasons set forth below, the Court grants in part and denies in part Defendants’ Motion to Dismiss.

**II. BACKGROUND**

On or about February 27, 2006, Plaintiff Mark Feathers (“Plaintiff”) and non-party Natalie

1 Feathers executed a Deed of Trust secured by a promissory note for \$1.875 million dollars in favor  
2 of Wells Fargo Bank, N.A. in order to purchase certain real property located in Los Altos,  
3 California. See “Addenda to Amended Complaint,” Docket Item No. 16, at Ex. A. Plaintiff  
4 alleges in a “Verified Amended Complaint for Damages” (“Amended Complaint”) that he stopped  
5 making payments required by the Deed of Trust in July, 2012, after his business was placed into  
6 receivership and he and his spouse lost their income.

7 The receivership referenced by Plaintiff was ordered as part of another action pending in  
8 this Court, Securities and Exchange Commission v. Small Business Capital Corp., Case No. 5:12-  
9 cv-03237-EJD (the “SEC Action”), in which Plaintiff was named as a defendant. The stipulated  
10 order appointing the receiver, filed on July 10, 2012, included the following provision imposing an  
11 injunction (“the SEC Injunction”), among others:

12  
13 IT IS FURTHER ORDERED that, except by leave of this Court,  
14 during the pendency of this receivership, all clients, investors, trust  
15 beneficiaries, note holders, creditors, claimants, lessors and all other  
16 persons or entities seeking relief of any kind, in law or in equity,  
17 from [Plaintiff] . . . and all persons acting on behalf of any such  
18 investor, trust beneficiary, note holder, creditor, claimant, lessor,  
19 consultant group or other person, including sheriffs, marshals,  
servants, agents, employees and attorneys, are hereby restrained and  
enjoined from, directly or indirectly, with respect to these persons  
and entities. . . commencing, prosecuting, continuing or enforcing  
any suit or proceeding (other than the present action by the  
Commission or any other action by the government) against any of  
them. . . .

20 Plaintiff alleges that Wells Fargo sold his loan to Bank of America after its origination, but still  
21 services the loan on behalf of Bank of America. Plaintiff alleges that he has applied to Wells  
22 Fargo several times for a loan modification, but has been unsuccessful. Plaintiff attributes this  
23 lack of progress to Wells Fargo’s internal operations, which he alleges resulted in an ever-  
24 changing list of loan representatives assigned to his account.

25 A Notice of Trustee’s Sale was recorded against the Los Altos property on December 30,  
26 2015, which notified Plaintiff that a trustee’s sale was scheduled for January 21, 2016. See

1 Amended Complaint, Ex. 1. Plaintiff initiated this action against Defendants, the alleged current  
2 noteholder, loan servicer and trustee and asserts sixteen causes of action. Under the current state  
3 of the pleadings, federal jurisdiction arises pursuant to 28 U.S.C. § 1331.<sup>1</sup>

## 4 II. LEGAL STANDARDS

5 A motion to dismiss under Fed. R. Civ. P. 12(b)(6) tests the legal sufficiency of claims  
6 alleged in the complaint. Parks Sch. of Business, Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir.  
7 1995). Dismissal “is proper only where there is no cognizable legal theory or an absence of  
8 sufficient facts alleged to support a cognizable legal theory.” Navarro v. Block, 250 F.3d 729, 732  
9 (9th Cir. 2001). The complaint “must contain sufficient factual matter, accepted as true, to ‘state a  
10 claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
11 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

12 Pro se pleadings must be construed liberally. Resnick v. Hayes, 213 F.3d 443, 447 (9th  
13 Cir. 2000). The Court “need not give a plaintiff the benefit of every conceivable doubt” but “is  
14 required only to draw every reasonable or warranted factual inference in the plaintiff’s favor.”  
15 McKinney v. De Bord, 507 F.2d 501, 504 (9th Cir. 1974). The Court “should use common sense  
16 in interpreting the frequently diffuse pleadings of pro se complainants.” Id. A pro se complaint  
17 should not be dismissed unless the court finds it “beyond doubt that the plaintiff can prove no set  
18 of facts in support of his claim which would entitle him to relief.” Haines v. Kerner, 404 U.S. 519,  
19 521 (1972).

## 20 III. DISCUSSION

### 21 **A. First Cause of Action for Violation of Injunction**

22 In the First Cause of Action, Plaintiff alleges that Defendants violated the SEC Injunction  
23 which, as detailed above, contained a provision restraining Plaintiff’s creditors from pursuing  
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25 <sup>1</sup> Although Plaintiff contends that federal jurisdiction arises on the basis of diversity, his  
26 allegations are insufficient to invoke such jurisdiction because he does not identify any of the  
27 defendants’ principal places of business. See Davis v. HSBC Bank Nev., N.A., 557 F.3d 1026,  
28 1028 (9th Cir. 2009) (“A corporation is a citizen of (1) the state under whose laws it is organized  
or incorporated; and (2) the state of its ‘principal place of business.’”).

1 claims during the pendency of the receivership. Defendants contend that Plaintiff lacks standing  
2 to assert the First Cause of Action.

3 Standing to sue is a doctrine rooted in the Constitution that limits the category of litigants  
4 empowered to maintain a lawsuit in federal court to seek redress for a legal wrong. Spokeo, Inc.  
5 v. Robins, 578 U.S. \_\_\_ (2016). There are three requirements for standing. Specifically, a plaintiff  
6 must allege: (1) that he suffered an injury in fact; (2) that the injury is fairly traceable to the  
7 challenged conduct of the defendant(s); and (3) that the injury is likely to be redressed by a  
8 favorable judicial decision. Id.

9 Plaintiff does not satisfy the requirements for standing to assert a claim for violation of the  
10 SEC Injunction. As the Court previously observed in the context of Plaintiff’s request for  
11 injunctive relief, the purpose of the SEC Injunction was to preserve assets for the benefit of the  
12 injured investors, and not to protect Plaintiff. Thus, even assuming –without actually finding –  
13 that Defendants’ actions violated the SEC Injunction, the investors, and not Plaintiff, were the  
14 injured parties with standing to seek redress. Therefore, the First Cause of Action is dismissed  
15 with prejudice.

16 **B. Second Cause of Action for Violation of the Homeowner’s Bill of Rights**

17 In Plaintiff’s Second Cause of Action, Plaintiff alleges that Defendants violated the  
18 Homeowner’s Bill of Rights, citing to Cal. Civil Code §§2923.6(c) and 2923.7(a), (b)(1), (2) and  
19 (3), by proceeding with a trustee’s sale while his application for a loan modification was pending;  
20 failing to provide a single point of contact and to provide one or more direct means of  
21 communications with the single point of contact; failing to provide current and timely information;  
22 and engaging in dual tracking. Plaintiff seeks damages, injunctive relief and attorney’s fees and  
23 costs pursuant to Cal. Civil Code §2924. Defendants contend that Plaintiff has failed to state  
24 sufficient facts to support a claim under the Homeowner’s Bill of Rights.

25 California Civil Code Section 2923.6(c), which provides protection against “dual  
26 tracking,” states as follows:

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If a borrower submits a complete application for a first lien loan modification offered by, or through, the borrower’s mortgage servicer, a mortgage service, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or notice of sale, or conduct a trustee’s sale, while the complete first lien loan modification application is pending.

Plaintiff alleges in his complaint that he submitted a “Making Home Affordable Program” application (“HAMP”) in November of 2013 (Am. Compl., ¶16); that “Wells Fargo corresponded with [Plaintiff] ‘acknowledging documentation supporting your request for mortgage assistance’ was received,” and yet three weeks later, Wells Fargo filed a Notice of Trustee’s Sale. *Id.* at ¶17.

Defendants, however, contend that Wells Fargo Bank had a Notice of Default and Election to Sell recorded against the Plaintiff’s property on July 10, 2013 (Defs.’ Req. for Judicial Notice, Ex. 6), after complying with the requisite notices and disclosures. Defendants acknowledge that Plaintiff was twice denied a request to modify his loan after the recording of the Notice of Default, but argue that the Homeowner’s Bill of Rights does not permit an unending series of loan modification attempts after a loan has been reviewed and declined for a loan modification. *See* Cal. Civil Code §2923.6(g).

Construing the Amended Complaint liberally, and drawing every reasonable or warranted factual inference in Plaintiff’s favor, the Court finds that Plaintiff’s allegations are sufficient to state a claim under Section 2923.6(c). Plaintiff alleges that he submitted an application in November of 2013 (Amended Complaint, ¶17), and while that application was pending Wells Fargo filed a Notice of Trustee’s Sale. Whether Section 2923.6(g) or the July 2013 Notice of Default and Election to Sell relieved Defendants of an obligation to complete an evaluation of Plaintiff’s November 2013 application before filing the Notice of Trustee’s Sale is a separate issue for a later stage in the proceedings. Accordingly, Defendants’ motion to dismiss the Second Cause of Action is denied.

1                   **C. Third Cause of Action for Declaratory Relief**

2                   In the Third Cause of Action, Plaintiff alleges that real property is unique and that the  
3 legal remedy of money damages would be insufficient to compensate him if his home is taken  
4 from him. Plaintiff seeks immediate relief before he is deprived of his home by a foreclosure sale  
5 that was scheduled for January 21, 2016.

6                   The Third Cause of Action fails to state a claim upon which relief may be granted.  
7 Plaintiff has not identified a legal controversy requiring a declaration of the parties' rights, nor the  
8 relief he is seeking. Accordingly the Claim is dismissed.

9                   **D. Fourth, Eleventh, Twelfth and Thirteenth Causes of Action for Fraud**

10                  Plaintiff alleges in the Fourth Cause of Action that Wells Fargo promised him  
11 consideration of his loan modification; that Wells Fargo never intended to perform, and failed to  
12 perform, on its promise; that Plaintiff relied on Wells Fargo's promise and was harmed. In the  
13 Eleventh Cause of Action, Plaintiff alleges that Defendants fraudulently concealed from him that  
14 he was not eligible for the HAMP program. In the Twelfth Cause of Action, Plaintiff alleges that  
15 Wells Fargo "made false statements of material facts that it knew to be false, and with the intent to  
16 induce [Plaintiff] to submit loan applications for the benefit of Wells Fargo while it collected  
17 heightened servicing fees while [Plaintiff's] loan was in non-conformance with the terms of  
18 [Plaintiff's] contract, and [Plaintiff] has incurred damages due to that." Am. Compl., ¶75. In the  
19 Thirteenth Cause of Action, entitled "Scheme Exception," (sic), Plaintiff alleges that Wells Fargo,  
20 "at the time it made promises to [Plaintiff] to act in good faith with his loan modification request,  
21 it did not actually hold such intent to execute on its representations to [Plaintiff]," *Id.* at ¶77.  
22 Defendants contend that these various claims for fraud fail to meet the specificity requirement of  
23 Rule 9(b), Fed.R.Civ.P., and therefore should be dismissed.

24                  Pursuant to Fed. R. of Civ. P. Rule 9(b), "[i]n alleging fraud or mistake, a party must state  
25 with particularity the circumstances constituting fraud or mistake." Claims of fraud must be  
26 "accompanied by the who, what, when, where, and how of the misconduct alleged." *Cooper v.*

1 Pickett, 236 F.3d 1014, 1019 (9<sup>th</sup> Cir. 2001). The circumstances constituting the alleged fraud  
2 must be pled “specific[ally] enough to give defendants notice of the particular misconduct . . . so  
3 that they can defend against the charge and not just deny that they have done anything wrong.”  
4 Kearns v. Ford Motor Co., 567 F.3d 1120 (9<sup>th</sup> Cir. 2009).

5 In this case, Plaintiff has not satisfied the heightened pleading standard for fraud. For  
6 example, in the Fourth Cause of Action, Plaintiff does not identify who promised him  
7 consideration of his loan modification, what was specifically said or written, and when and where  
8 the promise was made. Similarly, in the Fifth Cause of Action, Plaintiff alleges that Defendants  
9 fraudulently concealed from him that he was not eligible for the HAMP program, but omits facts  
10 to establish the who, what, when, where and how. Accordingly, the Fourth, Eleventh, Twelfth and  
11 Thirteenth Causes of Action are dismissed with leave to amend.

12 **C. Fifth Cause of Action for Negligence**

13 Plaintiff alleges that Wells Fargo engaged in “internal negligence and failure to oversee its  
14 operations in a competent manner.” Amended Complaint, ¶54. Defendants contend that this  
15 claim should be dismissed because there is no duty owed by a lender to its borrower as a matter of  
16 law.

17 Under California law, “as a general rule, a financial institution owes no duty of care to a  
18 borrower when the institution's involvement in the loan transaction does not exceed the scope of  
19 its conventional role as a mere lender of money.” Nymark v. Heart Fed. Sav. & Loan Assn., 231  
20 Cal.App.3d 1089, 1095, 283 Cal.Rptr. 53, 56 (1991). The question of whether a lender owes a  
21 duty of care to a borrower-client is, however, subject to a balancing test of several factors set forth  
22 in Biakanja v. Irving, 49 Cal.2d 647, 320 P.2d 16 (1958). Id. These factors include: “The extent  
23 to which the transaction was intended to affect the plaintiff, the foreseeability of harm to him, the  
24 degree of certainty that the plaintiff suffered injury, the closeness of the connection between the  
25 defendant’s conduct and the injury suffered, the moral blame attached to the defendant’s conduct,  
26 and the policy of preventing future harm.” Biakanja, 320 P.2d at 19.

1 Plaintiff's Fifth Cause of Action lacks sufficient facts to state a claim upon which relief  
2 may be granted. Plaintiff has not stated facts showing Defendants owed Plaintiff a duty,  
3 Defendants' failure to perform that duty, proximate cause or damages, all of which must be pled in  
4 order to state a claim. See Gilmore v. Wells Fargo Bank N.A., 75 F.Supp.3d 1255 (N.D. Cal.  
5 2014) (Wells Fargo owed duty to process loan modification with reasonable care); Lueras v. BAC  
6 Home Loans Servicing, L.P., 221 Cal.App.4th 49, 62, 163 Cal.Rptr.3d 804, 816 (2013) (no  
7 common law duty of care to consider home modification); see also Alvarez v. BAC Home Loans  
8 Servicing, L.P., 228 Cal.App.4th 941, 176 Cal.Rptr.3d 304 (2014) (because "defendants allegedly  
9 agreed to consider modification of the plaintiffs' loans, the Biakanja factors clearly weigh in favor  
10 of a duty"); Cornejo v. Ocwen Loan Servicing, LLC, 151 F.Supp.3d 1102, 1116 (E. D. Cal. 2015).  
11 Without these basic facts, Plaintiff's negligence claim, as currently pled, is not cognizable.  
12 Accordingly, Plaintiff's Fifth Cause of Action is dismissed with leave to amend.

13 **D. Sixth Cause of Action for Violation of 15 U.S.C. §1641(g)**

14 In the Sixth Cause of Action, Plaintiff alleges that Defendants violated 15 U.S.C. §1641(g)  
15 by failing to send him notice of Wells Fargo's sale or transfer of his mortgage loan within 30 days.  
16 Defendants contend this claim must be dismissed because Plaintiff has not stated what was  
17 violated, how Plaintiff was harmed or what relief is requested. Moreover, Defendants contend that  
18 as the original lender, they were not obligated to send Plaintiff a notice of transfer pursuant to  
19 §1641.

20 15 U.S.C. §1641(g) requires "the new owner or assignee" of a mortgage loan to provide  
21 the mortgage borrower with written notice of the sale, transfer, or assignment in which the  
22 mortgage loan was acquired. The notice must be provided no later than 30 days after the date on  
23 which the mortgage loan is sold or otherwise transferred or assigned to the new owner. 15 U.S.C.  
24 §1641(g).

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1           Although Plaintiff does not set forth any facts within the Sixth Cause of Action, the factual  
2 predicate for this Cause of Action appears to be set forth separately in paragraph 34 of the  
3 Amended Complaint, which states as follows:

4                           [Plaintiff] was not properly informed by Wells Fargo prior to  
5                           [Plaintiff's] loan being being [sic] placed into default by Wells  
6                           Fargo that it sold its loan to BOFA, as is required under federal  
7                           guidelines . . . ; ownership transfer notice was not provided to  
8                           [Plaintiff].

9           These allegations are insufficient to state a claim against Wells Fargo because Bank of America,  
10 not Wells Fargo, is alleged to be the new owner or assignee of Plaintiff's loan. To the extent  
11 Plaintiff is seeking redress for the alleged §1641(g) violation against Bank of America, the claim  
12 is also deficient because Plaintiff has not set forth facts to establish an injury or loss caused by the  
13 alleged failure to provide notice of the loan assignment to Bank of America. Accordingly, the  
14 Sixth Cause of Action is dismissed with prejudice as to Defendant Wells Fargo, and dismissed  
15 with leave to amend as to Defendant Bank of America.

16           **E. Seventh and Fifteenth Causes of Action for Violation of Fair Debt Collection Practices  
17 Act**

18           In the Seventh Cause of Action, Plaintiff alleges violations of the Federal Fair Debt  
19 Collection Practices Act ("FDCPA"), 15 U.S.C. §§1692 et seq., and in the Fifteenth Cause of  
20 Action, Plaintiff alleges violation of the state law counterpart to the FDCPA, the Rosenthal Act,  
21 Cal. Civ. Code §1788 et seq. Both statutes proscribe certain conduct in connection with debt  
22 collection. Defendants contend that the statutes are not applicable to foreclosure actions and that  
23 the two causes of action should therefore be dismissed.

24           Although the Ninth Circuit has not yet addressed whether a foreclosure action constitutes  
25 "debt collection" under the FDCPA, the vast majority of district courts within the Ninth Circuit  
26 have concluded that it does not. See e.g. Cromwell v. Deutsche Bank Nat. Trust Co., 2012 WL  
27 244928 (N.D. Cal. 2012) ("FDCPA does not apply to the actions taken by lenders or their agents

1 when foreclosing on the lender's security interest under a deed of trust, in a non-judicial  
2 foreclosure of property”) ; Garcia v. American Home Mortg. Servicing Inc., 2011 WL 6141047  
3 (N.D. Cal. 2011) (“non-judicial foreclosure does not constitute ‘debt collection’ as defined by the  
4 [FDCPA]”); Geist v. OneWest Bank, 2010 WL 4117504 (N.D. Cal. 2010) (same); Gamboa v. Tr.  
5 Corps, 2009 WL 656285, at \*4 (N.D. Cal. 2009) (same).

6 Similarly, under California law, foreclosing on a deed of trust does not invoke the statutory  
7 protection of the Rosenthal Act. See Bhandari v. Capital One, N.A., 2013 WL 1736789 (N.D.  
8 Cal. 2013) (mortgage cannot constitute a debt within the meaning of the Rosenthal Act); Benham  
9 v. Aurora Loan Servs., 2009 WL 2880232 (N.D. Cal. 2009) (foreclosing on a property pursuant to  
10 a deed of trust is not the collection of a debt within the meaning of the Rosenthal Act).

11 Accordingly, Plaintiff’s Seventh and Fifteenth Causes of Action are dismissed with  
12 prejudice.

13 **F. Eighth Cause of Action for Violation of California Civil Code §2923.5**

14 Plaintiff alleges that NBS and Wells Fargo violated California Civ. Code §2923.5 when  
15 they failed to provide him with a copy of an assignment note, failed to contact him from June 2015  
16 to December of 2015 to forewarn him of their intention to foreclose and that he was no longer in  
17 consideration for a loan modification, and failed to advise his HD Certified counselor of their  
18 intent to foreclose. Defendants contend that the claim should be dismissed because the allegations  
19 in Plaintiff’s Amended Complaint show that Defendants assessed and explored alternatives to  
20 foreclosure, in compliance with the statute.

21 California Civil Code Section 2923.5 provides that a mortgagee, trustee, beneficiary or  
22 authorized agent may not file a notice of default until both of the following: “(A) either 30 days  
23 after initial contact is made as required by paragraph (2) or 30 days after satisfying the due  
24 diligence requirement as described in subdivision (e). (B) The mortgage servicer complies with  
25 paragraph (1) of subdivision (a) of Section 2924.18.” Cal. Civ. Code §2923.5. Paragraph (2)  
26 requires the following: “A mortgage servicer shall contact the borrower in person or by telephone  
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1 in order to assess the borrower’s financial situation and explore options for the borrower to avoid  
2 foreclosure. During the initial contact, the mortgage servicer shall advise the borrower that he or  
3 she has the right to request a subsequent meeting, and if requested, the mortgage servicer shall  
4 schedule the meeting to occur within 14 days. . . .” Id.

5 The Court finds that Plaintiff’s Amended Complaint fails to set forth sufficient facts to  
6 support a claim for violation of Section 2923.5. In this case, the Notice of Default was recorded  
7 on July 10, 2013. Defs.’ Req. for Judicial Notice, Ex. 6. It is unclear from Plaintiff’s Amended  
8 Complaint whether Defendants made the requisite “initial contact” or satisfied the “due diligence”  
9 requirement prior to July 10, 2013. Instead, Plaintiff alleges that Defendants failed to contact him  
10 from June 2015 through December 2015, well after the Notice of Default had already been  
11 recorded. Accordingly, the Eighth Cause of Action is dismissed with leave to amend.

12 **G. Ninth Cause of Action for Violation of California Civil Code §2924.17**

13 Plaintiff’s Amended Complaint contains two “Ninth Causes of Action.” In the first,  
14 Plaintiff alleges a violation of California Civil Code §2924.7 based upon Defendants’ alleged  
15 failure to ensure a competent and reliable review of their right to foreclose before filing a Notice  
16 of Trustee Sale. Defendants contend that this cause of action is deficient in that it is contradicted  
17 by Plaintiff’s pleaded facts and is stated as a bare legal conclusion.

18 California Civil Code §2924.7 provides, in pertinent part, that before filing a notice of  
19 default, notice of sale, or assignment of a deed of trust, “a mortgage servicer shall ensure that it  
20 has reviewed competent and reliable evidence to substantiate the borrower’s default and the right  
21 to foreclose, including the borrower's loan status and loan information.”

22 The Court finds that Plaintiff’s Amended Complaint fails to state a cause of action for  
23 violation of §2924.17. By his own admission, Plaintiff stopped making payments on his loan in  
24 early July 2012 (Am. Compl., ¶10), and was therefore in default. Accordingly, Plaintiff’s cause  
25 of action for violation of §2924.17 is dismissed with leave to amend.

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1 **H. Second Ninth Cause of Action for Violation of California Civil Code §2937**

2 In the second Ninth Cause of Action, Plaintiff alleges a violation of California Civil Code  
3 §2937 based upon defendants’ alleged failure to inform him of the sale of his promissory note.  
4 Once again, Defendants contend that Plaintiff has not pled sufficient facts to support his claim.

5 Section 2937 requires a loan servicer to provide written notice before transferring servicing  
6 responsibilities to a new mortgage servicer. Cal. Civ. Code §2937. In order to state a claim for a  
7 violation of §2397, a plaintiff must allege that the harm he suffered resulted from that statutory  
8 violation. Paulhus v. Fay Servicing, LLC, 2014 WL 2453091 (E.D. Cal. 2014).

9 Plaintiff has not alleged facts to show he was injured by the alleged failure to give notice.  
10 Instead, Plaintiff asserts in conclusory terms that “has suffered exposure to irreparable harm  
11 including the possibility of a foreclosure on his residence.” There are no facts to establish a causal  
12 link between the failure to provide notice and the “possibility of foreclosure.” Accordingly, the  
13 claim for violation of §2937 is dismissed with leave to amend.

14 **I. Tenth Cause of Action for Violation of Business & Professions Code §17200**

15 In the Tenth Cause of Action, Plaintiff alleges that Defendants engaged in unfair business  
16 practices in violation of California Business & Professions Code §§17200 et seq. Defendants  
17 contend that Plaintiff has not alleged any unlawful, unfair or fraudulent conduct to support a claim  
18 for violation of §17200, or any basis for restitution.

19 The Court agrees. Plaintiff has not recited any facts in his Tenth Cause of Action, and  
20 accordingly the claim is dismissed with leave to amend.

21 **J. Fourteenth Cause of Action for Breach of Contract**

22 The Fourteenth Cause of Action is for breach of contract. Defendants contend that the  
23 claim fails because Plaintiff has not identified a contract or a violation.

24 Plaintiff has not recited any facts in support of his Fourteenth Cause of Action, and  
25 accordingly this Cause of Action is dismissed with leave to amend.

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1     **K. Sixteenth Cause of Action for Violation of the RESPA and Dodd-Frank**

2             Plaintiff has not recited any facts in support of his Sixteenth Cause of Action for violation  
3 of the RESPA and Dodd-Frank. Plaintiff has not stated which provisions have been violated, by  
4 whom they were violated, or how he was damaged. Accordingly, the claim is dismissed with  
5 leave to amend.

6   **IV. CONCLUSION**

7             For the reasons set forth above, Defendants’ motion to dismiss is granted in part and  
8 denied in part as follows:

- 9     1.       The First, Third, Seventh and Fifteenth Causes of Action are dismissed with prejudice and  
10 may not be reasserted.
- 11    2.       The Fourth, Fifth, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and  
12 Sixteenth Causes of Action for Fraud are dismissed with leave to amend.
- 13    3.       Defendants’ motion is denied with respect to the Second Cause of Action.
- 14    4.       The Sixth Cause of Action is dismissed with prejudice as to Defendant Wells Fargo, and  
15 dismissed with leave to amend as to Defendant Bank of America.

16     Plaintiff shall file and serve a Second Amended Complaint consistent with this Order no later than  
17 August 19, 2017.

18         Further, the Court sets a Case Management Conference for September 28, 2017 at 10:00 a.m.  
19 Pursuant to Civil L.R. 16-9(a), the parties shall file and serve separate Case Management  
20 Statements no later than September 21, 2017.

21             **IT IS SO ORDERED.**

22     Dated: July 19, 2017



EDWARD J. DAVILA  
United States District Judge