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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RANI YADAV-RANJAN,
Plaintiff,
v.
NATIONSTAR MORTGAGE, LLC, et
al.,
Defendants.

Case No. 17-cv-03939 NC

**ORDER GRANTING IN PART AND
DENYING IN PART MOTIONS TO
DISMISS WITH LEAVE TO
AMEND**

Re: Dkt. Nos. 72, 76

In this mortgage foreclosure case, defendants JP Morgan Chase Bank, N.A., Rushmore Loan Management Services, LLC, and Wilmington Fund Society, FSB move to dismiss plaintiff Rani Yadav-Ranjan’s first amended complaint. Defendant Nationstar Mortgage LLC does not join in the motions. For the reasons stated below, the Court GRANTS IN PART and DENIES IN PART defendants’ motions to dismiss.

I. BACKGROUND

Yadav-Ranjan purchased the home at issue in this case in 2007 by borrowing \$2,240,000 from the now-defunct Washington Mutual. Dkt. No. 68 at 1. After Washington Mutual was taken over by the FDIC, the FDIC sold the loan and servicing right to Chase. *Id.* at 2. After May 1, 2013, and in “the middle of 2013,” Chase sold the servicing rights to Nationstar. *Id.* Around that same time, Chase allegedly sold the underlying note and deed of trust to Wilmington, and the servicing rights to Rushmore. *Id.* Thus, according to Yadav-Ranjan, Chase sold the same servicing rights twice. *Id.* at 3.

1 Nationstar retained non-party Quality Loan Service Corporation as a “security enforcer.”
2 *Id.*

3 During the first five years of her loan, Yadav-Ranjan admits she missed a few
4 payments. *Id.* at 5. Yadav-Ranjan asserts she paid \$137,035.53 to Chase on November 5,
5 2010, to pay missed payments and decrease the principal owed. *Id.* Yadav-Ranjan also
6 asserts Chase took her money, but refused to credit her for the money paid, instead
7 crediting Yadav-Ranjan for \$70,000.00 of the \$137,035.53, and putting the rest in a
8 “suspense account.” *Id.* Yadav-Ranjan alleges she sought a loan modification from Chase
9 after it “unilaterally demanded monthly payments of \$24,583.54 - - instead of the
10 payments called for in the original TILA statement and deed of trust.” *Id.* at 6. To avoid
11 losing her home, Yadav-Ranjan alleges she signed the loan modification that Chase
12 “demanded,” which was effective May 1, 2013, and was in Chase’s favor. *Id.* Moreover,
13 Yadav-Ranjan alleges that “Chase modified the Principal from its proper sum as of May 1,
14 2013 (approximately \$2,200,000) to a grossly inflated sum of \$2,923,742.72.” *Id.* at 7.

15 Sometime in 2014, Yadav-Ranjan alleges that she attempted to secure a loan
16 modification from Nationstar. *Id.* Yadav-Ranjan alleges that Nationstar refused to
17 consider the application, and instead generated “countless requests for duplicative and
18 additional information and generally fly specked the loan modification application to
19 death.” *Id.* at 8. Nationstar allegedly failed to designate a single point of contact. *Id.* At
20 the same time that Yadav-Ranjan attempted to apply for a loan modification, she alleges
21 Nationstar recorded a Notice of Trustee’s Sale, and instructed Quality to postpone the sale
22 and to sell the subject property without “real” notice to her. *Id.* Per Yadav-Ranjan,
23 Nationstar neither approved nor denied her loan modification application. *Id.* at 9. The
24 Trustee’s Sale occurred on December 28, 2016, and the Trustee’s Deed Upon Sale was
25 recorded on January 17, 2017. *Id.* at 9. Wilmington was the buyer. *Id.* at 21. Lastly,
26 Yadav-Ranjan alleges Nationstar “and/or” Rushmore and Wilmington “rigged” the
27 Trustee’s Sale through their “arbitrary postponements” of the sale. *Id.* at 9.

28 Yadav-Ranjan filed this case in California Superior Court, and Wilmington and

1 Rushmore removed it on July 12, 2017. Dkt. Nos. 1, 2. In the operative complaint,
2 Yadav-Ranjan brings claims for: (1) breach of contract, (2) breach of the Homeowner Bill
3 of Rights, (3) fraud and deceit, (4) bid rigging, (5) violation of the Fair Debt Collection
4 Practices Act, (6) violation of the Equal Credit Opportunity Act, (7) violation of the Real
5 Estate Settlement Procedures Act, (8) cancellation and quiet title, and (9) slander of title.
6 Dkt. No. 68. Chase, Rushmore, and Wilmington¹ move to dismiss the complaint.² Dkt.
7 Nos. 73, 78. All parties consented to the jurisdiction of a magistrate judge under 28 U.S.C.
8 § 636(c). Dkt. Nos. 5, 16, 22, 26.

9 **II. LEGAL STANDARD**

10 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
11 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). On a
12 motion to dismiss, all allegations of material fact are taken as true and construed in the
13 light most favorable to the non-movant. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-
14 38 (9th Cir. 1996). The Court, however, need not accept as true “allegations that are
15 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re*
16 *Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). Although a complaint need
17 not allege detailed factual allegations, it must contain sufficient factual matter, accepted as
18 true, to “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*,
19 550 U.S. 544, 570 (2007). A claim is facially plausible when it “allows the court to draw
20 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*
21 *v. Iqbal*, 556 U.S. 662, 678 (2009).

22 If a court grants a motion to dismiss, leave to amend should be granted unless the

23 _____
24 ¹ Yadav-Ranjan lumps Rushmore and Wilmington into one entity in her allegations. Dkt.
25 No. 68 at 2.
26 ² Both Wilmington and Rushmore, as well as Chase filed requests for judicial notice of the
27 chain of title on the property. Dkt. Nos. 74, 77. Yadav-Ranjan objects to judicial notice of
28 these documents to the extent that defendants use the purportedly noticeable documents to
prove that she was in default on her mortgage. See Dkt. No. 83 at 15. The Court agrees
with Yadav-Ranjan that the chain of title does not prove that she was in default, rather, the
documents show that the notices were recorded. Because the Court did not find it
necessary to consider these documents, the requests are DENIED WITHOUT
PREJUDICE.

1 pleading could not possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203
2 F.3d 1122, 1127 (9th Cir. 2000).

3 **III. DISCUSSION**

4 Before jumping into the merits of the motions, the Court finds it necessary to make
5 the following observations. The First Amended Complaint lacks clarity, and it appears
6 that Yadav-Ranjan seeks to hold all defendants liable for everything in every claim. The
7 Court does not address all of Yadav-Ranjan’s factual allegations. Moreover, from the
8 cursory nature of a number of the claims, the Court is uncertain that certain claims allege
9 actionable conduct. This lack of precision does not help Yadav-Ranjan, defendants, the
10 Court, or the justice system. The Court directs Yadav-Ranjan to Federal Rule of Civil
11 Procedure 8(a)(2), which requires a pleading be “a short and plain statement of the claim
12 showing that the pleader is entitled to relief.” This should be her guiding principle.

13 **A. The Tender Rule Does Not Bar Yadav-Ranjan’s Claims.**

14 Chase argues that all of Yadav-Ranjan’s claims are barred by the tender rule,
15 meaning that because she has not tendered the full amount due on the loan, she cannot set
16 aside the trustee’s sale. Dkt. No. 73 at 12. Yet “[r]ecognized exceptions to the tender rule
17 include when: (1) the underlying debt is void, (2) the foreclosure sale or trustee’s deed is
18 void on its face, (3) a counterclaim offsets the amount due, (4) specific circumstances
19 make it inequitable to enforce the debt against the party challenging the sale, or (5) the
20 foreclosure sale has not yet occurred.” *Chavez v. Indymac Mortg. Servs.*, 219 Cal. App.
21 4th 1052, 1062 (2013) (citation omitted). Here, Yadav-Ranjan challenges application of
22 the tender rule on several grounds: because the balance due is disputed, the lender
23 allegedly engaged in inequitable conduct, the security enforcer lacked authority to proceed
24 with the trustee’s sale, and on equitable grounds. Dkt. No. 82 at 19-23. These assertions
25 are sufficient for purposes of this order.

26 **B. The Breach of Contract Claim is Dismissed.**

27 First, Yadav-Ranjan brings a breach of contract claim against all defendants. Dkt.
28 No. 68 at 10. Chase moves to dismiss this claim as time-barred; Rushmore and

1 Wilmington challenge this claim on the merits.

2 Under California law, the elements of breach of contract are: “(1) the contract, (2)
3 plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the
4 resulting damages to plaintiff.” *Reichert v. Gen. Ins. Co. of Am.*, 68 Cal. 2d 822, 830
5 (1968).

6 Yadav-Ranjan alleges the defendants “breached the contract”—presumably the
7 deed of trust—“by increasing the principal due during the first 5 years - - despite the fact
8 that Ranjan made payments in excess of those required according to the TILA statement
9 which accurately summarized the payments due.” Dkt. No. 68 at 10. By the “first 5
10 years,” Yadav-Ranjan is referring to the period between 2007 and 2012. Notwithstanding
11 the insufficiency of the allegations under *Riechert*, these allegations raise the issue of
12 whether this claim is time-barred.

13 A breach of contract claim on a written contract has a four year statute of
14 limitations. Cal. Civ. Proc. Code § 337(1). Because the breach of contract claim would
15 otherwise be rejected as time-barred, Yadav-Ranjan instead argues that her efforts to
16 “mitigate damages” tolls the statute of limitations. Dkt. No. 82 at 13. Yadav-Ranjan cites
17 no law supporting her contention that the Court should toll the statute on this ground.
18 Thus, the Court rejects this argument, and the breach of contract claim based on the
19 alleged raising of Yadav-Ranjan’s monthly payments as alleged against all defendants is
20 **DISMISSED WITH PREJUDICE.**

21 Yadav-Ranjan also alleges defendants breached the contract by “wrongfully
22 instructing Quality to record a Notice of Default, Notice of Trustee[’s] Sale, and failing to
23 provide Ranjan the benefit of the provisions of the FNMA servicing guidelines and
24 provisions of the National Housing Act incorporated by reference.” *Id.* at 10-11. The
25 Court is at a loss as to how these allegations constitute a breach of contract claim. First of
26 all, how would Wilmington, who bought the home in 2016 through the trustee’s sale be in
27 any way responsible for recording a Notice of Default, Notice of Trustee’s Sale, or for
28 “failing to provide Ranjan the benefit of the provisions of the FNMA servicing guidelines

1 and provisions of the National Housing Act”? *Id.* at 10-11. Furthermore, simply calling
2 conduct “wrongful” does not make it so if a plaintiff does not also explain *how* it breached
3 a contract. Likewise, Yadav-Ranjan cannot bring a claim for breach of contract when,
4 even accepting as true her allegation that “defendants” were in breach of the mortgage—
5 she too was in breach because of her default. The breach of contract claim on the basis of
6 these allegations is DISMISSED WITH LEAVE TO AMEND.

7 Lastly, Yadav-Ranjan alleges the defendants breached the contract by “refus[ing] to
8 make any good faith effort to allow Ranjan to retain her home.” Dkt. No. 68 at 11.
9 Yadav-Ranjan points to no oral or written contract requiring “defendants” to make such an
10 vaguely-described effort. The breach of contract claim on this ground is DISMISSED
11 WITH PREJUDICE as to all defendants.

12 **C. Homeowner Bill of Rights**

13 Second, Yadav-Ranjan brings a claim for violations of the California Homeowner
14 Bill of Rights against all defendants. Dkt. No. 68 at 12. Yadav-Ranjan alleges that
15 servicers Nationstar and “Rushmore/Wilmington” failed to provide her with a single point
16 of contact and engaged in dual tracking. *Id.* Defendants move to dismiss this claim.

17 **1. Yadav-Ranjan States a Claim Under Cal. Civil Code § 2923.7.**

18 Yadav-Ranjan’s claim regarding not being appointed a single point of contact
19 survives as to the alleged servicers, Nationstar and “Rushmore/Wilmington.” California
20 Civil Code § 2923.7(a) provides that a servicer, upon request by the borrower for a
21 foreclosure prevention alternative, must establish a single point of contact for the
22 borrower. Subsection (c) requires the contact “remain assigned to the borrower’s account
23 until” the servicer determines all loss mitigation options offered “by, or through” the
24 servicer are exhausted, or the borrower’s account becomes current. Cal. Civ. Code
25 § 2923.(c). Yadav-Ranjan’s *servicer* was required to appoint a single point of contact
26 when she requested a foreclosure alternative in 2014, namely a loan modification. Dkt.
27 No. 68 at 7-8; *Green v. Cent. Mortg. Co.*, 148 F. Supp. 3d 852, 874 (N.D. Cal. 2015). This
28 claim is DISMISSED WITH PREJUDICE as to Chase, a non-servicing entity. As to

1 Wilmington and Rushmore, the motion is DENIED.

2 **2. The Cal. Civil Code § 2923.18 Claim is Dismissed.³**

3 Yadav-Ranjan’s dual tracking claim does not survive. She alleges that “Chase,
4 Nationstar and Rushmore/Wilmington also wrongfully engaged in dual tracking by
5 promising to reasonably consider the completed loan modification packages submitted by
6 Ranjan, while continuing with the non judicial trustee sale process.” Dkt. No. 68 at 12.
7 At first blush, it appears Yadav-Ranjan states a dual tracking claim under Cal. Civil Code
8 § 2923.18. However, a different section, Civil Code § 2923.6(g) suggests she cannot state
9 such a claim. Yadav-Ranjan does not dispute that she was approved for, and signed, a loan
10 modification that became effective May 1, 2013. Dkt. No. 68 at 6. That she now claims
11 the loan modification was to her detriment alters nothing. *Id.*

12 Section 2923.6(g) provides:

13 In order to minimize the risk of borrowers submitting multiple
14 applications for first lien loan modifications for the purpose of
15 delay, the mortgage servicer shall not be obligated to evaluate
16 applications from borrowers who have already been evaluated
17 or afforded a fair opportunity to be evaluated for a first lien loan
18 modification prior to January 1, 2013, or who have been
19 evaluated or afforded a fair opportunity to be evaluated
20 consistent with the requirements of this section, unless there has
21 been a material change in the borrower’s financial

19 ³ California Civil Code § 2923.6 was amended. The amendment took effect on January 1,
20 2018. *See* Cal. Civ. Code § 2923.6. The relevant language quoted in this case was
21 removed from the statute. The Court must consider whether the amendment has a
22 retroactive effect on this case. Under California law, there is a two-step analysis to
23 determine if an amended statute should apply to actions that occurred before its enactment.
24 *McClung v. Employment Dev. Dep’t*, 34 Cal. 4th 467, 471-72 (2004). First, courts
25 consider if the amendment changes or merely clarifies the law. *Id.* If the amendment
26 merely clarifies existing law, it is not retroactive “because the true meaning of the statute
27 remains the same.” *Id.* (quoting *Western Sec. Bank v. Superior Court*, 15 Cal. 4th 232, 243
28 (1997)). “Second, if the amendment changes the law, then courts must assess whether the
change operates retroactively or has a ‘retroactive effect’ by hindering rights that a party
obtained before the amendment’s enactment.” *Johnson v. Hewlett-Packard Co.*, No. 09-
cv-03596 CRB, 2014 WL 988824, at *3 (N.D. Cal. Mar. 10, 2014) (quoting *McClung*, 34
Cal. 4th at 472). There is a strong presumption against retroactivity. *McClung*, 34 Cal. 4th
at 475. The Court finds that at the first step, § 2923.6 was modified, not merely clarified.
At step 2, the Court does not find that the strong presumption against retroactivity is
overcome. Considering that neither party brought up the change to § 2923.6 as a factor in
their papers, and the fact that applying § 2923.6 retroactively would *increase* the servicer
defendants’ liability, the Court does not consider retroactive application of the amended
statute appropriate.

1 circumstances since the date of the borrower’s previous
2 application and that change is documented by the borrower and
submitted to the mortgage servicer.

3 Yadav-Ranjan was previously approved for a loan modification, and she alleges no facts of
4 a “material change” in her financial circumstances. Cal. Civ. Code § 2923.6(g). In Yadav-
5 Ranjan’s opposition to Wilmington and Rushmore’s motion to dismiss, she seeks to add
6 additional facts that Chase only offered Yadav-Ranjan a trial modification. Dkt. No. 83 at
7 11. The timing of when this occurred is not clear. In any event, an opposition is not the
8 place to add facts that belong in a complaint. The Court will not consider the new facts
9 alleged in the opposition. *Schneider v. California Dep’t of Corr.*, 151 F.3d 1194, 1197 n.1
10 (9th Cir. 1998) (“new” allegations contained in an opposition are irrelevant for Rule
11 12(b)(6) purposes, and a court may not consider them). The claim for dual tracking is
12 DISMISSED WITH LEAVE TO AMEND.

13 **D. The Fraud and Deceit Claim is Dismissed.**

14 Third, Yadav-Ranjan brings a fraud and deceit claim against “Chase and its
15 assignees and servicers.” Dkt. No. 68 at 12. It appears, however, that this claim is against
16 all defendants, because Chase is the only defendant that Yadav-Ranjan does not label as a
17 servicer at some point in her pleadings. Chase, Wilmington, and Rushmore move to
18 dismiss this claim.

19 The elements of fraud are: “(a) a misrepresentation (false representation,
20 concealment, or nondisclosure); (b) scienter or knowledge of its falsity; (c) intent to induce
21 reliance; (d) justifiable reliance; and (e) resulting damage.” *Hinesley v. Oakshade Town*
22 *Ctr.*, 135 Cal. App. 4th 289, 294 (2005) (quoting *Lazar v. Superior Court*, 12 Cal. 4th 631,
23 638 (1996)). Yadav-Ranjan also seems to attempt to state a claim for fraud by omission. A
24 fraud by omission claim requires showing: “(1) the concealment or suppression of material
25 fact, (2) a duty to disclose the fact to the plaintiff, (3) intentional concealment with intent
26 to defraud, (4) justifiable reliance, and (5) resulting damages.” *Mui Ho v. Toyota Motor*
27 *Corp.*, 931 F. Supp. 2d 987, 999 (N.D. Cal. 2013) (citing *SCC Acquisitions Inc. v. Cent.*
28 *Pac. Bank*, 207 Cal. App. 4th 859, 864 (2012)). When pleading fraud in federal courts, “a

1 party must state with particularity the circumstances constituting fraud or mistake.” Fed.
2 R. Civ. P. 9(b). “Averments of fraud must be accompanied by ‘the who, what, when,
3 where, and how’ of the misconduct charged.” *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d
4 1097, 1106 (9th Cir. 2003) (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)).

5 The overarching problem with Yadav-Ranjan’s fraud claim under either theory is
6 that she fails to allege that she justifiably relied on some misrepresentation by defendants.
7 Yadav-Ranjan alleges Chase failed to credit her for payments and that it hid money in
8 “suspense accounts” and deceived her by “denying her the protections of the National
9 Housing Act.” Dkt. No. 68 at 13-14. Yadav-Ranjan does not, however, dispute that
10 putting money in a suspense account was explicitly permitted in the deed of trust. In
11 addition, Yadav-Ranjan’s allegation that she “made payments as required by the TILA
12 statement” is directly contradicted by her earlier statement that she admits to missing
13 payments. Dkt. No. 68 at 5, 13. Even assuming Chase did not credit her payments,
14 Yadav-Ranjan was put on notice when Chase recorded a Notice of Default. Under the
15 theory of omission, moreover, Yadav-Ranjan must plead that the defendants had a duty to
16 disclose the purportedly omitted information to her. *Mui Ho*, 931 F. Supp. 2d at 999. She
17 has not done so. Yadav-Ranjan’s allegations are insufficient. The Court is also concerned
18 that these claims are time-barred, because Yadav-Ranjan does not specify in her complaint
19 when the alleged misrepresentations through omission occurred. Lastly, Yadav-Ranjan’s
20 conclusory allegation that “Nationstar and its assignees continued this course of deceitful
21 and fraudulent conduct,” by refusing “to reverse the terms of the fraudulently inflated
22 loan,” fails to state a fraud claim. Dkt. No. 68 at 14. There is no allegation of reliance,
23 concealment, or damages. Yadav-Ranjan’s fraud and deceit claim is DISMISSED WITH
24 LEAVE TO AMEND.

25 **E. The “Bid-Rigging” Claim is Dismissed.**

26 Fourth, Yadav-Ranjan brings a “bid-rigging” claim against all defendants. Dkt. No.
27 68 at 14. She alleges defendants sold the home using a “stale” Notice of Default, and that
28 they “unilaterally and arbitrarily postponed the trustee sale.” *Id.* at 15. Yadav-Ranjan

1 does not specify what statute “bid-rigging” violates. Defendants move to dismiss.

2 According to Yadav-Ranjan’s opposition to Chase’s motion, the statutory hook for
3 the “bid-rigging” claim is California Civil Code § 2924h(g)(2), which makes it unlawful
4 for a person “to fix or restrain bidding in any manner, at a sale of property conducted
5 pursuant to a power of sale in a deed of trust or mortgage.” The purpose of this subsection
6 is “to protect property owners in default by ensuring fair and open bidding and the benefits
7 of competition.” *Lo v. Jensen*, 88 Cal. App. 4th 1093, 1095 (2001). In addition, Civil
8 Code § 2924(a)(5) requires that when a sale is postponed for at least 10 days under
9 § 2924g, “a mortgagee, beneficiary, or authorized agent shall provide written notice to a
10 borrower regarding the new sale date and time, within five business days following the
11 postponement.”

12 In essence, Yadav-Ranjan claims defendants moved the date of the sale so she
13 would not know when the auction occurred. Yet Yadav-Ranjan never stated that the
14 trustee’s sale was postponed for more than ten days. However, the Court does infer from
15 Yadav-Ranjan’s statement that she “never knew when to actually bring her money to the
16 courthouse steps,” that she was never given notice of a postponement under § 2924(a)(5).
17 Thus, the Court does not have sufficient information to find that Yadav-Ranjan states a
18 claim under § 2924h(g).

19 As to Yadav-Ranjan’s other factual allegations, she is under the misapprehension
20 that the trustee’s sale should not be postponed unless the borrower requests such a delay.
21 She provided no support for that statement. In addition, she claims that defendant
22 “proceeded to sale on a stale notice of default.” Dkt. No. 68 at 15. The notice of default
23 was not stale. As Rushmore and Wilmington correctly point out, it is only notices of sale
24 that have to be reissued every 365 days. Dkt. No. 78 at 13 (citing Cal. Civ. Code §
25 22924g(c)(2)). Though Yadav-Ranjan brings the “bid-rigging” claim against all
26 defendants, the Court is at a loss as to what, if any, Chase had to do with the foreclosure
27 process. Nationstar, Wilmington, and Rushmore as servicers and bidders at the auction
28 would potentially be implicated in this claim, but Chase does not appear to have had

1 anything to do with the 2016 sale of Yadav-Ranjan’s home. According to Yadav-Ranjan’s
2 complaint, she sold the loan and gave the servicing rights to other entities in 2013 and
3 2014. Dkt. No. 68 at 7. Yadav-Ranjan must amend the “bid-rigging” claim to either
4 address how Chase is implicated or remove it as a defendant in this claim.

5 The “bid-rigging” claim is DISMISSED WITH LEAVE TO AMEND consistent
6 with this order.

7 **F. The Fair Debt Collection Practices Act Claim is Dismissed.**

8 Fifth, Yadav-Ranjan brings a FDCPA claim against all defendants. Dkt. No. 68 at
9 15. She alleges that Quality is a “security enforcer” under 15 U.S.C. § 1692f(6). *Id.*
10 Quality allegedly “failed to perform the due diligence required to determine whether it had
11 lawful authority to conduct the trustee sale and dispossess Ranjan from her home.” *Id.* at
12 16. Yet Quality is not a defendant in this action, so the Court disregards the allegations in
13 the operative complaint against Quality. Next, Yadav-Ranjan alleges Nationstar and
14 Wilmington/Rushmore “are debt collectors required to comply with all the provisions of
15 the FDCPA. . . . These debt collectors breached this duty by demanding hundreds of
16 thousands of dollars more than was actually due.” *Id.* at 16-17. Defendants move to
17 dismiss this claim.

18 First, Chase moves to dismiss the FDCPA claim against it because Yadav-Ranjan
19 failed to allege any facts against Chase in her amended complaint as to this claim. Dkt.
20 No. 73 at 18. Bizarrely, Yadav-Ranjan’s opposition does not address this issue, instead
21 arguing that the FDCPA claim is not time-barred. In any event, the Court GRANTS
22 Chase’s motion to dismiss the FDCPA claim against it WITH PREJUDICE.

23 As to Nationstar and Wilmington/Rushmore, this claim requires unpacking. “To
24 prevail on a Fair Debt Collection Practices Act claim the plaintiff must allege the
25 following: ‘(1) the plaintiff is a ‘consumer’ under 15 U.S.C. § 1692a(3); (2) the debt arises
26 out of a transaction entered into for personal purposes; (3) the defendant is a ‘debt
27 collector’ under 15 U.S.C. § 1692a(6); and (4) the defendant violated one of the provisions
28 contained in 15 U.S.C. §§ 1692a-1692o.’” *Martinez v. Trinity Fin. Servs., LLC*, No. 17-

1 cv-03612 LB, 2017 WL 4071386, at *3 (N.D. Cal. Sept. 14, 2017) (quoting *Wheeler v.*
 2 *Premiere Credit of N. Am., LLC*, 80 F. Supp. 3d 1108, 1112 (S.D. Cal. 2015). Under the
 3 FDCPA, a “debt collector” is “any person who uses any instrumentality of interstate
 4 commerce or the mails in any business the principal purpose of which is the collection of
 5 any debts, or who regularly collects or attempts to collect, directly or indirectly, debts
 6 owed or due or asserted to be owed or due another. 15 U.S.C. § 1692a(6). A “debt” is “an
 7 ‘obligation ... of a consumer to pay money.’” *Vien-Phuong Thi Ho v. ReconTrust Co., NA*,
 8 858 F.3d 568, 571 (9th Cir. 2016) (quoting 15 U.S.C. § 1692a(5)). But “actions taken to
 9 facilitate a non-judicial foreclosure, such as sending the notice of default and notice of
 10 sale, are not attempts to collect ‘debt’ as that term is defined by the FDCPA.” *Id.* at 572;
 11 *id.* at 571 (“The object of a non-judicial foreclosure is to retake and resell the security, not
 12 to collect money from the borrower. California law does not allow for a deficiency
 13 judgment following non-judicial foreclosure.”).

14 This is not quite Yadav-Ranjan’s argument. In an apparent recognition that she
 15 cannot bring a claim under the FDCPA for defendants’ foreclosure activities, Yadav-
 16 Ranjan alleges that Nationstar and Rushmore demanded of her hundreds of thousands of
 17 dollars more than was due. Dkt. No. 68 at 17. When this occurred is not stated. Likewise,
 18 Yadav-Ranjan’s bald assertion that she was entitled to a right of first refusal and of bid-
 19 rigging is likewise disregarded for lack of legal support. *Id.* Nor does Yadav-Ranjan state
 20 which section between 15 U.S.C. §§ 1692a-1692o was violated. It is not the Court’s job to
 21 do Yadav-Ranjan’s statutory homework. Yadav-Ranjan must replead. This claim is
 22 DISMISSED as to Wilmington, Rushmore, and Nationstar WITH LEAVE TO AMEND.

23 **G. The Equal Credit Opportunity Act Claim is Dismissed.**

24 Sixth, Yadav-Ranjan brings a claim under ECOA, 15 U.S.C. § 1601(d)(1), against
 25 defendants Nationstar and Rushmore. Dkt. No. 68 at 18. Rushmore moves to dismiss.
 26 Dkt. No. 78 at 15.

27 In the complaint, Yadav-Ranjan brings a claim under 15 U.S.C. § 1691(d)(1), which
 28 sets forth the procedural requirements for processing a credit application. Section

1 1691(d)(1) states that “[w]ithin thirty days . . . after receipt of a completed application for
2 credit, a creditor shall notify the applicant of its action on the application.” Instead of
3 directing her allegations to Nationstar and Rushmore, Yadav-Ranjan levels her ECOA
4 allegations at Chase, whom she did not bring an ECOA claim against. As a result, the
5 Court disregards the ECOA allegations against Chase. Dkt. No. 68 at 18. Yadav-Ranjan’s
6 allegation against Rushmore is that it “refused to seriously consider the application of
7 Ranjan.”⁴ *Id.* This allegation does not give Rushmore notice of what Yadav-Ranjan is
8 alleging. Fed. R. Civ. P. 8(a)(2). Yadav-Ranjan makes an almost identical claim
9 regarding Nationstar. This allegation is insufficiently detailed to survive a Rule 12(b)(6)
10 motion. The ECOA claim is DISMISSED WITH LEAVE TO AMEND.

11 **H. The Real Estate Settlement Procedures Act Claim is Dismissed.**

12 Seventh, Yadav-Ranjan brings a claim under RESPA “against all beneficiaries and
13 servicers.” Dkt. No. 68 at 19. This claim is against all defendants.

14 Yadav-Ranjan alleges that defendants violated RESPA by failing to “promptly
15 process the complete loan modification packages.” *Id.* Even if that is true, the vagueness
16 of Yadav-Ranjan’s allegations on the RESPA claim fail to satisfy Rule 8(a)(2). It is not
17 the Court’s duty to comb through Regulation X or 12 CFR 1024’s numerous subparts to
18 determine if Yadav-Ranjan stated a claim. This claim is DISMISSED WITH LEAVE TO
19 AMEND.

20 **I. The Cancellation and Quiet Title Claims are Dismissed.**

21 Eighth, Yadav-Ranjan bring a claim for cancellation of the Trustee’s Deed Upon
22 Sale and to quiet title against Wilmington. Dkt. No. 68 at 20. Wilmington moves to
23 dismiss.

24 “California law permits an action ‘to establish title against adverse claims to real or
25

26 _____
27 ⁴ Rushmore’s argument to dismiss the ECOA claim is neither here nor there. Yadav-
28 Ranjan alleges her servicers violated the notice provisions of ECOA, not the
discrimination provisions. *See Vasquez v. Bank of Am., N.A.*, No. 13-cv-02902 JST, 2013
WL 6001924, at *11 (N.D. Cal. Nov. 12, 2013) (discussing the distinction). As a result,
the Court will not address the Rushmore’s arguments to dismiss this claim.

1 personal property or any interest therein.” *Diamond Real Estate v. Am. Brokers Conduit*,
 2 No. 16-cv-03937 HSG, 2017 WL 412527, at *7 (N.D. Cal. Jan. 31, 2017) (citing Cal. Civ.
 3 Proc. Code § 760.020(a)). “A quiet title action must include: (1) a description of the
 4 property in question; (2) the basis for plaintiff’s title; and (3) the adverse claims to
 5 plaintiff’s title.” *Kelley v. Mortg. Elec. Registration Sys., Inc.*, 642 F. Supp. 2d 1048, 1057
 6 (N.D. Cal. 2009). Importantly, where the property has already been sold, a quiet title
 7 action is no longer appropriate, and the plaintiff must first challenge the foreclosure.
 8 *Distor v. U.S. Bank NA*, No. 09-cv-02086 SI, 2009 WL 3429700, at *6 (N.D. Cal. Oct. 22,
 9 2009), *disagreed with on other grounds in Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1180
 10 n.5 (9th Cir. 2016). Because Yadav-Ranjan is barred from seeking to quiet title after the
 11 sale to Wilmington, the Court does not reach Wilmington’s other arguments and
 12 **DISMISSES WITH PREJUDICE** the quiet title claim.

13 As for the cancellation claim, the Court once again finds it lacks information.
 14 Yadav-Ranjan alleges that “[a]s a [Fannie Mae] loan, defendants had a duty to provide
 15 Ranjan the loan modification alternatives specified in the [Fannie Mae] Servicing
 16 Guidelines, which are incorporated by reference in the deed of trust.” Dkt. No. 68 at 20.
 17 The Court is unaware what these “loan modification alternatives” are, and how they are
 18 incorporated by reference into the deed of trust. How did “defendants” fail to comply with
 19 the loan modification requirements Fannie Mae requires? These questions are
 20 unanswered.

21 Moreover, in examining the parties’ arguments, the Court recognizes that the issue
 22 of whether a lack of compliance with federal regulations is sufficient to state a cancellation
 23 claim is unresolved. *Compare Fonteno v. Wells Fargo Bank, N.A.*, 228 Cal. App. 4th 1358
 24 (2014) (allowing borrowers to bring an action to set aside trustee’s sale on the basis of
 25 noncompliance with the federal regulations incorporated into the deed of trust) *with*
 26 *Tumbaga v. Bank of Am., N.A.*, No. C075532, 2015 WL 138961, at *4-*5 (Cal. Ct. App.
 27 Jan. 12, 2015) (explicitly rejecting *Fonteno*). This issue requires further briefing.

28 In any event, the Court finds that the cancellation claim is insufficiently pled, so the

1 cancellation claim is DISMISSED WITH LEAVE TO AMEND.

2 **J. The Slander of Title Claim is Dismissed.**

3 Ninth, Yadav-Ranjan brings a claim for slander of title against all defendants. Dkt.
4 No. 68 at 21.

5 The elements of a slander of title claim are: “(1) a publication, (2) which is without
6 privilege or justification, (3) which is false, and (4) which causes direct and immediate
7 pecuniary loss.” *Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal. App. 4th 1040,
8 1051 (2009), *as modified* (May 18, 2009). Nonjudicial foreclosure proceedings are
9 privileged. Cal. Civ. Code § 47(c)(1) (“[a] privileged publication or broadcast is one
10 made: (c) [i]n a communication, without malice, to a person interested therein, (1) by one
11 who is also interested.”). “Nonjudicial foreclosure documents are subject to this
12 privilege.” *Rockridge Trust v. Wells Fargo, N.A.*, 985 F. Supp. 2d 1110, 1158 (N.D. Cal.
13 2013) (citing Cal. Civ. Code § 2924(d)).

14 Yadav-Ranjan sufficiently pleads that there was a publication, that it was false, and
15 that she incurred damages, but not that the publication was not privileged. To do so,
16 Yadav-Ranjan must provide facts showing defendants acted with malice. To show malice,
17 a plaintiff must show “that the publication was motivated by hatred or ill will towards the
18 plaintiff or by a showing that the defendant lacked reasonable grounds for belief in the
19 truth of the publication and therefore acted in reckless disregard of the plaintiff’s rights.”
20 *Kachlon v. Markowitz*, 168 Cal. App. 4th 316, 336 (2008) (internal quotation marks
21 omitted). Because there are no allegations of malice in the complaint, this claim is
22 DISMISSED WITH LEAVE TO AMEND.

23 **K. Other Claims**

24 It appears that Yadav-Ranjan seeks to add a negligence and California Unfair
25 Competition Act claim via her opposition brief. Just as an opposition brief is not the
26 proper place to add facts, it is no place to add claims.

27 **IV. CONCLUSION**

28 The motions to dismiss are GRANTED IN PART and DENIED IN PART WITH

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LEAVE TO AMEND. As the Court made clear throughout this order, the First Amended complaint is seriously deficient on Rule 8(a)(2) and Rule 12(b)(6) grounds. Yadav-Ranjan must file a motion for leave to file the Second Amended Complaint, with the Second Amended Complaint attached by February 15, 2018. The motion for leave to amend must address how the Second Amended Complaint cures the defects in the First Amended Complaint. Yadav-Ranjan may not add claims or parties absent leave of Court. Defendants will be given the opportunity to object to the filing of the Second Amended Complaint. Those objections must be filed by February 22, 2018.

IT IS SO ORDERED.

Dated: February 1, 2018



NATHANAEL M. COUSINS
United States Magistrate Judge