

1 **BACKGROUND**¹

2 On June 28, 2007, Plaintiff obtained a \$999,999 mortgage loan from IndyMac
3 Bank, FSB (“IMB”) in order to refinance her residence located at 2167 South Grade
4 Road, Alpine, California (“the Property”). [Compl. ¶¶ 6, 33.] The loan was secured
5 by a deed of trust on the Property. [*Id.* ¶ 33.] The deed of trust lists Mortgage
6 Electronic Registration Systems, Inc. (“MERS”) as the beneficiary, and Chicago
7 Title Insurance Co. as Trustee. [*Id.*; see June 28, 2007 Deed of Trust, Def’s Request
8 for Judicial Notice (“RJN”), Ex. A.]

9 Plaintiff then alleges that IMB attempted to sell or assign her loan, but, for
10 reasons difficult to discern from the complaint, did not validly do so. [Compl. ¶ 35.]
11 Later, IMB was acquired by OneWest Bank Group, LLC (“OneWest”). *Id.* ¶ 36.]
12 Plaintiff alleges that “[t]o date, there have been no valid substitutions or assignments
13 . . . such that [IMB], and now [OneWest] as successor remains the owner of the Note
14 and the Lender under the Note and Deed of trust, and Chicago Title remains the
15 named Trustee to the exclusion of all others.” [*Id.* ¶ 42.]

16 According to Defendant, shortly after Plaintiff’s loan closed, Plaintiff’s loan
17 was pooled and placed in the IndyMac INDA Mortgage Loan Trust 2007-FLX6,
18 Mortgage Pass-Through Certificates, Series 2007-FLX6 (“2007 Trust”) pursuant to
19 the terms of a Pooling and Servicing Agreement dated July 1, 2007 (“PSA”). [*See*
20 RJN, Ex. B.] Although ownership of Plaintiff’s loan was transferred to the 2007
21 Trust, IMB retained the servicing rights to the loan. [*Id.* at 1.] On July 11, 2008,
22 IMB failed and was closed by the Office of Thrift Supervision. The FDIC was
23 appointed as receiver. [*See* Office of Thrift Supervision Order (“OTS”) Order No.
24 2008-24, RJN, Ex. C.] The assets of IMB were transferred to the newly-chartered

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26 ¹ Because this matter is before the Court on a motion to dismiss, the Court must
27 accept as true the allegations of the complaint in question. *Hospital Bldg. Co. v. Rex*
28 *Hospital Trustees*, 425 U.S. 738, 740 (1976). However, as it is difficult to reconstruct
a factual background from the Complaint alone, the Court supplements the background
section with facts taken from the documents attached to Defendant’s motion to dismiss.
As discussed below, the Court takes judicial notice of the facts contained in these
documents.

1 IndyMac Federal Bank, FSB (“IMFB”), for which the FDIC was appointed as
2 Conservator and operated IMFB from July 11, 2008 until March 19, 2009. [*See*
3 *generally* Servicing Business Asset Purchase Agreement, RJN, Ex. D.] On March
4 19, 2009, IMFB was closed and the FDIC was appointed as Receiver. In its capacity
5 as receiver, the FDIC sold and transferred certain assets of IMFB to newly-formed
6 OneWest. The transferred assets included the servicing rights to Plaintiff’s loan.
7 [*See id.*] On January 10, 2011, MERS assigned its beneficial interest in Plaintiff’s
8 loan to Deutsche Bank, as trustee for the 2007 Trust. [*See* Assignment of Deed of
9 Trust, RJN, Ex. F.] This assignment was recorded on June 3, 2011. [*Id.*]

10 Plaintiff alleges that on February 24, 2011, Meridian Foreclosure Service
11 (“Meridian”) caused to be recorded and sent to Plaintiff a Notice of Default and
12 Election to Sell Under Deed of Trust. [Compl. ¶ 44.] Plaintiff alleges that Luis
13 Henriquez, who signed the notice, was not authorized to do so by IMB, OneWest, or
14 MERS. [*Id.* ¶¶ 46-47.] Plaintiff alleges that Defendant was merely a third-party
15 stranger to the loan transaction, with no right or power to act under the Note or Deed
16 of Trust. [*Id.* ¶ 50.] Plaintiff does not dispute that money is owed on her mortgage
17 obligation. [*Id.* ¶ 31.]

18 Based on these events, on February 20, 2013, Plaintiff alleging claims for (1)
19 declaratory relief; (2) negligence; (3) breach of quasi contract; (4) violation of the
20 Fair Debt Collection Practices Act (“FDCPA”); (5) violation of California’s Unfair
21 Business Practices act; (6) accounting; and (7) cancellation of instruments. Plaintiff
22 asserts “the documents recorded by or on behalf of [Defendant] were not in any
23 manner authorized or executed by a real party in interest in the Note and Deed of
24 Trust, and are fabrications and forgeries executed by as yet unidentified rogue
25 employees of [Defendant].” [Compl. ¶ 30.]

26 LEGAL STANDARD

27 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint.
28 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “While a complaint attacked

1 by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a
2 plaintiff's obligation to provide the grounds of his entitlement to relief requires more
3 than labels and conclusions, and a formulaic recitation of the elements of a cause of
4 action will not do. Factual allegations must be enough to raise a right to relief above
5 the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
6 (internal quotations, brackets, and citations omitted).

7 In reviewing a motion to dismiss under Rule 12(b)(6), the Court must assume
8 the truth of all factual allegations and must construe them in the light most favorable
9 to the nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-38 (9th
10 Cir. 1996). Legal conclusions need not be taken as true merely because they are cast
11 in the form of factual allegations. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th
12 Cir. 1987); *W. Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).
13 Similarly, "conclusory allegations of law and unwarranted inferences are not
14 sufficient to defeat a motion to dismiss." *Pareto v. FDIC*, 139 F.3d 696, 699 (9th
15 Cir. 1998).

16 In determining the propriety of a Rule 12(b)(6) dismissal, generally, a court
17 may not look beyond the complaint for additional facts. *United States v. Ritchie*,
18 342 F.3d 903, 908 (9th Cir. 2003); *Parrino v. FHP, Inc.*, 146 F.3d 699, 705-06 (9th
19 Cir. 1998). However, Federal Rule of Evidence 201 allows the Court to take judicial
20 notice of certain items without converting the motion to dismiss into one for
21 summary judgment. *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994). The
22 Court may take judicial notice of facts "not subject to reasonable dispute" because
23 they are either: "(1) generally known within the territorial jurisdiction of the trial
24 court or (2) capable of accurate and ready determination by resort to sources whose
25 accuracy cannot reasonably be questioned." Fed. R. Evid. 201; *see also Lee v. City*
26 *of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (noting that the court may take
27 judicial notice of undisputed "matters of public record"), *overruled on other grounds*
28 *by* 307 F.3d 1119, 1125-26 (9th Cir. 2002). The court may disregard allegations in

1 a complaint that are contradicted by matters properly subject to judicial notice.
2 *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010).

3 DISCUSSION

4 **A. Judicial Notice**

5 Defendant seeks judicial notice of seven documents: (1) a copy of the Deed of
6 Trust recorded on July 17, 2007 in the official records of the San Diego County
7 Recorder; (2) the July 1, 2007 PSA between IMB and Defendant, which is publically
8 available on the Security Exchange Commission's website; (3) a July 11, 2008,
9 order from the Office of Thrift Supervision appointing the FDIC as receiver; (4) a
10 Servicing Business Asset Purchase Agreement between the FDIC, the receiver for
11 IMFB, and OneWest available on the FDIC's website; (5) the Notice of Default
12 recorded February 24, 2011 in the official records of the San Diego County Recorder
13 as instrument no. 2011-0102393; (6) the Assignment of Deed of Trust recorded on
14 June 3, 2011 in the official records of the San Diego County Recorder as instrument
15 no. 2011-0284142; and (7) the Assignment of Deed of Trust recorded on July 20,
16 2012, in the official records of the San Diego County Recorder as instrument
17 number 2012-0421624.

18 Under Federal Rule of Evidence 201(b), a district court may take notice of
19 facts not subject to reasonable dispute that are "capable of accurate and ready
20 determination by resort to sources whose accuracy cannot reasonably be
21 questioned." Fed. R. Evid. 201(b). Plaintiff objects to Defendant's request for
22 judicial notice, arguing that this Court should not take judicial notice of the facts
23 stated within the documents, as the statements are hearsay. [*See Opp.* at 1-2.]
24 However, Plaintiff does not question the authenticity of the documents themselves.
25 The Court overrules Plaintiff's hearsay objections in light of the fact that all of
26 Defendant's exhibits are available from public records. For example, Exhibits A
27 (Deed of Trust), E (Notice of Default), F (Assignment of Deed), and G (further
28 Assignment), of which Defendant requests judicial notice, are all records filed with

1 the county recorder. Courts routinely take judicial notice of these types of
2 documents. *See, e.g., Liebelt v. Quality Loan Serv. Corp.*, 2011 WL 741056, at *6
3 n.2 (N.D. Cal. 2011); *Reynolds v. Applegate*, 2011 WL 560757, at *1 n.2 (N.D. Cal.
4 2011); *Giordano v. Wachovia Mortg., FSB*, 2010 WL 5148428, at * 1 n.2 (N.D. Cal.
5 2011). In addition, RJN Exhibits B, C, and D are documents obtained from
6 administrative agencies and are therefore properly noticed as a public record. *See*
7 *Barron v. Reich*, 13 F.3d 1370, 1377 (9th Cir. 1994).²

8 Thus, the Court finds that the accuracy of these documents cannot reasonably
9 be questioned as they are all either publically recorded documents or publically
10 available government documents. Accordingly, the Court **GRANTS** Defendant's
11 requests for judicial notice.

12 **B. Standing**

13 As a preliminary matter, Defendant argues that the complaint must be
14 dismissed on standing grounds because Plaintiff fails to identify the trust of which
15 Defendant is purportedly the trustee. [Mot. at 8.] Plaintiff acknowledges that this
16 deficiency must be cured in order to prevent dismissal. Accordingly, Plaintiff
17 requests leave to amend her complaint to substitute "INDX Mortgage Loan Trust
18 2007-FLX6, Mortgage Pass-Through Certificates 2007-FLX6" in place and instead
19 of "The Unknown Trust."³ [Opp. at 7.]

20 As a general rule, a court freely grants leave to amend a complaint which has
21 been dismissed. Fed. R. Civ. P. 15(a). However, leave to amend may be denied
22 when "the court determines that the allegation of other facts consistent with the
23 challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co.*

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25 ² Furthermore, to the extent that these exhibits are considered for the truth of the matter
26 asserted, they are either business or public records under Fed. R. Evid. 803(6) and 803(8) and
therefore constitute exceptions to the hearsay rule.

27 ³ The Court notes that Federal Rule of Civil Procedure 15(a) afforded Plaintiff the opportunity
28 to amend her complaint as a matter of course within 21 days after service of Defendant's motion to
dismiss. Fed. R. Civ. P. 15(a)(1)(B). As this opportunity has now passed, however, Plaintiff must
seek leave of court to amend.

1 v. *Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986). To determine
2 whether leave to amend would be futile, the Court assumes for purposes of this order
3 that Plaintiff has properly identified the trust over which Defendant serves as trustee.
4 As will be demonstrated, the Court finds that amendment would be futile, and thus
5 denies Plaintiff's request to amend her complaint.

6 **C. Individual Claims for Relief**

7 The crux of Plaintiff's complaint is as follows:

8 Plaintiffs allege[] that at NO TIME did MERS affect an assignment,
9 transfer, negotiation, or sale of the Deed of Trust to any Defendant
10 or Doe Defendant, or anyone at any time, and any document, that
11 purports to have effectuated such an assignment, transfer,
12 negotiation, or sale of the Deed of Trust, including the Notice of
Default was executed by a stranger to the Lender, and also to MERS,
and someone without the legal authority to undertake any act for or
on behalf of MERS as agent of the true lender.

13 [Compl. ¶ 62.] In opposition, Plaintiff clarifies that "through the instant lawsuit,
14 Plaintiff . . . will establish that Defendant . . . in its capacity as purported assignee of
15 Plaintiff's Note and Deed of Trust are not and were not her true creditors and as such
16 have and had no legal, equitable, or pecuniary right in the debt obligation secured by
17 the Plaintiff's real property that is the subject of these proceedings." [Opp. at 1.]

18 However, the documents submitted by Defendant and which are subject to
19 judicial notice directly refute Plaintiff's allegation that Defendant is a stranger to the
20 loan. Under these documents, (1) Plaintiff obtained the loan from IMB in 2007
21 secured by a deed of trust; (2) this loan was pooled and placed in the 2007 Trust; and
22 (3) the beneficial interest in the deed of trust was later assigned to Defendant. Thus,
23 there is an unbroken chain of title that supports Defendant's right to receive
24 payments under the loan. *See McLaughlin v. Wells Fargo Bank, N.A.*, 2012 WL
25 5994924, at *6 (C.D. Cal. 2012) (finding that "[b]ecause there is an unbroken chain
26 of title and Plaintiff has failed to properly allege a claim for fraud so as to invalidate
27 the recorded documents," defendants had the authority to demand payment on the
28 mortgage loan).

1 In response to these facts, Plaintiff states that she “will not dispute that the
2 [assignment document] exists, but will dispute that MERS authorized, signed, or had
3 knowledge of the purported assignment and that the person who signed the
4 assignment was authorized by MERS.” [Opp. at 3.] However, the Court finds that
5 amendment of the complaint to include these allegations would be futile. “[D]istrict
6 courts have held that borrowers who were not parties to the assignment of their
7 deed—and whose rights were not affected by it—lacked standing to challenge the
8 assignment’s validity because they had not alleged a concrete and particularized
9 injury that is fairly traceable to the challenged assignment.” *Marques v. Federal*
10 *Home Loan Mortg. Corp.*, 2012 WL 6091412, at *4 (S.D. Cal. 2012) (quoting
11 *Silving v. Wells Fargo Bank, NA*, 2012 WL 135989, at *3 (D. Ariz. 2012); *In re*
12 *MERS Litig.*, 2011 WL 4550189 (D. Ariz. Oct.3, 2011) (quotations omitted). “[T]he
13 validity of the assignment does not affect whether [the] borrower owes its
14 obligations, but only to whom [the] borrower is obliged.” *Id.* at *5 (quoting *Livonia*
15 *Prop. Holdings, L.L.C. v. Farmington Road Holdings, L.L.C.*, 717 F. Supp. 2d 724,
16 735-36 (E.D. Mich. 2010)). Therefore, the Court finds that Plaintiff lacks standing
17 to challenge the assignment of the Deed of Trust.

18 Additionally, Plaintiff contends that the assignment of the Deed of Trust was
19 invalid on the ground that “[t]he parties involved in the alleged Securitization and
20 transfer of Plaintiffs’ Note and Mortgage failed to adhere to section 2.01 of the
21 related PSA” [Compl. ¶ 53.] “To the extent Plaintiff bases her claims on the
22 theory that [Defendant] allegedly failed to comply with the terms of the PSA, the
23 court finds that she lacks standing to do so because she is neither a party to, nor a
24 third party beneficiary of, that agreement .” *McLaughlin*, 2012 WL 5994924, at *4
25 (quoting *Sami v. Wells Fargo Bank*, 2012 WL 967051, at *5 (N.D. Cal. 2012)
26 (dismissing claims based on the allegation that defendant bank transferred or
27 assigned the Deed of Trust after the securitized trust closing date in violation of the
28 PSA)). Thus, Plaintiff does not have standing to challenge the assignment on the

1 basis of violations of the PSA.

2 Because the Court finds that Plaintiff's mortgage loan was assigned to
3 Defendant, thereby giving Defendant the right to seek payment, Plaintiff's claims
4 must be dismissed. Plaintiff requests leave to amend her complaint to provide
5 "plausible factual assertions" in support of her position that MERS did not affect any
6 assignment of the Deed of Trust. [Opp. at 10.] However, the Court finds that
7 dismissal with prejudice is warranted because amendment would be futile absent
8 allegations that the assignment documents were fraudulent.

9 Federal Rule of Civil Procedure 9(b) states that an allegation of "fraud or
10 mistake must state with particularity the circumstances constituting fraud." Fed. R.
11 Civ. P. 9(b). The "circumstances" required by Rule 9(b) are the "who, what, when,
12 where, and how" of the fraudulent activity. *Vess v. Ciba-Geigy Corp. USA*, 317
13 F.3d 1097, 1106 (9th Cir. 2003); *Neubronner v. Milken*, 6 F.3d 666, 672 (9th Cir.
14 1993) ("[Rule 9(b) requires] the times, dates, places, benefits received, and other
15 details of the alleged fraudulent activity."). In addition, the allegation "must set
16 forth what is false or misleading about a statement, and why it is false." *Vess*, 317
17 F.3d at 1106 (quoting *In re Glenfed, Inc. Secs. Litig.*, 42 F.3d 1541, 1548 (9th Cir.
18 1994)). Rule 9(b)'s heightened pleading standard applies not only to federal claims,
19 but also to state law claims brought in federal court. *Id.* at 1103. This heightened
20 pleading standard ensures that "allegations of fraud are specific enough to give
21 defendants notice of the particular misconduct which is alleged to constitute the
22 fraud charged so that they can defend against the charge and not just deny that they
23 have done anything wrong." *Semegen v. Weidner*, 780 F.2d 727, 731 (9th Cir.
24 1985).

25 Here, in taking judicial notice of the aforementioned documents, the Court has
26 conclusively determined that the accuracy of these documents cannot reasonably be
27 questioned. Further, Plaintiff does not indicate what additional plausible facts she
28 might include, or otherwise indicate an ability to satisfy the stringent pleading

1 requirements for claims of fraud. Thus, the Court is convinced that this complaint
2 cannot be saved by any amendment.

3 In light of the determination that Plaintiff’s claims should be dismissed with
4 prejudice, the Court only briefly addresses each specific claim.

5 *1. Declaratory Relief*

6 Plaintiff’s claim for declaratory relief is directly tied to the allegation that
7 Defendant was a stranger to the loan, and thus did not have the authority to collect
8 mortgage payments from Plaintiff. Thus, for the reasons above, and also because
9 none of Plaintiff’s substantive claims survive Defendant’s motion to dismiss, this
10 claim necessarily fails. *See Glue-Fold, Inc. v. Slautterback Corp.*, 82 Cal. App. 4th
11 1018, 1023 n.3, 98 Cal. Rptr. 2d 661 (2000) (noting that equitable forms of remedy
12 “have no separate viability” if plaintiff’s other causes of action fail).

13 *2. Negligence*

14 Plaintiff alleges that Defendant breached its duty of care not to collect
15 mortgage payments where Defendant lacked the right to enforce the underlying
16 obligation. [Compl. ¶ 106.] In addition to the reasons stated above, this claim fails
17 because financial institutions generally do not owe a duty of care to a borrower when
18 its activities do not exceed those of a conventional money lender. *Nymark v. Heart*
19 *Fed. Sav. & Loan Ass’n*, 231 Cal. App. 3d 1089, 1095-96 (Ct. App. 1991).
20 “Furthermore, a trustee under a deed of trust owes Plaintiff no duty beyond its duties
21 contained in Cal. Civ. Code §§ 2924, *et seq.*” *Id.* (citations omitted).

22 While Plaintiff alleges that Defendant owes her a duty of care because of their
23 “unconventional relationship,” Plaintiff bases her negligence claim on allegations
24 that Defendant was a stranger to the loan and did not have the right to enforce it.
25 [Compl. ¶ 106.] For the reasons stated above, these allegations are insufficient to
26 establish an unconventional relationship necessary to compel the Court to deviate
27 from the general rule that financial institutions do not owe a duty of care to
28 borrowers. *Nymark*, 231 Cal. App. 3d at 1096. As Plaintiff is unable to establish a

1 duty, and for the reasons stated previously with respect to Defendant’s right to
2 collect payment, the cause of action for negligence is dismissed with prejudice.

3 3. *Quasi Contract*

4 Plaintiff’s claim for breach of quasi contract is based on the theory that
5 Defendant had no interest in the note or deed of trust when it attempted to
6 improperly collect on the loan. [Compl. ¶ 112.] For the reasons set forth above, this
7 claim fails and is dismissed.

8 4. *FDCPA*

9 Plaintiff asserts violations of the FDCPA against Defendant, which moves to
10 dismiss the claim on grounds that they are not debt collectors as defined by the
11 FDCPA, and foreclosure-related activity conducted pursuant to a deed of trust does
12 not constitute debt collection within the meaning of the FDCPA.

13 The declared purpose of the FDCPA is to “eliminate abusive debt collection
14 practices by debt collectors . . . and to promote consistent state action to protect
15 consumers against debt collection abuses.” 15 U.S.C. § 1692. The FDCPA defines
16 “debt” as “any obligation or alleged obligation of a consumer to pay money arising
17 out of a transaction in which the money, property, insurance, or services which are
18 the subject of the transaction are primarily for personal, family, or household
19 purposes, whether or not such obligation has been reduced to judgment.” 15 U.S.C.
20 § 1692a(5). It is well-established that the activity of foreclosing on property
21 pursuant to a deed of trust is not “collection of a debt” within the meaning of the
22 FDCPA. *See, e.g., Izenberg v. ETS Servs., LLC*, 589 F. Supp. 2d 1193, 1199 (C.D.
23 Cal. 2008) (citing *Ines v. Countrywide Home Loans*, 2008 WL 4791863, at *2 (S.D.
24 Cal. 2008)). As one district court explained,

25 Foreclosing on a trust deed is distinct from the collection of the
26 obligation to pay money. The FDCPA is intended to curtail
27 objectionable acts occurring in the process of collecting funds from
28 a debtor. But, foreclosing on a trust deed is an entirely different
 path. Payment of funds is not the object of the foreclosure action.
 Rather, the lender is foreclosing its interest in the property.

1 *Hulse v. Ocwen Fed. Bank*, 195 F. Supp. 2d 1188, 1204 (D. Or. 2002).

2 Plaintiff's FDCPA claim cannot be based on the allegation that Defendant
3 recorded the notice of default, as such activity does not qualify as "debt collecting"
4 under the FDCPA. Furthermore, this claim fails because it is based on Defendant
5 not having the legal right to collect loan payments. Thus, this claim is dismissed.

6 5. *California Business and Professions Code*

7 Plaintiff next alleges that Defendant engaged in unlawful, unfair, and
8 fraudulent business practices in violation of California's Unfair Competition Law,
9 Cal. Bus. and Prof. Code § 17200 *et seq.* ("UCL"). Defendant asserts that Plaintiff
10 fails to state a claim under this statutory provision.

11 California's UCL prohibits unlawful, unfair, and fraudulent business acts or
12 practices. Cal. Bus. & Prof. Code § 17200 *et seq.*; *Wolfe v. State Farm Fire &*
13 *Casualty Ins. Co.*, 46 Cal. App. 554, 558 (1996). The law is "sweeping, embracing
14 anything that can properly be called a business practice and at the same time is
15 forbidden by law." *Cel-Tech Communs., Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th
16 163, 180 (1999). The UCL "borrows violations of other laws and treats them as
17 unlawful practices that the [UCL] makes independently actionable." *Id.*

18 Plaintiff alleges that Defendant engage in fraudulent business practices with
19 respect to mortgage loan servicing by: executing and recording false and misleading
20 documents; executing and recording documents without the legal authority to do so;
21 failing to disclose the principal for which documents were being executed and
22 recorded; demanding and accepting payments for debts that were non-existent;
23 violating the security first rule; and acting as a beneficiary without the legal
24 authority to do so. [Compl. ¶ 116.]

25 The Court finds that this claim is directly derivative of the previous claims
26 which the Court has determined to be without merit. Thus, this claim also
27 necessarily fails.

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6. *Accounting*

As Plaintiff “tethers” her claim for an accounting to the previously asserted causes of action [*see* Compl. ¶ 125], this claim fails.

7. *Cancellation of Instruments*

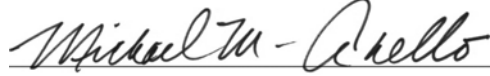
Plaintiff seeks the cancellation of the Notice of Default recorded with the San Diego County Recorder’s Office on February 23, 2011. However, as discussed previously, Plaintiff has failed to allege facts to demonstrate such notice was unlawful. The Court dismisses this claim.

CONCLUSION

For the foregoing reasons, the Court **GRANTS** Defendant’s motion to dismiss and **DISMISSES** Plaintiff’s Complaint **with prejudice**. The Clerk of Court shall terminate the case.

IT IS SO ORDERED.

DATED: July 1, 2013



Hon. Michael M. Anello
United States District Judge