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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JULIE ELICE FONTAINE,  
  
Plaintiff,  
  
vs.  
  
BANK OF AMERICA, N.A., a/k/a  
FIRST MAGNUS FINANCIAL  
CORPORATION, A DIVISION OF  
BANK OF AMERICA, N.A. and f/k/a  
FIRST MAGNUS FINANCIAL  
CORPORATION; THE BANK OF  
NEW YORK MELLON f/k/a THE  
BANK OF NEW YORK AS  
TRUSTEE FOR THE  
CERTIFICATEHOLDER OF  
CWMBS, INC. CHL MORTGAGE  
PASS THROUGH TRUST 2006-3,  
MOTGAGE PASS THROUGH  
CERTIFICATE SERIES 2006;  
MERSCORP HOLDINGS, INC;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.  
(MERS); RECONTRUST  
COMPANY, N.A.; CLEAR RECON  
CORP; and DOES 1 through 10  
inclusive,  
  
Defendants.

CASE NO. 14cv1944-WQH-  
DHB  
  
ORDER

HAYES, Judge:

The matters before the Court are: (1) the Motion to Dismiss Plaintiff’s First Amended Complaint (ECF No. 67) filed by Defendants Bank of America, N.A. (erroneously sued as Bank of America, N.A. a/k/a First Magnus Financial Corporation,

1 a Division of Bank of America, N.A. and f/k/a First Magnus Financial Corporation), the  
2 Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificate  
3 Holders of the CWMBBS, Inc. CHL Mortgage Pass Through Trust 2006-3, Mortgage  
4 Pass Through Certificate Series 2006, Mortgage Electronic Registration Systems, Inc.  
5 (appearing for itself and MersCorp Holdings, Inc.), and ReconTrust Company, N.A.;  
6 (2) the Motion to Dismiss First Amended Complaint (ECF No. 68) filed by Defendants  
7 Clear Recon Corp; and (3) the Motion to Strike Defendants' Motion to Dismiss (ECF  
8 No. 74) filed by Plaintiff.

9 **I. Background**

10 On August 20, 2014, Plaintiff initiated this action by filing a Complaint against  
11 Defendants Bank of America, N.A., The Bank of New York Mellon, Merscorp  
12 Holdings, INC., Mortgage Electronic Registrations Systems, Inc ("MERS"),  
13 ReconTrust Company, N.A., Clear Recon Corp., and Does 1 through 10. (ECF No 1).

14 On October 20, 2014, Defendants Bank of America, N.A., The Bank of New  
15 York Mellon, MERS, and ReconTrust Company filed a motion to dismiss Plaintiff's  
16 Complaint. (ECF No. 13). On November 24, 2014, Defendant Clear Recon Corp. filed  
17 a Notice of Joinder to Defendants' Motion to Dismiss Plaintiff's Petition adopting and  
18 incorporation the contents of the Defendants' Motion to Dismiss. (ECF No. 18). On  
19 January 7, 2015, the Court issued an Order granting Defendants' motion to dismiss for  
20 failure to comply with Rule 8(a). (ECF No. 21). The Order further dismissed  
21 Plaintiff's first, second, fourth, fifth, and sixth claims for additional independent  
22 reasons.

23 On June 25, 2015, Plaintiff filed the First Amended Complaint, adding Shellpoint  
24 Mortgage Servicing as a Defendant. (ECF No. 64). On July 13, 2015, Defendants  
25 Bank of America, N.A., The Bank of New York Mellon, MERS, and ReconTrust  
26 Company, N.A. filed the Motion to Dismiss Plaintiff's First Amended Complaint.  
27 (ECF No. 67). On July 14, 2015, Defendant Clear Recon Corp. filed the Motion to  
28 Dismiss First Amended Complaint. (ECF No. 68). On August 3, 2015, Plaintiff filed

1 the Motion to Strike Defendants’ Motion to Dismiss. (ECF No. 75). On August 10,  
2 2015, Defendants Bank of America, N.A., The Bank of New York Mellon, MERS, and  
3 ReconTrust Company, N.A. filed a reply (ECF No. 76) and a response in opposition to  
4 Plaintiff’s motion to strike. (ECF No. 77). On August 11, 2015, Defendant Clear  
5 Recon Corp. filed a reply. (ECF No. 78).

## 6 **II. Allegations of First Amended Complaint**

7 “... Julie E. Fontaine whose property address is 909 Glendor Drive, Oceanside,  
8 CA 92057 ... allegedly signed a Note in favor of First Magnus Financial Corp. on  
9 November 17, 2005.” (ECF No. 1 ¶ 1). “This loan was identified in multiple classes  
10 of the CHL Mortgage Pass-Through Trust 2006-3 (hereinafter “CWHL-2006-3”), which  
11 has a Closing Date of January 31, 2006. The loan is being serviced by Shellpoint  
12 Mortgage Servicing.” *Id.*

13 “Multiple classes of the CWHL-2006-3 Trust own the Fontaine Intangible  
14 Obligation.” *Id.* ¶ 13. “However the transfer of rights to either of the two tangible parts  
15 of the security instrument that evidence the Fontaine Intangible Obligation from First  
16 Magnus Financial Corp. to multiple classes of the CWHL-2006-3 Trust is not  
17 memorialized in the Official Records of the San Diego County Recorder’s Office in a  
18 manner which observes United States Code.” *Id.* “Under the Consumer Credit  
19 Protection Act Title 15 USC Chapter 41 § 1641(g): any transfers of the Fontaine  
20 Mortgage Loan to multiple classes of the CWHL-2006-3 Trust would be in violation  
21 of Federal Statute, if those transfers had not been recorded in the Official Records of  
22 the San Diego County Recorder’s Office within 30 days along with notification of Julie  
23 E. Fontaine that the transfers had occurred.” *Id.* ¶ 14. “As there are no recorded  
24 assignments of the Fontaine Deed of Trust to multiple classes of the CWHL-2006-3  
25 Trust within 30 days of November 17, 2005, either there has been a violation of Federal  
26 Law or multiple classes of the CWHL-2006-3 Trust, who are the owners of the Fontaine  
27 Intangible Obligation, are not the owners of either the Fontaine Note or the Fontaine  
28 Deed of Trust.” *Id.*

1 “For all three parts of the Fontaine Mortgage Loan as a whole to have been  
2 transferred into the CWHL-2006-3 Trust there is a chain of entities through which the  
3 Fontaine Deed of Trust must be assigned and the Fontaine Note must be indorsed.” *Id.*  
4 ¶ 22. “Moreover, these assignments were to all be recorded in the Official Records of  
5 the San Diego County Recorder’s Office as per the PSA for the CWHL-2006-3 Trust.”  
6 *Id.* ¶ 23. “No evidence is available to evidence negotiations of the Fontaine Note to  
7 multiple classes of the CWHL-2006-3 Trust.” *Id.* ¶ 18. “Any electronic transfers of the  
8 Fontaine Deed of Trust that may have been execute without recording within the  
9 Official Records of the San Diego County Recorder’s Office are void under Uniform  
10 Electronic Transactions Act (UETA) USC § 15-96-1-7003....” *Id.* ¶ 24.

11 “The written agreement that created the CWHL-2006-3 Trust is a ‘Pooling &  
12 Servicing Agreement’ (PSA) dated January 01, 2006....” *Id.* ¶ 26. “The CWHL-2006-3  
13 Trust by its terms set a ‘CLOSING DATE’ of (on or about) January 31, 2006.” *Id.*  
14 “The Fontaine Note in this case did not become CWHL-2006-3 Trust property in  
15 compliance with this requirement set forth in the PSA.” *Id.*

16 “There is a document purporting to be an ‘Assignment of Deed of Trust’, dated  
17 August 12, 2011 and filed in the Official Records of the San Diego County Recorder’s  
18 Office on August 19 ... where MERS grants, assigns, and transfers to The Bank of New  
19 York Mellon FKA The Bank of New York, as trustee for the certificateholders of  
20 CWMBS Inc.” *Id.* ¶ 31. “[T]he filing of this document purporting to be an  
21 ‘Assignment of Deed of Trust’ did not and does not assign/convey any legal rights to  
22 enforce the Fontaine Note.” *Id.* ¶ 32

23 “There is a document purporting to be a ‘Substitution of Trustee’, dated October  
24 14, 2011 and filed in the Official Records of the San Diego County Recorder's Office  
25 on October 17, 2011 ... where The Bank of New York Mellon FKA The Bank of New  
26 York, as trustee for the certificateholders of CWMBS Inc. CHL Mortgage  
27 Pass-Through Trust 2006-3, Mortgage Pass-Through Certificates Series 2006-3, by its  
28 AIF Bank of America N.A. removes Chicago Title Company as Trustee and substitutes

1 Recontrust Company N.A. as Trustee of a Deed of Trust dated November 17, 2005....”  
2 *Id.* ¶ 61. “[The] document purporting to be an ‘Assignment of Deed of Trust dated  
3 August 12, 2011 is invalid, as the Assignment of Deed of Trust did nothing to transfer  
4 any right or interest in the Fontaine Deed of Trust to the Assignee, The Bank of New  
5 York Mellon.” *Id.* ¶ 62. “As no rights or interests in the Fontaine Deed of Trust have  
6 been transferred to The Bank of New York Mellon, neither The Bank of New York  
7 Mellon nor any of its agents have any right to substitute Recontrust Company N.A. as  
8 Trustee to the Fontaine Deed of Trust. With neither The Bank of New York Mellon nor  
9 any of its agents having any right to substitute Recontrust Company N.A. as Trustee to  
10 the Fontaine Deed of Trust, the document purporting to be a ‘Substitution of Trustee’  
11 dated October 14, 2011 is invalid as a Substitution of Trustee.” *Id.*

12 Plaintiff asserts that:

13 Defendants, *et al.*, violated 15 USC Chapter 41 § 1641(g) and did not  
14 disclose the new creditor as required by law.

15 Defendants, *et al.*, violated USC § 15-96-1-7003 and did not execute the  
16 proper recordings as required by law.

17 The misfeasance, malfeasance and nonfeasance by the Defendants, *et al.*,  
18 have slandered title to the Plaintiffs property.

19 *Id.* ¶¶ 87-89.

20 **III. Motion to Strike**

21 Plaintiff’s Motion to Strike requests the Court to “deny in its entirety the  
22 Defendants Motion to Dismiss” and “strike as moot Defendants’ Request for Judicial  
23 Notice in Support of Motion to Dismiss Plaintiff’s First Amended Complaint.” (ECF  
24 No. 75 at 9-10).

25 Federal Rule of Civil Procedure 12(f) provides that “[t]he court may strike from  
26 a *pleading* any insufficient defense or any redundant, immaterial, impertinent, or  
27 scandalous matter.” Fed. R. Civ. P. 12(f) (emphasis added). The Federal Rules of Civil  
28 Procedure allow only the following pleadings: a complaint, an answer to a complaint,  
an answer to a counterclaim, an answer to a crossclaim, a third-party complaint, an  
answer to a third-party complaint, and a reply to an answer. *See* Fed. R. Civ. P. 7(a).

1 Plaintiff has not identified any authority for striking Defendants' Request for Judicial  
2 Notice. Plaintiff's motion is denied.

#### 3 **IV. Motion to Dismiss**

##### 4 **A. Legal Standard**

5 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state  
6 a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "A pleading that  
7 states a claim for relief must contain ... a short and plain statement of the claim showing  
8 that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal under Rule  
9 12(b)(6) is appropriate where the complaint lacks a cognizable legal theory or sufficient  
10 facts to support a cognizable legal theory. *See Balistreri v. Pac. Police Depot*, 901 F.2d  
11 696, 699 (9th Cir. 1990).

12 "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment]' to relief"  
13 requires more than labels and conclusions, and a formulaic recitation of the elements  
14 of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)  
15 (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to dismiss, a court must  
16 accept as true all "well-pleaded factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662,  
17 679 (2009). "Courts have a duty to construe pro se pleadings liberally, including pro  
18 se motions as well as complaints." *Bernhardt v. Los Angeles County*, 339 F.3d 920,  
19 925 (9th Cir.2003). However, a court is not "required to accept as true allegations that  
20 are merely conclusory, unwarranted deductions of fact, or unreasonable inferences."  
21 *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "In sum, for a  
22 complaint to survive a motion to dismiss, the non-conclusory factual content, and  
23 reasonable inferences from that content, must be plausibly suggestive of a claim  
24 entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.  
25 2009) (quotations omitted).

##### 26 **B. Analysis**

##### 27 **Rule 8(a)**

28 "Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a short

1 and plain statement of the claim showing that the pleader is entitled to relief. *Ashcroft*  
2 *v. Iqbal*, 556 U.S. 662, 677-78 (2009). The complaint must include “sufficient  
3 allegations to put defendants fairly on notice of the claims against them.” *McKeever*  
4 *v. Block*, 932 F.2d 795, 798 (9th Cir.1991). “Something labeled a complaint ... yet  
5 without simplicity, conciseness and clarity as to whom plaintiffs are suing for what  
6 wrongs, fails to perform the essential functions of a complaint.” *McHenry v. Renne*, 84  
7 F.3d 1172, 1180 (9th Cir. 1996). “When a plaintiff asserts multiple claims against  
8 multiple defendants, this fair notice standard requires that the allegations in the  
9 complaint must show which defendants are liable to the plaintiff for which wrongs.”  
10 *In re Tevis*, No. ADV. 08-2004, 2011 WL 7145712, at \*8 (B.A.P. 9th Cir. Dec. 9,  
11 2011).

12 Defendants contend that the FAC should be dismissed because “Defendants are  
13 not on sufficient notice of the acts in which they are alleged to have engaged in,” and  
14 “it is unclear which laws or standards have been violated, and how they have allegedly  
15 been violated.” (ECF No. 67 at 9). Defendants contend that the “FAC fails in any way  
16 to state any proper elements of any cause of action; it is simply a quagmire of  
17 statements drawn together...” *Id.* Defendants further contend that Plaintiff’s FAC is  
18 flawed because it lumps all Defendants together and fails to specify specific actions by  
19 each of them. Defendant Clear Recon Corp contends that Plaintiff’s FAC is wholly  
20 deficient under Rule 8(a). Plaintiff does not address these contentions in her Motion  
21 to Strike. *See* ECF No. 75.

22 Plaintiff’s FAC consists of a series of bolded headings followed by dense  
23 paragraphs of indefinite allegations. Plaintiff’s FAC fails to identify violations of law  
24 allegedly committed by Defendants, with the exception of references to violations of  
25 two federal statutes. With respect to the two federal statutes referenced in Plaintiff’s  
26 FAC, Plaintiff alleges violations by “Defendant’s [sic], *et al.*, ...” (ECF No. 64 ¶¶ 87,  
27 88). Plaintiff’s FAC does not indicate the alleged wrongful act performed by each  
28 Defendant, preventing Defendants from responding to the allegations. The Court

1 concludes that Plaintiff has failed to comply with Rule 8. Defendants' motions to  
2 dismiss the Complaint pursuant to Rule 8 are granted. In addition, the two cognizable  
3 claims alleged by Plaintiff warrant dismissal for additional reasons discussed below.

#### 4 **Violation of the Truth in Lending Act ("TILA")**

5 Plaintiff alleges that "Defendants, *et al.*, violated 15 USC Chapter 41 § 1641(g)  
6 and did not disclose the new creditor as required by law." (ECF No. 64 at 37). Plaintiff  
7 alleges that:

8 Under the Consumer Credit Protection Act Title 15 USC Chapter 41 §  
9 1641(g): any transfers of the Fontaine Mortgage Loan to multiple classes  
10 of the CWHL-2006-3 Trust would be in violation of Federal Statute, if  
11 those transfers had not been recorded in the Official Records of the San  
12 Diego County Recorder's Office within 30 days along with notification of  
13 Julie E. Fontaine that the transfers had occurred. As there are no recorded  
14 assignments of the Fontaine Deed of Trust to multiple classes of the  
15 CWHL-2006-3 Trust within 30 days of November 17, 2005, either there  
16 has been a violation of Federal Law or multiple classes of the CWHL-  
17 2006-3 Trust, who are the owners of the Fontaine Intangible Obligation,  
18 are not the owners of either the Fontaine Note or the Fontaine Deed of  
19 Trust.

20 (ECF No. 64 ¶ 14). Defendants contend that Plaintiff's TILA claim is barred by the  
21 statute of limitations. See ECF No. 67 at 16, ECF No. 68-1 at 21-22. Plaintiff does not  
22 address Defendants' contentions in her Motion to Strike. See ECF No. 75.

23 In *King v. California*, 784 F.2d 910 (9th Cir. 1986), The Court of Appeals held:

24 [T]he limitations period in Section 1640(e) runs from the date of  
25 consummation of the transaction but ... the doctrine of equitable tolling  
26 may, in the appropriate circumstances, suspend the limitations period until  
27 the borrower discovers or had reasonable opportunity to discover the fraud  
28 or nondisclosures that form the basis of the TILA action. Therefore, as a  
general rule the limitations period starts at the consummation of the  
transaction. The district courts, however, can evaluate specific claims of  
fraudulent concealment and equitable tolling to determine if the general  
rule would be unjust or frustrate the purpose of the Act and adjust the  
limitations period accordingly.

*King*, 784 F.2d at 915. "Equitable tolling is generally applied in situations where the  
claimant ... has been induced or tricked by his adversary's misconduct into allowing the  
filing deadline to pass." *O'Donnell v. Vencor, Inc.*, 465 F.3d 1063, 1068 (9th Cir.  
2006) (quotation omitted).

The transaction at issue was consummated on November 17, 2005. Plaintiff



1 initiated this action on August 20, 2014, after the one-year limitations period had  
2 expired. (ECF No. 1). The Court finds that Plaintiff's TILA claim falls outside of the  
3 one year limitations period. The Complaint fails to allege any facts to support equitable  
4 tolling in this case. Plaintiff's claim for violation of TILA is dismissed.

5 **Violation of the Uniform Electronic Transaction Act ("UETA")**

6 Plaintiff alleges that "Defendants, *et al.*, violated USC § 15-96-1-7003 and did  
7 not execute the proper recordings as required by law." (ECF No. 64 at 37). "The  
8 misfeasance, malfeasance and nonfeasance by the Defendants, *et al.*, have slandered  
9 title to the Plaintiff's property." *Id.*

10 Defendants contend that Plaintiff fails to allege facts to support a claim that  
11 Defendants violated the UETA. Defendants contend that Plaintiff vaguely asserts that  
12 Defendants "did not execute the proper recordings as required by law." (ECF No. 67  
13 at 16, quoting ECF No. 64 ¶ 88). Defendants contend that Plaintiff fails to explain "how  
14 this statute even applies to the instant action," and "in no way explains or details how  
15 Defendants are alleged to have violated the statute." *Id.* at 16.

16 Sections 7001 and 7003, together, do not provide Plaintiff a cause of action  
17 against Defendants.

18 15 U.S.C. § 7001 states:

19 (a) In general

20 Notwithstanding any statute, regulation, or other rule of law (other than this  
21 subchapter and subchapter II of this chapter), with respect to any transaction in  
or affecting interstate or foreign commerce—

22 (1) a signature, contract, or other record relating to such transaction may not be  
23 denied legal effect, validity, or enforceability solely because it is in electronic  
form; and

24 (2) a contract relating to such transaction may not be denied legal effect, validity,  
25 or enforceability solely because an electronic signature or electronic record was  
used in its formation.

26 15 U.S.C. § 7001. 15 U.S.C. § 7003 states:

27 (a) Excepted requirements

28 The provisions of section 7001 of this title shall not apply to a contract or other  
record to the extent it is governed by—

1 (3) the Uniform Commercial Code, as in effect in any State, other than sections  
2 1-107 and 1-206 and Articles 2 and 2A.

3 15 U.S.C. § 7003.

4 The sections of the statute cited by Plaintiff establish that a contract or record  
5 that is governed by the “Uniform Commercial Code, as in effect in any State, other than  
6 sections 1-107 and 1-206 and Articles 2 and 2A” are excepted from the general rule of  
7 section 7001 that “a contract relating to [any transaction in or affecting interstate or  
8 foreign commerce] may not be denied legal effect, validity, or enforceability solely  
9 because an electronic signature or electronic record was used in its formation.” *See* 15  
10 U.S.C. § 7001, 7003.

11 To the extent Plaintiff cites 15 U.S.C. §§ 7001 and 7003 in an effort to show that  
12 the assignment of Plaintiff’s Deed of Trust into the CHL Mortgage Pass-Through Trust  
13 2006-3 Trust was invalid, Plaintiff’s claim fails. Showing that the presumption of  
14 validity would not apply does not render the assignment void. *See Blackmore v. World*  
15 *Sav. Bank, F.S.B.*, 14-cv-00690-CW-DBP, 2015 WL 1002823 \*4 (D. Utah March 5,  
16 2015) (“Plaintiffs assume that if the presumption of validity does not apply, the  
17 document or signature becomes void. This is not so. Even if a document or signature  
18 is not entitled to the presumption of validity in Section 7001, it may remain valid. The  
19 statutes cited do not provide that an electronic signature deprived of the presumption  
20 of validity becomes void.”). Plaintiff also fails to allege sufficient facts to show that the  
21 assignment was void.

22 To the extent Plaintiff cites 15 U.S.C. §§ 7001 and 7003 in an effort to show that  
23 the assignment of Plaintiff’s Deed of Trust into the CHL Mortgage Pass-Through Trust  
24 2006-3 Trust was invalid, Plaintiff lacks standing to challenge the securitization of the  
25 Deed of Trust. Borrowers who were not parties to the assignment of their deed—and  
26 whose rights were not affected by it—lacked standing to challenge the assignment’s  
27 validity. *See Marques v. Fed. Home Loan Mortg. Corp.*, No. 12-CV-2373-GPC, 2012  
28 WL 6091412, at \*4 (S.D. Cal. Dec. 6, 2012) (“District courts have held that borrowers  
who were not parties to the assignment of their deed—and whose rights were not

1 affected by it—lacked standing to challenge the assignment’s validity because they had  
2 not alleged a concrete and particularized injury that is fairly traceable to the challenged  
3 assignment.”) (internal citations omitted); *Bascos v. Fed. Home Loan Mortg. Corp.*,  
4 2011 WL 3157063, at \*6 (C.D. Cal. July 22, 2011) (“To the extent Plaintiff challenges  
5 the securitization of his loan because Freddie Mac failed to comply with the terms of  
6 its securitization agreement, Plaintiff has no standing to challenge the validity of the  
7 securitization of the loan as he is not an investor [in] the loan trust.”); *Nguyen v. Bank*  
8 *of Am. Nat’l Ass’n*, No. 11-CV-03318-LHK, 2011 WL 5574917, at \*9 (N.D. Cal. Nov.  
9 15, 2011) (“[C]ourts have uniformly rejected the argument that securitization of a  
10 mortgage loan provides the mortgagor with a cause of action.”). Plaintiff’s UETA  
11 claim is dismissed.

12 **V. Conclusion**

13 IT IS HEREBY ORDERED that Defendants’ Motions to Dismiss (ECF Nos. 67,  
14 68) are GRANTED. Plaintiff may file a motion for leave to amend complying with  
15 Local Rule 15.1(b) within thirty (30) days of this Order. If no motion is filed, Clerk  
16 will close the case.

17 IT IS FURTHER ORDERED that Plaintiff’s Motion to Strike (ECF No. 75) is  
18 DENIED.

19 DATED: August 21, 2015

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22 **WILLIAM Q. HAYES**  
23 United States District Judge  
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