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

RICK J. HINRICHSSEN, ANNA  
HINRICHSSEN, HOLLY COX,

Plaintiffs,

vs.

QUALITY LOAN SERVICE  
CORPORATION; DEUTSCHE  
BANK NATIONAL TRUST  
COMPANY, AS TRUSTEE FOR  
THE HOLDERS OF NEW  
CENTURY HOME EQUITY LOAN  
TRUST, SERIES 2005-A, ASSET  
BACKED PASS-THROUGH  
CERTIFICATES; DOES 1-10,  
INCLUSIVE,

Defendants.

CASE NO. 16cv0690 DMS (NLS)

**ORDER (1) DENYING  
DEFENDANT QUALITY LOAN  
SERVICE CORPORATION'S  
MOTION TO DISMISS AND (2)  
GRANTING IN PART AND  
DENYING IN PART DEFENDANT  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY'S MOTION TO  
DISMISS**

This case comes before the Court on the motions to dismiss filed by Defendant Quality Loan Service Corporation and Defendant Deutsche Bank National Trust Company. Plaintiffs filed oppositions to each motion. Quality filed a reply brief. Deutsche Bank did not. For the reasons set out below, Quality's motion is denied and Deutsche Bank's motion is granted in part and denied in part.

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1 **I.**

2 **BACKGROUND**

3 In their original Complaint, Plaintiffs Rick and Anna Hinrichsen alleged they  
4 were the former owners of the property located at 11060 Green Oaks Road in Lakeside,  
5 California. Plaintiffs alleged Holly Cox was then the owner of the property, while  
6 Plaintiffs Rick and Anna Hinrichsen remained on the property as tenants. In the First  
7 Amended Complaint, Plaintiffs allege Rick and Anna Hinrichsen have “a 50% interest  
8 in the property in fee simple[,]” as does Plaintiff Holly Cox.

9 Plaintiffs allege they refinanced the property in 2005, and rescinded that  
10 mortgage in 2006. According to Plaintiffs, the lender on that mortgage, New Century  
11 Mortgage Corporation, reconveyed the deed of trust on the property in 2012.<sup>1</sup> Plaintiffs  
12 allege Defendants Quality Loan Service Corporation and Deutsche Bank National Trust  
13 Company are threatening to sell the property at a trustee’s sale even though they no  
14 have no legal right do so.

15 In an effort to stop that sale, Plaintiffs filed the present case and a motion for a  
16 temporary restraining order, which the Court denied. Plaintiffs filed a second motion  
17 for a temporary restraining order, which the Court also denied. After some preliminary  
18 motions were filed and briefed, Plaintiffs filed their FAC. In the FAC, Plaintiffs allege  
19 claims for violation of the Fair Debt Collection Practices Act, the Rosenthal Fair Debt  
20 Collection Practices Act, violation of California Civil Code § 2924, violation of  
21 California Business and Professions Code § 17200 and declaratory relief.

22 **II.**

23 **DISCUSSION**

24 Quality moves to dismiss all of the claims alleged against it. First, it argues the  
25 FAC should be dismissed in its entirety due to Plaintiffs’ unclean hands and judicial  
26 estoppel. Second, Quality asserts Plaintiffs have failed to allege the necessary facts to

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27 <sup>1</sup> Plaintiffs alleged in the original Complaint that Plaintiffs Rick and Anna  
28 Hinrichsen sold the property to Pacifico Property Trust in 2015. That allegation is not  
reasserted in the First Amended Complaint.

1 support its debt collection claims. Third, Quality contends it is immune from Plaintiffs’  
2 claim under California Civil Code § 2924.

3 Deutsche Bank moves to dismiss the debt collection claims for the same reasons  
4 as Quality. On the § 2924 claim, Deutsche Bank argues Plaintiffs have no right to  
5 challenge its authority to foreclose on the property. On the UCL claim, Deutsche Bank  
6 asserts Plaintiffs lack standing to bring that claim, and since the other claims fail, there  
7 is no predicate conduct on which to base the claim.

### 8 **A. Motion to Dismiss**

9 In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*,  
10 550 U.S. 544 (2007), the Supreme Court established a more stringent standard of review  
11 for 12(b)(6) motions. To survive a motion to dismiss under this new standard, “a  
12 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
13 relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S.  
14 at 570). “A claim has facial plausibility when the plaintiff pleads factual content that  
15 allows the court to draw the reasonable inference that the defendant is liable for the  
16 misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

17 “Determining whether a complaint states a plausible claim for relief will ... be a  
18 context-specific task that requires the reviewing court to draw on its judicial experience  
19 and common sense.” *Id.* at 679 (citing *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir.  
20 2007)). In *Iqbal*, the Court began this task “by identifying the allegations in the  
21 complaint that are not entitled to the assumption of truth.” *Id.* at 680. It then considered  
22 “the factual allegations in respondent’s complaint to determine if they plausibly suggest  
23 an entitlement to relief.” *Id.* at 681.

### 24 **B. Unclean Hands/Judicial Estoppel**

25 As stated above, Quality first argues the FAC should be dismissed in its entirety  
26 based on the doctrines of unclean hands and judicial estoppel.

#### 27 1. Unclean Hands

28 The unclean hands doctrine is “a vehicle for affirmatively enforcing  
the requirements of conscience and good faith” which “closes the doors of

1 a court of equity to one tainted with inequitableness or bad faith relative  
2 to the matter in which he seeks relief, however improper may have been  
the behavior of the defendant.”

3 *Piping Rock Partners, Inc. v. David Lerner Assocs.*, 946 F.Supp.2d 957, 973 (N.D. Cal.  
4 2013) (quoting *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806,  
5 814 (1945)). Whether the doctrine applies in a particular case “is a question of fact.”  
6 *Id.* at 974.

## 7 2. Judicial Estoppel

8 “Judicial estoppel is an equitable doctrine that precludes a party from gaining  
9 an advantage by asserting one position, and then later seeking an advantage by taking  
10 a clearly inconsistent position.” *Kobold v. Good Samaritan Regional Medical Center*,  
11 \_\_\_ F.3d \_\_\_, 2016 U.S. App. LEXIS 14603, at \*40 (9<sup>th</sup> Cir. Aug. 15, 2016) (quoting  
12 *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 782 (9<sup>th</sup> Cir. 2001)). “Three  
13 factors ‘inform the decision whether to apply the doctrine in a particular case.’” *Id.* at  
14 \*40-41 (quoting *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001)). “‘First, a party’s  
15 later position must be clearly inconsistent with its earlier position.’” *Id.* at \*41 (quoting  
16 *New Hampshire v. Maine*, 532 U.S. at 750). “‘Second, courts regularly inquire whether  
17 the party has succeeded in persuading a court to accept that party’s earlier position, so  
18 that judicial acceptance of an inconsistent position in a later proceeding would create  
19 the perception that either the first or the second court was misled.’” *Id.* (quoting *New*  
20 *Hampshire v. Maine*, 532 U.S. at 750). “‘A third consideration is whether the party  
21 seeking to assert an inconsistent position would derive an unfair advantage or impose  
22 an unfair detriment on the opposing party if not estopped.’” *Id.* (quoting *New*  
23 *Hampshire v. Maine*, 532 U.S. at 751).

24 Here, Quality asserts both of these doctrines bar Plaintiffs from pursuing the  
25 present case. In support of this argument, Quality relies on Plaintiffs’ attempt to pay  
26 off their mortgage in 2012. (*See* Request for Judicial Notice in Supp. of Mot., Ex. B.)  
27 Quality asserts that attempt is inconsistent with Plaintiffs’ allegation in the present case  
28 that they rescinded their mortgage in 2006. Plaintiffs object to that evidence as

1 irrelevant, which objection is overruled, but that evidence is insufficient to warrant  
2 dismissal of Plaintiffs' case at this stage of the proceedings. Quality has not shown the  
3 evidence is undisputed such that the Court may consider the unclean hands defense on  
4 the present motion. Nor has Quality shown that the requirements for judicial estoppel  
5 are met. In particular, Quality has not shown that the court took any action in Plaintiffs'  
6 previously filed case, or that estoppel is necessary either to prevent Plaintiffs from  
7 gaining an unfair advantage in this case or to prevent the imposition of unfair detriment  
8 on Quality. Accordingly, the Court denies Quality's request to dismiss Plaintiffs' case  
9 based on either of these doctrines.

10 **C. Debt Collection Claims**

11 Defendants argue Plaintiffs' debt collection claims should be dismissed because  
12 Plaintiffs have failed to allege Defendants are debt collectors or that Defendants were  
13 engaged in debt collection under the relevant statutes. The Court disagrees. Plaintiffs  
14 allege both elements of their debt collection claims. (*See* FAC ¶¶ 18, 21-22.)  
15 Accordingly, the Court denies Defendants' motion to dismiss these claims.

16 **D. California Civil Code § 2924**

17 The next claim at issue here is Plaintiffs' claim for violation of California Civil  
18 Code § 2924. Deutsche Bank argues Plaintiffs have no right to challenge its authority  
19 to foreclose, therefore the claim should be dismissed. Quality asserts its liability on this  
20 claim relates solely to its duties as trustee, and that any such liability is foreclosed by  
21 California Civil Code § 2924(b).

22 In support of its argument that Plaintiffs lack standing to challenge Defendants'  
23 authority to foreclose, Deutsche Bank cites a number of California decisions, including  
24 the California Supreme Court's recent decision in *Yvanova v. New Century Mortg.*  
25 *Corp.*, 62 Cal. 4<sup>th</sup> 919 (2016). (*See* Deutsche Bank's Mem. of P. & A. in Supp. of Mot.  
26 at 5.) In that case, the court held,

27 that a "home loan borrower has standing to claim a nonjudicial foreclosure  
28 was wrongful because an assignment by which the foreclosing party  
purportedly took a beneficial interest in the deed of trust was not merely

1 voidable but void, depriving the foreclosing part of any legitimate  
2 authority to order a trustee's sale."

3 *Watson v. Bank of Am., N.A.*, No. 16cv513 GPC(MDD), 2016 U.S. Dist. LEXIS 85580,  
4 at \*63 (S.D. Cal. June 30, 2016) (quoting *Yvanova*, 62 Cal. 4<sup>th</sup> at 942-43). Notably, the  
5 California Supreme Court did not review whether a plaintiff may use "a lawsuit to  
6 preempt a nonjudicial foreclosure," *Yvanova*, 62 Cal. 4<sup>th</sup> at 933, which is what Plaintiffs  
7 are doing in this case.

8 District courts considering that issue post-*Yvanova* "have predicted that the  
9 California Supreme Court would likely 'limit a bar on pre-foreclosure suits only to  
10 plaintiffs who lack a specific factual basis for asserting that the foreclosing party lacks  
11 authority to do so.'" *Watson*, 2016 U.S. Dist. LEXIS 85580, at \*64 (citations omitted).  
12 Here, Deutsche Bank has not shown that Plaintiffs lack that factual basis. Thus, this  
13 Court declines to dismiss Plaintiffs' § 2924 claim.

14 Turning to Quality's argument, California Civil Code § 2924(b) states: "In  
15 performing acts required by this article, the trustee shall incur no liability for any good  
16 faith error resulting from reliance on information provided in good faith by the  
17 beneficiary regarding the nature and the amount of the default under the secured  
18 obligation, deed of trust, or mortgage." Cal. Civ. Code § 2924(b). Quality asserts it is  
19 entitled to the protection of this statute, but Plaintiffs specifically allege Quality's  
20 conduct is not entitled to this protection. (*See* FAC ¶ 35-37.) Thus, the Court denies  
21 Quality's motion to dismiss this claim in light of the disputed facts.

#### 22 **E. Unfair Competition**

23 The last claim at issue here is Plaintiffs' claim under California Business and  
24 Professions Code § 17200, which is alleged against Deutsche Bank only. Deutsche  
25 Bank argues Plaintiffs lack standing to bring this claim, and thus the claim must be  
26 dismissed.

27 California Business and Professions Code § 17204 sets out the statutory standing  
28 requirements for UCL claims. It states that individual claims may only be brought by

1 “a person who has suffered injury in fact and has lost money or property as a result of  
2 the unfair competition.” Cal. Bus. & Prof. Code § 17204. Here, Deutsche Bank argues  
3 Plaintiffs have not satisfied either requirement under § 17204. The Court agrees that  
4 Plaintiffs have failed to allege they “lost money or property as a result of the unfair  
5 competition.” The only economic injury Plaintiffs are alleged to have suffered “is the  
6 impending foreclosure of their home[,]” (Opp’n to Deutsche Bank’s Mot. at 15), which  
7 is insufficient to demonstrate standing. *See Reyes v. Nationstar Mortg. LLC*, No. 15-  
8 CV-01109-LHK, 2015 U.S. Dist. LEXIS 99201, at \*29-30 (N.D. Cal. July 28, 2015)  
9 (granting motion to dismiss § 17200 claim for lack of standing where plaintiffs alleged  
10 they had not yet lost property to foreclosure). Accordingly, the Court grants Deutsche  
11 Bank’s motion to dismiss this claim.<sup>2</sup>


12 **III.**

13 **CONCLUSION AND ORDER**

14 For these reasons, the Court denies Quality’s motion to dismiss and grants in part  
15 and denies in part Deutsche Bank’s motion to dismiss. Specifically, the Court grants  
16 Deutsche Bank’s motion to dismiss Plaintiffs’ § 17200 claim and denies the remainder  
17 of the motion. Plaintiffs are granted leave to file a Second Amended Complaint that  
18 cures the pleading deficiencies set out above. Plaintiffs are cautioned that if their  
19 Second Amended Complaint does not cure these pleading deficiencies, their claims will  
20 be dismissed with prejudice and without further leave to amend. Plaintiffs’ Second  
21 Amended Complaint shall be filed on or before **September 9, 2016**.

22 **IT IS SO ORDERED.**

23 DATED: August 31, 2016

24 

25 HON. DANA M. SABRAW  
26 United States District Judge

27 \_\_\_\_\_  
28 <sup>2</sup> Deutsche Bank argues Plaintiffs’ declaratory relief claim must be dismissed  
because all of Plaintiffs’ other claims fail. Because the Court disagrees with that  
premise, it declines to dismiss Plaintiffs’ declaratory relief claim.