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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

PIA MCADAMS, on behalf of herself
and those similarly situated,

Plaintiff,

v.

NATIONSTAR MORTGAGE LLC et al,

Defendants.

Case No. 3:20-cv-2202-L-BLM

**ORDER DENYING MOTION
FOR JUDGMENT ON THE
PLEADINGS AND GRANTING
REQUESTS FOR JUDICIAL
NOTICE [ECF NO. 36.]**

Pending before the Court is Defendant Nationstar Mortgage LLC's Motion for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c) and the Parties' requests for judicial notice. Plaintiff opposes Defendant's Motion for Judgment on the Pleadings. The Court decides the matter on the papers submitted and without oral argument. See Civ. L. R. 7.1(d.1).

I. FACTUAL BACKGROUND

Plaintiff purchased her former home in August 2004. Complaint ¶ 15. The home was purchased "with a loan obtained from American Wholesale Lender, Inc." *Id.* Defendant was the mortgage servicer to Plaintiff's loan. *Id.* ¶ 17.

Plaintiff received her first loan modification from Defendant in October 2010. *Id.* ¶ 18. A few years later, in April 2014, Plaintiff defaulted on her loan. *Id.* ¶

1 19. Plaintiff filed for Chapter 13 bankruptcy relief on April 23, 2015, and the
2 bankruptcy plan was confirmed on the same day. (*Id.* at ¶ 20; Plaintiff Req. Judicial
3 Notice Ex. 1 at 2 [ECF No. 37-2.]

4 In December 2016, Plaintiff entered a second loan modification with
5 Defendant. *Id.* ¶ 21. Plaintiff’s financial difficulties continued over the next several
6 years. *See id.* ¶¶ 25–28. In November 2018, Plaintiff again defaulted on her loan
7 and requested a third loan modification from Defendant. *Id.* ¶¶ 27, 29.

8 In December 2018, Defendant sent Plaintiff a Borrower Response Package
9 (“Package”), which Defendant uses to assess whether a loan modification is
10 necessary. *See id.* ¶¶ 32–35. The Package requests several documents, including
11 income documentation. *Id.* ¶¶ 33, 35. The Package “instructed [Plaintiff] to
12 complete the attached documents by January 21, 2019.” *Id.* ¶ 31. The Package also
13 stipulated:

14 Once we receive your application, we will provide you with an
15 acknowledgment to let you know whether your application is complete or
16 whether documentation or information is missing. In the event
17 information is missing and the application has not been received too
18 close to a scheduled foreclosure sale to permit us to evaluate your
19 application, we will provide you with a reasonable date within which the
20 missing information must be provided to us.

21 Prior to our receipt of the missing/complete documents, a foreclosure
22 process may be initiated or if the foreclosure has already been initiated,
23 the foreclosure process will continue until all documents are received
24 unless state law provides otherwise.

25 *Id.* ¶ 32 (quoting the Package) (emphasis omitted).

26 Defendant requested additional documentation, which Plaintiff sent on
27 January 16, 2019. *Id.* ¶ 37. Defendant did not reply until February 14, 2019. *Id.* ¶
28 41. Defendant’s response indicated that Plaintiff’s application was incomplete
because her income documentation was “‘illegible[.]’ and needed to be
resubmitted.” *Id.* ¶ 42. Defendant requested that Plaintiff resubmit her income
documentation by March 15, 2019. *Id.* Plaintiff resubmitted her income

1 documentation on March 8, 2019. *Id.* ¶ 47. Within days, Defendant responded and
2 claimed that the income documentation was still incomplete. *Id.* ¶ 48–49.

3 Defendant advised Plaintiff to resubmit the income documentation by April 7,
4 2019. *Id.* ¶ 52; *see also id.* at 81. Nonetheless, on March 22, 2019, before Plaintiff
5 submitted her income documentation for the third time, Defendant sold Plaintiff’s
6 home in a foreclosure sale. *Id.* ¶ 55; *see also id.* at 85.

7 Plaintiff’s bankruptcy proceedings concluded on September 7, 2020, when
8 the bankruptcy court issued an Order of Discharge. (Def. Req. Jud. Notice Ex. 6
9 [ECF No. 36-8.]

10 II. PROCEDURAL BACKGROUND

11 On September 22, 2020, Plaintiff filed a putative class action Complaint in
12 Superior Court for the County of San Diego alleging ten causes of action including
13 violations of the California Homeowners Bill of Rights, and Misrepresentation. See
14 *McAdams v. Nationstar Mortgage LLC d/b/a Mr. Cooper*, Case No. 37-2020-
15 00033451-CU-OR-CTL. On November 12, 2020, Defendants removed the action to
16 this Court on the basis of diversity jurisdiction pursuant to 28 U.S.C. § 1332(d).

17 On December 12, 2020, Defendants filed a motion to dismiss. (MTD [ECF
18 No. 12.]) On December 17, 2020, the Court granted the Parties’ request for extra
19 time, allowing Plaintiff additional time to file a First Amended Complaint, allowing
20 Defendant additional time to respond to a First Amended Complaint, and denying
21 the pending motion to dismiss as moot. (Order Granting Joint Motion [ECF No.
22 16.]

23 On January 14, 2021, Plaintiff filed a First Amended Complaint. (FAC [ECF
24 No. 17.]) On February 4, 2021, Defendant filed a Motion to Dismiss the FAC.
25 (MTD [ECF No. 20.]) The Court granted the Motion in part, dismissing the
26 promissory estoppel and UCL claims without prejudice. (Ord. at 21 [ECF No. 24.])
27 On October 20, 2021, Defendant filed an Answer to the First Amended Complaint.
28 (Answer [ECF No. 29.]

1 On January 12, 2022, Defendant filed the present motion for Judgment on the
2 Pleadings. [ECF No. 36.] On January 31, 2022, Plaintiff filed a Response in
3 Opposition, and Request for Judicial Notice. (Opposition [ECF No. 37.]) On
4 February 7, 2022, Defendant filed a Reply along with a Request for Judicial Notice.
5 (Reply [ECF No. 40.]

6 III. LEGAL STANDARD

7 “After the pleadings are closed – but early enough not to delay trial – a party
8 may move for judgment on the pleadings.” Fed.R.Civ.P. 12(c). “A judgment on the
9 pleadings is properly granted when, taking all the allegations in the pleadings as true,
10 the moving party is entitled to judgment as a matter of law.” *Owens v. Kaiser Found.*
11 *Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir.2001).

12 Courts must evaluate a motion brought pursuant to Rule 12(c) under the same
13 standard as a motion to dismiss brought pursuant to Rule (12(b)(6). *See Enron Oil*
14 *Trading & Trans. Co. v. Walbrook Ins. Co.*, 132 F.3d 526, 529 (9th Cir. 1997). A Rule
15 12(b)(6) motion tests the legal sufficiency of the claims made in the complaint. *See*
16 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a
17 short and plain statement of the claim showing that the pleader is entitled to relief,”
18 Fed. R. Civ. P. 8(a)(2), such that the defendant is provided “fair notice of what the .
19 . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S.
20 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

21 IV. DISCUSSION

22 Defendant moves for dismissal pursuant to Rule 12(c) contending that
23 Plaintiff concealed her claims against Nationstar from the bankruptcy court,
24 Trustee, and her creditors in her Chapter 13 bankruptcy but she now asserts the
25 claims in this Court, therefore, her claims are barred by the doctrine of judicial
26 estoppel. (Motion at 2). Defendant argues that Plaintiff was required to disclose the
27 legal claims to the bankruptcy court and her demand for over \$50,000 in statutory
28 and punitive damages which accrued in 2019 during the pendency of her

1 bankruptcy. (*Id.*) Defendant claims that Plaintiff obtained an unfair advantage by
2 failing to disclose these claims to the bankruptcy court. (*Id.*)

3 In response, Plaintiff contends she was not required to disclose the claims in
4 this action to the bankruptcy court because the claims arose in 2019, after the
5 confirmation of her bankruptcy plan on August 11, 2015. (Opposition at 1).
6 Plaintiff claims that *In re Jones*, 657 F.3d 921 (9th Cir. 2011) supports her position
7 that the confirmation of her Chapter 13 plan “terminated the estate and all property
8 revested in plaintiff” removing the after-acquired claims against Defendant from
9 any reporting requirement. (Oppo. at 7). As a result, she argues she did not mislead
10 the bankruptcy court and judicial estoppel does not preclude her claims. (*Id.* at 14).

11 A. Judicial Estoppel

12 “[J]udicial estoppel ‘is an equitable doctrine invoked by a court at its
13 discretion.’ *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001). “Judicial estoppel
14 . . . precludes a party from gaining an advantage by asserting one position, and then
15 later seeking an advantage by taking a clearly inconsistent position.” *Hamilton v.*
16 *State Farm Casualty Co.*, 270 F.3d 778, 782 (9th Cir. 2001). Courts invoke judicial
17 estoppel for “general consideration[s] of the orderly administration of justice and
18 regard for the dignity of judicial proceedings,” and to “protect against a litigant
19 playing fast and loose with the courts.” *Russell v. Rolfs*, 893 F.2d 1033, 1037 (9th
20 Cir.1990).

21 “The application of judicial estoppel is not limited to bar the assertion of
22 inconsistent positions in the same litigation, but is also appropriate to bar litigants
23 from making incompatible statements in two different cases.” *Hamilton*, 270 F.3d
24 at 783. “In the bankruptcy context, a party is judicially estopped from asserting a
25 cause of action not raised in a reorganization plan or otherwise mentioned in the
26 debtor's schedules or disclosure statements.” *Id.* (citing *Hay v. First Interstate Bank*
27 *of Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir.1992); see also *Ah Quin v. County of*
28 *Kauai Dept. of Transp.*, 733 F.3d 267, 271 (9th Cir. 2013). (“If a plaintiff-debtor

1 omits a pending (or soon-to-be-filed) lawsuit from the bankruptcy schedules and
2 obtains a discharge (or plan confirmation), judicial estoppel bars the action.”)

3 “Ordinarily affirmative defenses may not be raised by motion to dismiss but
4 this is not true when defense raises no disputed issues of fact.” *Scott v. Kuhlmann*,
5 746 F.2d 1377, 1378 (9th Cir. 1984). “For a complaint to be dismissed because the
6 allegations give rise to an affirmative defense ‘the defense clearly must appear on
7 the face of the pleading.’” *McCalden v. California Library Ass’n*, 955 F.2d 1214,
8 1219 (9th Cir. 1990)(*superseded by rule on other grounds as stated in Harmston v.*
9 *City & County of San Francisco*, 627 F.3d 1273 (9th Cir. 2010). “An affirmative
10 defense is grounds for dismissal at the pleading stage only if ‘the plaintiff pleads
11 itself out of court—that is, admits all the ingredients of an impenetrable defense
12’” *Boquist v. Courtney*, 32 F.4th 764, 774, (9th Cir. 2022).

13 In determining the applicability of a judicial estoppel defense, a district court
14 considers the following non-exhaustive list of factors: First, “a party's later position
15 must be ‘clearly inconsistent’ with its earlier position.” *New Hampshire v. Maine*,
16 532 U.S. 742, 750 (2001). Second, “courts regularly inquire whether the party has
17 succeeded in persuading a court to accept that party's earlier position, so that
18 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.* Third, the
20 Court must determine “whether the party seeking to assert an inconsistent position
21 would derive an unfair advantage or impose an unfair detriment on the opposing
22 party if not estopped.” *Id.* at 751. These are not inflexible prerequisites, but often
23 provide a sufficient basis for applying judicial estoppel. *Id.*

24 *1. Clearly Inconsistent Position*

25 Defendant claims dismissal is warranted because Plaintiff represented to the
26 bankruptcy court that she had no potential legal claims, but she now takes the
27 contrary and inconsistent position that Defendant Nationstar is liable to her for more
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1 than \$50,000 on claims that accrued during the pendency of her bankruptcy. (Mot. at
2 6).

3 Plaintiff argues that she is not taking an inconsistent position because she was
4 not required to amend her pending bankruptcy petition and schedules to include those
5 claims because confirmation of a bankruptcy plan terminates the estate and all
6 property reverts in a plaintiff, resulting in after-acquired legal claims not being
7 included as part of that estate. (*Oppo.* at 6-7). According to Plaintiff, any potential
8 recovery in the present case does not constitute post-confirmation property and is
9 therefore exempt from any reporting requirement to the bankruptcy court. (*Id.* at 8).

10 The Bankruptcy Code and Rules impose upon bankruptcy debtors an express,
11 affirmative duty to disclose all assets, including contingent and unliquidated claims.
12 11 U.S.C. § 521(1) (“The debtor shall-(1) file a list of creditors, and unless the court
13 orders otherwise, a schedule of assets and liabilities, a schedule of current income
14 and current expenditures, and a statement of the debtor's financial affairs”). “The
15 debtor's duty to disclose potential claims as assets does not end when the debtor files
16 schedules, but instead continues for the duration of the bankruptcy proceeding.”
17 *Hamilton*, 270 F.3d at 785. Generally, judicial estoppel bars an action when a
18 plaintiff/debtor omits a pending lawsuit “from the bankruptcy schedules and obtains
19 a discharge or plan confirmation.” *Ahn Quin*, 733 F.3d at 271.

20 Plaintiff filed her bankruptcy petition in 2015, and the conduct giving rise to
21 her claims against Defendant Nationstar occurred between February 14, 2019, and
22 March 22, 2019, after the confirmation but before the final disposition of the Chapter
23 13 bankruptcy in September 2020. Plaintiff was aware of Defendant’s actions that
24 give rise to her present claims from at least March 22, 2019 onward, yet she did not
25 inform the bankruptcy court of the potential lawsuit by amending her schedules. The
26 Court finds that Plaintiff was required to amend her bankruptcy schedules to include
27 the possible claims against Defendant that accrued during the pendency of her
28

1 Chapter 13 proceedings. *Hamilton*, 270 F.3d at 783; *see also Ah Quin*, 733 F.3d at
2 271.

3 Plaintiff distinguishes *Hamilton*, contending that the plaintiff there knew of the
4 all the material facts surrounding his claims at the time he filed his bankruptcy
5 schedules, but in contrast, she could not have known about the claims against
6 Defendant when she filed her bankruptcy petition because the facts underlying her
7 claims arose in 2019, five years after she filed her bankruptcy petition. (Oppo. at 9-
8 10). While accurate, this does not address Plaintiff’s ongoing obligation to disclose
9 for the duration of the bankruptcy proceedings. *Hamilton*, 270 F.3d at 785.

10 Furthermore, *In re Jones* does not support Plaintiff’s position. The issue in
11 *Jones* was whether the debtor’s Franchise Tax Board (“FTB”) state tax liabilities
12 were excepted from a Chapter 13 discharge pursuant to the three-year lookback
13 period of 11 U.S.C. §507(a)(8). *In re Jones*, 657 F.3d at 926-27. To evaluate whether
14 the FTB could collect the tax, the court analyzed the consequences to estate property
15 when a Chapter 13 is confirmed. *Id.* at 927. The Court addressed the tension between
16 sections 1327(b), which vests all estate property in the debtor upon confirmation
17 unless otherwise provided for in the plan or confirmation order, and §1306(b)(1)
18 which designates property acquired and earnings earned after the petition date but
19 before the case is closed, dismissed, or converted as estate property. *Id.* In concluding
20 that the tax debt was discharged, the court looked to the language of the Chapter 13
21 plan which specified that the debtor elected to have property of the estate vest upon
22 plan confirmation. *Id.* at 928-29. Importantly, the court did not address whether after-
23 acquired legal claims were considered “property” for purposes of the estate,
24 therefore, the holding has no bearing on the issue at bar.

25 By failing to disclose the legal claims against Defendant in her Chapter 13
26 filings, and later filing this case seeking recovery against Defendant, Plaintiff has
27 alleged inconsistent positions, meeting the first prong of the judicial estoppel inquiry
28 for purposes of a judgment on the pleadings. *See New Hampshire*, 532 U.S. at 750.

1 2. *Earlier Court Misled*

2 Having established that Plaintiff was required to amend her bankruptcy
3 schedule to add the legal claims against Defendant Nationstar, the Court next turns
4 to whether Plaintiff succeeded in persuading the bankruptcy court to accept her
5 earlier position, so that judicial acceptance of an inconsistent position in this later
6 proceeding would create ‘the perception that either the first or the second court was
7 misled. *Hamilton*, 270 F.3d at 782.

8 Defendant argues that permitting Plaintiff to proceed with the current action
9 will “condone the actual misleading of the bankruptcy court, the Trustee, and
10 Plaintiff’s creditors. (Mot. at 6). In response, Plaintiff claims that the bankruptcy
11 court did not accept or rely upon an inconsistent position because she was not
12 required to disclose the potential litigation. (Oppo. at 12).

13 The bankruptcy court was persuaded to discharge Plaintiff of \$57,928 in
14 unsecured debt relying on the disclosures made in Plaintiff’s filings. These
15 disclosures included her assertion that she had no potential lawsuits accruing in her
16 favor. As a result, the bankruptcy court was unaware that she would be seeking over
17 \$50,000 from Defendant for actions taken during 2019. Plaintiff does not dispute that
18 the bankruptcy court relied upon the statements. Based on the allegations, it is evident
19 that the bankruptcy court was persuaded to accept Plaintiff’s earlier assertions that
20 she had no pending or potential litigation accruing in her favor and to now allow
21 Plaintiff’s claims to proceed could result in “judicial acceptance of an inconsistent
22 position” that would create ‘the perception that either the first or the second court
23 was misled”, meeting the second ground for judicial estoppel. *Hay*, 978 F.2d at 557.

24 3. *Unfair Advantage*

25 Defendant contends that Plaintiff would receive an unfair advantage if allowed
26 to proceed with her claims because she represented to the bankruptcy court that she
27 was unable to repay debts owed and was relieved of \$57, 928 in unsecured debt as a
28 result, but in fact, she was “shielding” over \$50,000 in potential recovery from

1 Defendants by failing to amend her schedules. (Mot. at 7). Defendant argues that
2 Plaintiff would acquire an unfair advantage if she was allowed to recover on her claim
3 against Nationstar despite her failure to disclose the claims in her bankruptcy petition
4 or schedules. (*Id.*)

5 Plaintiff disagrees, contending that she would not derive an unfair advantage
6 over Nationstar if the action was to proceed for two reasons: first, it was impossible
7 for her to know of this potential lawsuit until after her plan was confirmed, and
8 second, Plaintiff's Chapter 13 plan provided for payment to creditors, and excluded
9 Nationstar, therefore Nationstar would not be prejudiced if the action was to proceed.
10 (*Oppo* at 13-14).

11 The doctrine of judicial estoppel is properly applied only where it can be
12 established that "intentional self-contradiction is being used as a means of obtaining
13 unfair advantage in a forum provided for suitors seeking justice." *In re Haynes*, 97
14 B.R. 1007, 1011 (B.A.P. 9th Cir. 1989)(internal citations omitted); *see also Green*
15 *Archives v. Marilyn Monroe LLC*, 692 F.3d 983, 994 (9th Cir. 2012)("judicial
16 estoppel applies 'when a party's position is tantamount to a knowing
17 misrepresentation to or even fraud on the court.')" "The emphasis is not on a hard
18 and fast rule, but rather on prevention of 'intentional self-contradiction ... as a means
19 of obtaining unfair advantage.'" *Arizona v. Shamrock Foods Co.*, 729 F.2d 1208,
20 1215 (9th Cir.1984) (internal citations omitted).

21 The allegations before the Court are insufficient to establish that Defendant is
22 entitled to judgment as a matter of law on its claim that Plaintiff knowingly and
23 intentionally failed to notify the bankruptcy court to obtain an advantage. *Arizona*,
24 729 F.2d at 1215. Plaintiff has adequately alleged that she believed she was not
25 required to disclose the potential claims against Defendant in her bankruptcy
26 proceedings, and that any failure to do so was not intentional. In addition, Plaintiff's
27 claim that payment to creditors was provided within her Chapter 13 plan, and
28 Nationstar was excluded from the plan, makes it unclear the extent of her obligation

1 to repay creditors and how Nationstar would be disadvantaged by allowing her claims
2 to proceed. Therefore, Defendant has not demonstrated that Plaintiff intentionally
3 omitted the claims in the bankruptcy court proceedings to gain an unfair advantage,
4 and Defendant’s Motion for Judgment on the Pleadings is denied.

5 *B. Judicial Notice*

6 “The court may judicially notice a fact that is not subject to reasonable dispute
7 because it:(1) is generally known within the trial court's territorial jurisdiction; or (2)
8 can be accurately and readily determined from sources whose accuracy cannot
9 reasonably be questioned.” Fed. R. Evid. 201(b). A court may take judicial notice of
10 court records. *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971
11 F.2d 244, 248 (9th Cir. 1992)(Court “may take notice of proceedings in other courts,
12 both within and without the federal judicial system, if those proceedings have a direct
13 relation to matters at issue.”) “[A] court may take judicial notice of matters of public
14 record[.]” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018).

15 Defendant Nationstar requests that the Court take judicial notice of: **Exhibit**
16 **1**, the Trustee’s Deed Upon Sale for Plaintiff’s property recorded on February 19,
17 2019; **Exhibit 2**, a copy of the docket for Plaintiff’s bankruptcy case No. 3:15-bk-
18 02621 in the United States Bankruptcy Court for the Southern District of California¹;
19 **Exhibit 3**, a copy of Plaintiff’s Chapter 13 Voluntary Petition, Schedules &
20 Statements filed on April 23, 2015; **Exhibit 4**, a copy of Schedule B of Plaintiff’s
21 Balance of Schedules filed on May 7, 2015; **Exhibit 5**, a copy of Plaintiff’s Initial
22 Chapter 13 Plan filed on May 7, 2015; **Exhibit 6**, a copy of the Court’s Order
23 Discharging Debtor(s) After Completion of Chapter 13 Plan filed on September 7,
24 2020. (Motion, Req. Jud. Notice at 2-3 [ECF No. 36-2.]

25 Plaintiff requests the Court take judicial notice of the Application for
26 Compensation and Confirmation of Chapter 13 Plan, and Order Thereon entered on
27

28 ¹ Defendant makes a second request for judicial notice of this document in its Reply brief. The Court finds this second request moot in light of the present holdings.

1 August 11, 2015, in Plaintiff's bankruptcy case, Case No. 3:15-bk-02621 in the
2 United States Bankruptcy Court for the Southern District of California. (Opposition,
3 Req. Jud. Notice at 1 [ECF No. 37-1.]


4 The Court has reviewed the aforementioned documents and finds each of them
5 to be a public record appropriate for judicial notice. *Khoja*, 899 F.3d at 999
6 Accordingly, the Court grants the Parties' requests for judicial notice of the above
7 referenced documents.

8 V. CONCLUSION AND ORDER

9 For the foregoing reasons, Defendant's motion for judgment on the pleadings
10 is **DENIED**. The Parties' Requests for Judicial Notice are **GRANTED**.

11 **IT IS SO ORDERED.**

12 Dated: August 24, 2022

13 
14 Hon. M. James Lorenz
15 United States District Judge
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