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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No.	**EDCV 17-2335 JGB (SHKx)**	Date	September 27, 2018
Title	***Jay Hinkle v. Home123, et al.***		

Present: The Honorable	JESUS G. BERNAL, UNITED STATES DISTRICT JUDGE

MAYNOR GALVEZ	Not Reported
Deputy Clerk	Court Reporter

Attorney(s) Present for Plaintiff(s):	Attorney(s) Present for Defendant(s):
None Present	None Present

Proceedings: **Order GRANTING Defendants' Motion to Dismiss (Dkt. No. 36) and DISMISSING Plaintiff's Second Amended Complaint WITHOUT LEAVE TO AMEND; and (2) VACATING the October 1, 2018 Hearing (IN CHAMBERS)**

Before the Court is Defendants Mortgage Electronic Registration Systems, Inc. ("MERS"), U.S. Bank National Association[1] ("US Bank"), and JP Morgan Chase Bank, N.A.'s ("Chase") (collectively, "Defendants") Motion to Dismiss Plaintiff's Second Amended Complaint under Federal Rule of Civil Procedure 12(b)(6). ("Motion," Dkt. No. 36.) The Court finds this matter appropriate for resolution without a hearing. See Fed. R. Civ. P. 78; L.R. 7-15. After considering all papers filed in support of, and in opposition to, the Motion the Court GRANTS Defendants' Motion and DISMISSES the Second Amended Complaint WITHOUT LEAVE TO AMEND and VACATES the October 1, 2018 hearing.

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[1] Defendants initially identify U.S. Bank as U.S. Bank National Association, as Trustee, successor in interest to Bank of America, National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR8 Trust, erroneously sued as both LaSalle Bank National Association as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR8 and US Bank, NA as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR8. (Mot. at 4.)

I. BACKGROUND

On October 10, 2017, Plaintiff Jay Hinkle ("Plaintiff") filed four complaints ("Complaint") in the Superior Court of California, County of San Bernardino against Home 123 Corporation, MERS, LaSalle Bank National Association as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR8, and US Bank, NA as Trustee for Washington Mutual Mortgage Pass-Through Certificates WMALT Series 2006-AR8. (Dkt. No. 1-2, Case No. 17-2335; Dkt. No. 1-2, Case No. 17-2340; Dkt. No. 1-2, Case No. 17-2339; Dkt. No. 1-2, Case No. 17-2421.) The Court was unable to identify any material difference in the contents of the various complaints. On November 17, 2017, Defendants removed the cases. (Dkt. No. 1, Case No. 17-2335; Dkt. No. 1, Case No. 17-2340; Dkt. No. 1, Case No. 17-2339; Dkt. No. 1, Case No. 17-2421.) Defendant Home123 has not yet been served.[2] Defendants filed motions to dismiss in all four actions, but failed to meet and confer with Plaintiff prior to filing them. (Dkt. No. 8, Case No. 17-2335; Dkt. No. 7, Case No. 17-2340; Dkt. No. 8, Case No. 17-2339; Dkt. No. 7, Case No. 17-2421.) The Court then struck the motions for failure to comply with the requirements of Local Rule 7-3. (Dkt. No. 19, Case No. 17-2335; Dkt. No. 22, Case No. 17-2340; Dkt. No. 23, Case No. 17-2339; Dkt. No. 19, Case No. 17-2421.) Defendants refiled their motions to dismiss on February 16, 2018 (Dkt. No. 20, Case No. 17-2335; Dkt. No. 23, Case No. 17-2340; Dkt. No. 24, Case No. 17-2339; Dkt. No. 20, Case No. 17-2421) as well as requests for judicial notice ("RJN") (Dkt. No. 21, Case No. 17-2335; Dkt. No. 241, Case No. 17-2340; Dkt. No. 25, Case No. 17-2339; Dkt. No. 21, Case No. 17-2421). On March 16, 2018, the Court granted Defendants' Motion. ("March Order," Dkt. No. 24.) On March 22, 2018, Plaintiff filed his First Amended Complaint alleging (1) violation of California Business and Professions Code §§ 17200 et seq.; and (2) quiet title. ("FAC," Dkt. No. 25.) On April 9, 2018, Defendants filed their Motion to Dismiss the FAC. Plaintiff filed an opposition on May 8, 2018. ("FAC Opposition," Dkt. No. 29.) On May 18, 2018, Defendants filed their reply. ("FAC Reply," Dkt. No. 31.) On July 27, 2018, the Court granted Defendants' Motion. ("July Order," Dkt. No. 24.) On August 10, 2018, Plaintiff filed his Second Amended Complaint adding Defendant Chase and alleging (1) violation of California Business and Professions Code §§ 17200 et seq.; and (2) quiet title. ("SAC," Dkt. No. 34.) On August 21, 2018, Defendants MERS and US Bank filed their Motion to Dismiss the SAC. ("Motion," Dkt. No. 36.) Plaintiff filed an opposition on September 10, 2018.[3] ("Opposition," Dkt. No. 39.) On September 17, 2018, Defendants MERS

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[2] On August 16, 2018, the Court ordered Plaintiff to show cause why the action should not be dismissed against Home123 for failure to effect timely service. ("OSC," Dkt. No. 35.) Plaintiff responded on August 31, 2018 and explained that Plaintiff would be voluntarily dismissing Home123 because it is defunct. ("OSC Response," Dkt. No. 38.) Plaintiff has not yet dismissed Home123 from this case. The Court DISMISSES Home123 for failure to prosecute.

[3] The Court notes that Plaintiff's Opposition is almost a verbatim copy of its FAC Opposition. The Court found only two differences: (1) a brief explanation of a single case about UCL standing; and (2) a deletion of argument about the propriety of granting leave to amend. The rest of the Opposition appears to be a copy-paste job. Additionally, the Opposition lacks any citation to the SAC that supports what is otherwise Plaintiff's summary of law. Finally,

and US Bank replied. ("Reply," Dkt. No. 40.) On September 21, 2018, Defendant Chase joined Defendants MERS's and US Bank's Motion. ("Joinder," Dkt. No. 41.)

II. FACTUAL ALLEGATIONS[4]

Plaintiff alleges the following in his SAC.[5] On July 26, 2006, Plaintiff financed a loan on real property located at 1365 Crafton Avenue #1087, Mentone, California 92359 (the

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Plaintiff's Opposition is non-responsive to both the Court's July Order and Defendants' Motion regarding particularity. Plaintiff argues that he satisfies the particularity requirement by "identifying the specific provisions of the UCL that were violated and by providing factual allegations surrounding those violations. Plaintiff has alleged the specifics of the negligent assignment made by DEFENDANTS." (Opposition at 6.) Plaintiff neither directs the Court to paragraphs in the SAC supporting this bare assertion nor does he even attempt to explain why this satisfies Rule 9(b). This is particularly concerning considering the Court dismissed Plaintiff's FAC for this precise reason. (July Order at 6.)

[4] The Court notes that Plaintiff's FAC was filed pro se. Plaintiff retained counsel before filing his FAC Opposition. (Dkt. No. 27.) The Court also observes that Plaintiff's SAC is not materially different from his FAC. The SAC adds sections alleging the parties' identities, as well as jurisdiction and venue. (SAC ¶¶ 1-12.) However, Plaintiff re-alleges verbatim the paragraphs under "Facts Relevant to All Causes of Action" and under "Second Cause of Action: Quiet Title." (Id. ¶¶ 13-19, 33-41.) The few additional allegations under "First Cause of Action: Violations of B&P Code § 17200" are conclusory and non-specific or mere legal summary. Plaintiff re-packages FAC ¶ 16 into SAC ¶ 24 and adds that Defendants "never gave Plaintiff the chance to review hi[s] loss mitigation options even though he incessantly reached out." (Id. ¶ 24.) The SAC contains no other allegations regarding this conduct. Paragraph 25 alleges "Defendant's unfair business practices are substantial when Defendant foreclosed on Plaintiff's home." (Id. ¶ 25.) This is a legal conclusion. Paragraph 27 alleges "[a] borrower may bring an unfair claim per the statute by alleging that a servicer's statements or conduct was misleading." (Id. ¶ 27.) This is a summary of law. Paragraph 28 alleges "[i]n the present case, the information provided to Plaintiff was certainly misleading and not consistent as to the status of his loan and what he was supposed to do to satisfy the lender's demands." (Id. ¶ 28.) Whether information is misleading is a legal conclusion which Plaintiff does not support with accompanying factual allegations, like what the status of his loan was or what he was instructed to do. Finally, paragraph 31 alleges that "[u]nder the three-factor analysis test found in Zuniga v. Bank of America, N.A., 2014 WL 7156403 (C.D. Cal. Dec. 9, 2014), Plaintiff has stated a viable unfair prong UCL claim." (Id. ¶ 31.) This is a legal conclusion. These are the totality of the additions to Plaintiff's SAC.

[5] The Court also considers documents, including the Deed of Trust, attached to Plaintiff's SAC. See Macgregor v. Dial, No. 2:13-CV-1883 JAM AC, 2015 WL 1405492, at *2 (E.D. Cal. Mar. 26, 2015), subsequently aff'd, 671 F. App'x 441 (9th Cir. 2016) (citing Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir.1987)) (stating that, on motion to dismiss

"Property") with Defendant Home123 and executed a Promissory Note ("Note") and Deed of Trust. (SAC ¶ 14, Exh. B.) MERS was listed as the beneficiary of the Deed of Trust. (Id.) On or before September 28, 2006, Home123 sold its property interest in the Note and attempted to sell its "personal property security interest" in the Deed of Trust. (Id. ¶ 15.) "At the time of purported sale[,] LaSalle Bank National Association became the 'Trustee' on the Deed of Trust in this action." (Id. ¶ 16.) In a letter dated July 13, 2007, Chase, the servicer for Plaintiff's loan, conceded that US Bank NA was the trustee for WALT Series 2006-AR8. (Id. ¶ 17.) Plaintiff also alleges there was no assignment of the Note or substitution of trustee; thus, none of the Defendants hold the Note and are not entitled to enforce it. (Id. ¶ 18.) Plaintiff adds that "the information provided to [him] was certainly misleading and not consistent as to the status of his loan and what he was supposed to do to satisfy the lender's demands." (Id. ¶ 28.) Based on these allegations, Plaintiff alleges Defendants engaged in the following deceptive business practices: (1) unlawfully executing and recording false and misleading documents; (2) acting as beneficiaries and trustees without legal authority; and (3) not giving Plaintiff the opportunity to review his loss mitigation options when he requested. (Id. ¶ 24.)

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6) ("Rule 12(b)(6)"), a party may bring a motion to dismiss for failure to state a claim upon which relief can be granted. Rule 12(b)(6) must be read in conjunction with Federal Rule of Civil Procedure 8(a), which requires a "short and plain statement of the claim showing that a pleader is entitled to relief," in order to give the defendant "fair notice of what the claim is and the grounds upon which it rests." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007); see Horosny v. Burlington Coat Factory, Inc., No. 15-05005, 2015 WL 12532178, at *3 (C.D. Cal. Oct. 26, 2015). When evaluating a Rule 12(b)(6) motion, a court must accept all material allegations in the complaint — as well as any reasonable inferences to be drawn from them — as true and construe them in the light most favorable to the non-moving party. See Doe v. United States, 419 F.3d 1058, 1062 (9th Cir. 2005); ARC Ecology v. U.S. Dep't of Air Force, 411 F.3d 1092, 1096 (9th Cir. 2005); Moyo v. Gomez, 32 F.3d 1382, 1384 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). Rather, the allegations in the complaint "must be enough to raise a right to relief above the speculative level." Id.

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pursuant to Federal Rule of Civil Procedure 12(b)(6), "[t]he court may consider facts established by exhibits attached to the complaint.").

To survive a motion to dismiss, a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face."[6] Twombly, 550 U.S. at 570; Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 556). The Ninth Circuit has clarified that (1) a complaint must "contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively," and (2) "the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

IV. DISCUSSION

A. Violation of California Business and Professions Code §§ 17200 et seq.

Plaintiff alleges "Defendants engaged in the following deceptive business practices: a) Defendants unlawfully executed and recorded false and misleading documents; b) Acting as beneficiaries and trustees without the legal authority to do so; c) Never gave Plaintiff the chance to review hi[s] loss mitigation options even though he incessantly reached out." (SAC ¶ 24.) Plaintiff further asserts "the information provided to [him] was certainly misleading and not consistent as to the status of his loan and what he was supposed to do to satisfy the lender's demands." (Id. ¶ 28.) Plaintiff claims that as a result he suffered damages because he had to pay unfair and unwarranted late fees and other fees and charges. (Id. ¶ 30.)

Federal Rule of Civil Procedure Rule 9(b) requires that circumstances constituting a claim for fraud or mistake be pled with particularity. Fed. R. Civ. P. 9(b). Rule 9(b) applies also where the claim is "grounded in fraud" or "sound[s] in fraud." Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1103 (9th Cir. 2003). The heightened particularity requirements of Rule 9(b) apply to claims under California's Unfair Competition Law ("UCL"). Horosny v. Burlington Coat Factory of Cal., LLC, 2015 WL 12532178, at *4 (C.D. Cal. Oct. 26, 2015) (citing Kearns v. Ford Motor Co., 567 F.3d 1120, 1124-25 (9th Cir. 2009)). Rule 9(b) requires a plaintiff to "identify the 'who, what, when, where and how of the misconduct charged," as well as "what is false or misleading about [the purportedly fraudulent conduct], and why it is false." Shimono v. Harbor Freight Tools USA, Inc., 2016 WL 6238483 at *5 (C.D. Cal. Oct. 24, 2016) (quoting Cafasso, ex rel. United States v. Gen. Dynamics C4 Sys., Inc., 637 F.3d 1047, 1055 (9th Cir. 2011)).

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[6] Plaintiff's Opposition defines this standard as a "complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." (Opp'n at 3 (citing Conley v. Gibson, 355 U.S. 41 (1957).) In light of Twombly and Iqbal, this is not the proper standard since 2007.

A claim under the UCL requires a showing of either an unlawful, unfair, or fraudulent business act or practice, or unfair, deceptive, untrue, or misleading advertising. Lundy v. Selene Fin. LP, No. 15-cv-05676-JST, 2016 WL 1059423, at *17 (N.D. Cal. Mar. 17, 2016) (citing Steward v. Life Ins. Co. of N. Am., 388 F. Supp. 2d 1138, 1143 (E.D. Cal. 2005)).

1. Unlawful

The unlawful practices prohibited are any practices forbidden by law. Saunders v. Super. Ct., 27 Cal. App. 4th 832, 838 (Ct. App. 1994). "Under the UCL's 'unlawful' prong, violations of other laws are 'borrowed' and made independently actionable under the UCL." Herron v. Best Buy Co. Inc., 924 F. Supp. 2d 1161, 1177 (E.D. Cal. 2013) (citing Cel–Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co., 20 Cal.4th 163, 180, 83 Cal.Rptr.2d 548, 973 P.2d 527 (1999)); see also Beaver v. Tarsadia Hotels, 816 F.3d 1170, 1177 (9th Cir.), cert. denied, 137 S. Ct. 113 (2016). In the July Order, the Court found that the FAC's unfair claim failed because Plaintiff did not plead a violation of another statute or common law. (July Order at 4 (citing Warner v. Tinder, Inc., 105 F. Supp. 3d 1083, 1095 (C.D. Cal. 2015) ("Tinder also argues, and the court agrees, that Warner's UCL claim fails to the extent it is based on the unlawful prong of the statute because he has not adequately alleged that Tinder engaged in any unlawful conduct. This is because all of his substantive claims fail.").) Again, Plaintiff's SAC does not plead a violation of another statute or common law. Again, this claim fails.

2. Unfair

Unfair conduct is conduct "whose harm to the victim outweighs its benefits." Saunders, 27 Cal. App. 4th at 838. Unfair business practices may also be those that "offend an established public policy or . . . [are] immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." Heighley v. J.C. Penney Life Ins. Co., 257 F. Supp. 2d 1241, 1259 (C.D. Cal. 2003).

Plaintiff alleges Defendants violated the unfair prong of the UCL because "a) [d]efendants unlawfully executed and recorded false and misleading documents; b) [acted] as beneficiaries and trustees without the legal authority to do so; [and] c) [n]ever gave Plaintiff the chance to review hi[s] loss mitigation options even though he incessantly reached out." (SAC ¶ 24.) The first two practices are paraphrased from Plaintiffs' FAC. (See FAC ¶ 16 (alleging Defendants engaged in "deceptive business practices with respect to Deed of Trust loan servicing, assignments of notes and deeds of trust . . . by failing to record an assignment . . . and by acting as beneficiaries and trustees without legal authority to do so.").) In fact, the only factual allegations added to the UCL claim are the following: (1) Plaintiff never received an opportunity to review loss mitigation options; (2) the "unfair business practices" are "substantial" when Defendants foreclosed on Plaintiff's home; and (3) "the information provided" to Plaintiff was "certainly misleading and not consistent as to the status of his loan and what he was supposed to do to satisfy the lender's demands." (SAC ¶¶ 24c, 25, 28.)

As the Court noted in the July Order, and applicable here, these allegations indicate that Plaintiff's unfair prong cause of action is grounded in the same contentions as the fraudulent prong of the UCL. A court in the Northern District explained:

> Regardless of the test, courts in this district have held that where the unfair business practices alleged under the unfair prong of the UCL overlap entirely with the business practices addressed in the fraudulent and unlawful prongs of the UCL, the unfair prong of the UCL cannot survive if the claims under the other two prongs of the UCL do not survive. See Punian v. Gillette Co., 2016 WL 1029607, at *17 (N.D. Cal. Mar. 15, 2016) (holding that cause of action under the unfair prong of the UCL did not survive where "the cause of action under the unfair prong of the UCL overlaps entirely with Plaintiff's claims" under the FAL, CLRA, and fraudulent prong of the UCL); see also In re Actimmune Mktg. Litig., 2009 WL 3740648, at *14 (N.D. Cal. Nov. 6, 2009), aff'd, 464 Fed.Appx. 651 (9th Cir. 2011) (dismissing unfair prong UCL cause of action where "plaintiffs' unfair prong claims overlap entirely with their claims of fraud").

Hadley v. Kellogg Sales Co., 243 F. Supp. 3d 1074, 1104–05 (N.D. Cal. 2017).

The only new allegation that potentially attempts to allege conduct separate from a claim under the fraudulent prong is the allegation that Defendants "[n]ever gave Plaintiff the chance to review hi[s] loss mitigation options even though [Plaintiff] incessantly reached out." (SAC ¶ 24c.) However, this allegation is insufficient because Plaintiff pleads no facts to make his claim plausible. For example, Plaintiff does not allege when he requested loss mitigation options or how he requested such options. Plaintiff does not allege if or when he applied for a loan modification. Furthermore, Plaintiff does not allege, or argue in his Opposition, how this failure is unlawful, unfair, or fraudulent. In sum, Plaintiff does not allege sufficient facts to support a plausible claim for relief or to put Defendants on notice of how their conduct is allegedly unlawful. Finally, adding an allegation that Plaintiff pleads a viable unfair claim based on Zuniga v. Bank of America, N.A., 2014 WL 7156403 (C.D. Cal. Dec. 9, 2017) is a legal conclusion unsupported by the rest of the SAC. (SAC ¶ 31.)

Thus, the SAC still suffers from the same deficiencies as the FAC. Accordingly, the Court GRANTS Defendants' Motion as to the unlawful prong of the UCL for the same reasons the Court grants Defendants' Motion as to the fraudulent prong UCL cause of action, as discussed below.

3. Fraudulent

A claim under the fraudulent prong requires a showing that members of the public "are likely to be deceived." Saunders, 27 Cal. App. 4th at 838. In his Opposition, which is almost verbatim the same document as the FAC Opposition, Plaintiff asserts Defendants negligently serviced Plaintiff's loan, which was unfair and resulted in prejudice against Plaintiff. (Opp'n at 7.) Further, Plaintiff states "the Complaint alleges that DEFENDANTS' business acts and

practices, include, but are not limited to the illicit transferring of the subject loan." (Id. at 7.) Plaintiff argues that MERS did not have any interest in the loan and thus could not assign the note and deed of trust. (Id. at 4.) In his SAC Plaintiff states: "Defendants engaged in the following deceptive business practices: a) Defendants unlawfully executed and recorded false and misleading documents; b) Acting as beneficiaries and trustees without the legal authority to do so; c) Never gave Plaintiff the chance to review hi[s] loss mitigation options even though he incessantly reached out." (SAC ¶ 24.) Plaintiff further asserts "the information provided to [him] was certainly misleading and not consistent as to the status of his loan and what he was supposed to do to satisfy the lender's demands." (Id. ¶ 28.) Plaintiff alleges "Defendant's unfair business practices are substantial when Defendant foreclosed on Plaintiff's home" and that he suffered "damages in the form of unfair and unwarranted late fees and other improper fees and charges." (Id. ¶¶ 25, 30.) Plaintiff continues that "[t]hese actions also make it impossible for Plaintiff to ascertain if he is paying the proper party and that his payments are being applied properly to his Deed of Trust and Note." (Id. ¶ 29.)

Plaintiff, however, does not specify what fraudulent conduct MERS, US Bank, or Chase allegedly committed. Plaintiff asserts that Defendants, without identifying which ones, engaged in deceptive business practices by acting as beneficiaries and trustees without legal authority to do. (See id. ¶ 24.) The Deed of Trust, however, named MERS as the beneficiary. (Id., Exh. B.) Thus, MERS had the legal authority to act as the beneficiary, as evidenced by the Deed of Trust. (Id.) As to US Bank and Chase, the Court is unclear what, if any, fraudulent conduct US Bank or Chase engaged in. Plaintiff's conclusory allegation that US Bank and Chase, presumably, acted as trustees without legal authority to do so is insufficient and does not meet the requirements of Rule 9(b) of the Federal Rules of Civil Procedure. Plaintiff does not state or explain how US Bank or Chase engaged in fraud, or even identify US Bank or Chase by name; he merely refers to unidentified Defendants. (See id. ¶ 24.) These are the same reasons the Court dismissed the FAC. (See July Order at 6.) Again, Plaintiff's SAC does not plead his UCL claim with particularity. Again, Plaintiff did not address these deficiencies in his Opposition. And again, the Court finds Plaintiff fails to state a claim under the fraudulent prong of the UCL. Accordingly, the Court GRANTS Defendants' Motion as to this claim. See Monreal v. GMAC Mortg., LLC, 948 F. Supp. 2d 1069, 1076 (S.D. Cal. 2013) ("Plaintiff's claims under the unfair and fraudulent . . . allege Defendants committed unfair and fraudulent acts by delivering and posting the Notice of Trustee's Sale and proceeding with the sale of the Property without the legal authority to do so . . . As stated below, none of these allegations meet the heightened pleading standard under Rule 9(b) because Plaintiff fails to allege how each individual Defendant participated in the alleged fraudulent scheme.")

As the Court noted in the July Order, a plaintiff bringing a UCL claim must allege some form of economic injury. See McVicar v. Goodman Glob., Inc., 1 F. Supp. 3d 1044, 1050 (C.D. Cal. 2014) ("Under the UCL, standing extends to 'a person who has suffered injury in fact and has lost money or property as a result of the unfair competition[.]' Cal. Bus. & Prof. Code § 17204. This requirement is governed by a 'simple test': a party must '(1) establish a loss or deprivation of money or property sufficient to qualify as injury in fact, i.e., economic injury, and (2) show that the economic injury was the result of, i.e., caused by, the unfair business practice or

false advertising that is the gravamen of the claim.' Kwikset Corp. v. Superior Court, 51 Cal.4th 310, 322, 120 Cal.Rptr.3d 741, 246 P.3d 877 (2011).") Here, Plaintiff alleges damages in the form of late fees and other fees and charges. (SAC ¶ 30.) Plaintiff, however, fails to plead he actually lost money (i.e., that he paid any of the fees or charges). Additionally, the Court is unclear as to MERS's role in issuing these allegedly improper fees or charges, as MERS was a trustee not a lender or servicer. The Court noted these deficiencies in the FAC, and the SAC does not cure them.

B. Quiet Title

The SAC again attempts to allege a claim for quiet title. (SAC ¶¶ 33-41.) The July Order dismissing the claim for quiet title thoroughly explained the FAC's deficiencies. (July Order at 6-9.) However, the SAC re-alleges verbatim the same allegations. (See SAC ¶¶ 33-41; FAC ¶¶ 22-29.) The only change to the SAC regarding this claim is splitting the allegation in the FAC ¶ 26 into two paragraphs at SAC ¶¶ 37-38. But the language remains precisely the same. Thus, for the same reasons the Court granted Defendants' motion dismissing the FAC's claim for quiet title, the Court GRANTS Defendants' motion as to the SAC's claim for quiet title.

V. LEAVE TO AMEND

Federal Rule of Civil Procedure 15(a) provides that "a party may amend his pleading once as a matter of course at any time before a responsive pleading is served." The Ninth Circuit has held that a motion to dismiss is not a responsive pleading within the meaning of the Rule. Doe v. U.S., F.3d 494, 497 (9th Cir. 1995) (quoting Schreiber Distributing v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986)). Further, Federal Rule of Civil Procedure 15(a)(2) states that the court should "freely give leave [to amend] when justice so requires." If a Rule 12(b)(6) motion is granted, a "district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks and citations omitted).

As addressed above, the SAC is not materially different from the FAC filed in March 2018. Allowing further amendment of Plaintiff's claims would be futile. Plaintiff amended his complaint twice—both times with leave of this Court. Despite having two opportunities to rectify the deficiencies of his claims, Plaintiff failed to do so.

Therefore, the Court DISMISSES Plaintiff's Complaint WITHOUT LEAVE TO AMEND.

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VI. CONCLUSION

For the reasons above, the Court GRANTS Defendants' Motion to Dismiss and DISMISSES Plaintiff's Second Amended Complaint WITHOUT LEAVE TO AMEND. The October 1, 2018 hearing is VACATED.

IT IS SO ORDERED.