

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MAKEDA KARIMLOU,

Plaintiff and Appellant,

v.

AURORA BANK FSB,

Defendant and Respondent.

G047190

(Super. Ct. No. 30-2012-00547727)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Kirk H. Nakamura, Judge. Affirmed.

Makeda Karimlou in pro. per.

Akerman Senterfitt, Justin D. Balsler and Preston K. Ascherin for Defendant and Respondent.

This appeal arises from an action following a nonjudicial foreclosure. Makeda Karimlou (Karimlou) appeals from a judgment entered in favor of Aurora Bank FSB (Aurora) after the trial court sustained Aurora's demurrer without leave to amend. On appeal, Karimlou asserts she pled sufficient facts to maintain causes of action for negligent misrepresentation, constructive fraud, unconscionability of contract, unjust enrichment, violation of the covenant of good faith and fair dealing, and unfair business practices. We conclude the trial court properly sustained the demurrer without leave to amend, and we affirm the court's judgment dismissing the action.

## I

In June 2006, Karimlou obtained a \$1,105,000 loan from Metrocities Mortgage LLC doing business as No Red Tape Mortgage (Metrocities) secured by a deed of trust recorded against property located in Irvine. The beneficiary under the deed of trust was Mortgage Electronic Registration Systems, Inc. (MERS). The trustee was Fidelity National Loan Portfolio Solutions (Fidelity).

Karimlou defaulted on her loan sometime in 2011. In November 2011, MERS assigned its beneficial interest under the deed of trust to Aurora, who substituted Quality Loan Service Corporation (Quality) in place of Fidelity as trustee. In December 2011, Quality recorded a notice of default to initiate nonjudicial foreclosure of the Irvine property.

On February 24, 2012, Karimlou filed a complaint alleging causes of action for negligent misrepresentation, constructive fraud, unconscionability of contract, unjust enrichment, violation of the covenant of good faith and fair dealing, unfair business practices, accounting, declaratory relief, and quiet title. Aurora was the only named defendant in the case, but the allegations referred generally to "Defendants." Karimlou focused her complaint on events taking place during the loan origination and also events occurring several years later, when she unsuccessfully attempted to modify her loan terms. Karimlou alleged the following facts in her complaint:

“[D]efendants knew . . . [Karimlou] could not afford to pay the amount eventually to be charged on the currently operative adjustable interest rate loan, and that the only way [Karimlou] could avoid eventual default and foreclosure sale of property was to speculate on the ability and availability of further refinancing of the loan. [¶] Because of this situation, the terms of the loan contract were such that risk was placed unreasonabl[y] and unexpectedly on [Karimlou] in a way overly harsh and one-sided . . . so as to make the loan contract substantively and procedurally unconscionable.”

“Defendants . . . were also aware that [Karimlou] . . . could not understand the complex loan documents which she was being asked to approve and sign. Because of this, those documents were contracts of adhesion, not really bargained for. [¶] The loan documents were oppressive, because [Karimlou] had no real negotiations over the loan terms . . . . [¶] The unconscionability, procedural and substantive, began when the loan originating Defendants through their authorized representatives and/or employees agreed to consider loan modification for [Karimlou]. That started in 2009 [when Karimlou] wrote to Defendants about her financial difficulties to pay the adjustable loan following the U.S. recession starting [in] 2008 . . . . Defendants entertained [Karimlou’s] request and asked for a number of applications and supporting documents . . . .”

For several years, Karimlou diligently tried to modify her loan and responded to every request and inquiry from “Defendants.” Karimlou claimed she submitted more than 20 packages and made more than 40 phone calls to “Defendants.” Karimlou stated she was led to believe “Defendants” were in the process of modifying her loan. On a “couple of occasions, Defendants[’] representatives actually called [Karimlou] . . . and congratulated [her] for her successful modification. The name of the [a]gent was Natasha who was ‘supposed to be’ the point of contact . . . assigned to [Karimlou’s] loan.” Karimlou later learned the loan had not been modified and Natasha no longer worked for “Defendants.”

Karimlou alleged her time had been wasted for four years (2009-2012). The “Defendants” ignored her requests to be assigned one contact person or agent to avoid having to repeat the long story of her reasons for modification, and send the same paperwork repeatedly. She claimed the “non-responsive[ness] and confusion” had “put more financial hardship” on her. She was a self-employed immigration attorney, a single mother, and she cared for her elderly ill mother. She asserted that if she could just have been given a fixed interest rate she could have afforded the payments and stayed in her home.

Karimlou alleged that on December 9, 2011, “Defendants . . . recorded a [d]efault . . . without notifying [her]. On or about December 21, 2011, such notice came to [her] address for the first time. [Karimlou] was in shock since she had been paying for her house since 2004.” Karimlou’s son, suffering from obsessive compulsive disorder, had an anxiety attack over losing his room.

[Karimlou] concluded, she “was taken as a fool by the Defendants and [they took] advantage of the fact that [she] did not have any bargaining power. Defendants pushed [Karimlou] around for more than [three] years with no intention of modifying her loan. Defendants have interfered with [her] business by requesting repeated number of duplicated documents. . . . [She] has complied with every request . . . and spent hours every week preparing, copying, faxing and mailing the overwhelming amount of documents . . . [but] unknown to [Karimlou] there was no intention . . . to even consider her documents or to consider [her] application for modification.”

Karimlou asserted “Defendants and their agents” made material misrepresentations and gave her false assurances. She alleged they concealed material facts and their actions amounted to constructive fraud. She explained the “Defendants are all jointly and severally liable . . . due to first, usage and liability as respondent superior as to the employees working in their origination and subsequently due to a series of transfers of the mortgage interest . . . so that each Defendant is believed to have legally

or in equity assumed the liabilities as well as the benefits in connection with any enforceable mortgage interest.”

Karimlou listed the following “joint and several liabilities . . . imputed against all Defendants” and any subsequently added DOE defendants: (1) insisting on an adjustable interest rate loan with unconscionable “balloon rate” not in compliance with industry or federal guidelines; (2) assuring Karimlou her property would increase in market value so that she could refinance at a better interest rate; (3) “by employing bait and switch tactic[s], giving [her] a low initial interest rate with negative loan amortization so that now the total loan amount balance stands about the same as the original loan amount even though [she] has made more than [eight] years of loan payments[;]” (4) “by so fragmenting and repackaging [Karimlou’s] promissory note obligation that the current purported holder of the ‘right to foreclose’ is not a holder in due course for value, and has no standing to proceed with any foreclosure sale against [Karimlou’s] interest [in the Irvine property;]” (5) by creating an unconscionable loan because Karimlou now faces the “process of ‘negative amortization’” regarding the debt “ensuring” she will eventually lose her property; (6) any involvement by Aurora in the chain of title of the promissory note or trust deed violated Commercial Code sections 3301 and 3309, subdivision (a)(2), because Aurora is not the original holder; (7) other statements and acts “not specifically remembered” at this time but will be disclosed in discovery; and (8) “by saddling [Karimlou] with [an] adjustable rate promissory note, including [a] balloon payment rider, and adjustable rate rider, concerning the loan for \$1,200,000 . . . so that [she] could never repay this loan, but instead would have to speculate and rely on ability to refinance.”

Karimlou also believed, “the current beneficiary under the trust deed, seeking to enforce the loan obligation through the promissory [note] is not the same as the holder(s) and/or owner(s) of the promissory note, which are more than one and therefore the purported current owner(s) and/or holder(s) of the promissory note [have

no] standing to enforce it, and/or is the wrong party to enforce it, through foreclosure sale or in any other lawful manner . . . unless each and every holder and/or owner of said note is joined in any enforcement proceeding or foreclosure action[.]”

As to the first cause of action for misrepresentation, Karimlou also alleged “Defendants . . . knew or had reason to know of an impending real estate market crash . . . .” Karimlou asserted she reasonably relied on this misrepresentation and she would not have entered into any transactions with the Defendants if she had known the truth. She claimed her damages equaled the amount of her down payment plus eight years of payments.

Karimlou’s constructive fraud claim was based on the conclusory allegation Defendants took advantage of her and violated their duty of good faith and fair dealing and their fiduciary duty to her. For this claim she sought \$1,200,000 in damages.

The third cause of action, titled, “violation of [the] covenant unjust enrichment and unconscionability of contract” relates to the terms of the loan agreement. Karimlou maintained the terms of the adhesion loan agreement were unconscionable and unfair. Karimlou claimed Defendants also violated the implied covenant of good faith and fair dealing for conduct occurring when the loan documents were signed. She explained, “The loan contracts imposed terms that were beyond what [she] could afford and perform, and the Defendants, and each of them, were aware that [she] could not possibly perform. The true intent of Defendants was to deprive [her] of their property . . . and then sell the property to an outside buyer or buyers, believed to be wealthy investors . . . and/or owners of the lending institutions.”

Similarly, Karimlou’s unfair business practices cause of action was based on Defendant’s conduct “the past seven years” because they had the “intent to destroy [her] economic viability” and “thus to injure more honest competitors.”

Karimlou stated she was entitled to an accounting “because of the complexity of ascertaining what sums have been paid and to whom they have been

applied . . . .” She sought declaratory relief and to quiet title based on her belief Defendants “have generated, processed, transferred and eventually came to possess a promissory note and . . . a deed [of trust] as to [her] property . . .” by (1) unlawful fraudulent means, (2) by racketeering and unfair business practices, and (3) procedural and substantive unconscionability. She concluded, “no party in the world” can lawfully enforce the loan contract and, therefore, the promissory and trust deed “must be outlawed, adjudged unenforceable, and that [she] should regain unencumbered title to this property or else be fairly compensated with monetary damages.”

Aurora demurred to the complaint, arguing it had authority to foreclose when Karimlou defaulted, and it was not required to produce the note to initiate foreclosure. Aurora stated all claims related to events occurring during the loan origination do not implicate Aurora, and for this reason, the complaint is uncertain and must fail. Moreover, the loan origination claims would be time barred and preempted by the federal law (Home Owner’s Loan Act (12 U.S.C. § 1461 et seq.)) In addition, Aurora moved to expunge the *lis pendens* Karimlou recorded. Karimlou opposed the demurrer and the motion. She presented argument as to each cause of action except for the accounting, declaratory relief, and quiet title claims.

On July 12, 2012, after considering argument from the parties, the court sustained the demurrer without leave to amend. The court stated its tentative ruling would become the final ruling: “Despite the rule of liberal construction and the preference for amendment, plaintiff cannot possibly assert any claim against Aurora. While her personal circumstances are regrettable, she did not contract with Aurora for this mortgage, there is no cognizable statutory violation, the statute of limitations has run and [Karimlou] has abandoned her claims for an accounting, declaratory relief, and quiet title. Even had she not abandoned these requests, her failure to tender defeats each of these claims. [¶] Further plaintiff’s asserted damages-i.e. house payments and her down payment represent her contractual obligation with the initial lender and cannot be

characterized as damages.” In addition, the court granted the motion to expunge the *lis pendens*. It reasoned, “[A]bsent tender, [Karimlou] cannot establish a right to title, nor can she prevail on her complaint.”

On July 18, 2012, Karimlou filed a notice of appeal. This court advised Karimlou an order sustaining a demurrer was not appealable, and we ordered her to file a judgment of dismissal or the appeal would be dismissed. On August 13, 2012, the court ordered Karimlou’s action dismissed and Karimlou provided this court with a copy of the final judgment.

## II

Karimlou is a member of the California State Bar representing herself in this appeal. We find her opening brief woefully inadequate. First, Karimlou failed to adhere to any of the court rule requirements. For example, the entire statement of facts does not contain a single citation to the record in violation of California Rules of Court, rule 8.204(a)(1)(C) [all appellate briefs must “[s]upport any reference to a matter in the record by a citation . . . of the record . . .”]. Moreover, her factual summary is one-sided, omits significant facts, and is not limited to matters in the record as required by California Rules of Court, rule 8.204(a)(2)(C).

The brief’s legal discussion is also defective. Karimlou includes a few legal rules and asks us to refer to multiple pages of the clerk’s transcripts—primarily references to the discussion contained in her opposition to the demurrer. She fails to include a statement of appealability, making it difficult to determine if she is appealing both the order sustaining the demurrer and the order expunging the *lis pendens*. And noticeably absent is any discussion of her issues on appeal in the context of the appropriate standard of review. Instead, Karimlou presents essentially the same rambling discussion contained in her opposition to the demurrer, and she summarily concludes the court erred.

Karimlou’s brief also violates California Rules of Court, rule 8.204(a)(1)(B), which requires that briefs must “support each point by argument and, if possible, by citation of authority . . . .” Karimlou’s brief significantly fails in this respect. Karimlou’s argument discusses none of the elements of the various causes of action, and she engages in no reasoned legal analysis as to why each cause of action was adequately pled. In addition, she made no effort to offer any legal analysis in rebuttal to the successful arguments raised by Aurora and accepted by the trial court. She did not request leave to amend her complaint to allege different or new facts.

Karimlou is not exempt from the appellate rules because she is representing herself on appeal in propria persona. “Under the law, a party may choose to act as his or her own attorney. [Citations.] ‘[S]uch a party is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys. [Citation.]’ [Citation.] Thus, as is the case with attorneys, pro. per. litigants must follow correct rules of procedure. [Citations.]” (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.)

Disregarding the rules of appellate procedure even by an unrepresented layperson is always problematic; when an attorney representing herself flouts them so pervasively, it is inexplicable. Were we to take one of the steps permitted in response to such conduct—disregarding the noncomplying portions—we would, in effect, toss out the entire opening brief.<sup>1</sup> It is not surprising Aurora asserts we should strike the entire brief.

---

<sup>1</sup> (See, e.g., *Opdyk v. California Horse Racing Bd.* (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4.) “The appellate court is not required to search the record on its own seeking error.” (*Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768.) Thus, “[i]f a party fails to support an argument with the necessary citations to the record, . . . the argument [will be] deemed to have been waived. [Citation.]” (*Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) Moreover, “When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and

However, after considering the issues raised, we shall go ahead with a review on the merits as best we can under the circumstances, at least in part.<sup>2</sup> We do so reluctantly, because we do not wish to encourage the view attorneys can get away with disregarding the rules. But because the record in this case is so abbreviated<sup>3</sup> and the standard of review is de novo, the rule violations do not burden our court as much as they would if the proceedings below had been lengthier. Moreover, the complaint is so obviously defective we need not spend a great deal of time on the issues. As Karimlou has offered no factual basis on which to amend, we can put this entire case to rest rather expeditiously.

*A. Standard of Review*

We review Karimlou’s complaint “de novo to determine whether it alleged facts sufficient to state a cause of action under any legal theory. [Citation.] In doing so, we look past the form of the pleading to its substance and ignore any erroneous or confusing labels [Karimlou] attached. [Citation.] ““We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] . . .’ . . . Further, we give the complaint a reasonable interpretation,

---

citations to authority, we treat the point as waived. [Citations.]” (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784-785 (*Badie*).

<sup>2</sup> In her opposition to the demurrer, Karimlou did not discuss her causes of action seeking an accounting, declaratory relief, and to quiet title. Because Karimlou did not oppose the demurrer as to those claims, we conclude the trial court properly determined she abandoned those causes of action. On appeal, Karimlou mentions the claims with just a few sentences that plainly appear to have been cut and pasted from her complaint. Because the issue was not timely raised below, and because her brief lacked any reasoned argument or citation to authority, we deem the accounting, declaratory relief, and quiet title claims waived. (*Badie, supra*, 67 Cal.App.4th at pp. 784-785.) We also deem waived any challenge to the order to expunge the *lis pendens*. Karimlou utterly fails to address the ruling in any meaningful way on appeal. It is referred to in one sentence without comment. (*Ibid* [waiver].)

<sup>3</sup> The record does not include a reporter’s transcript.

reading it as a whole and its parts in their context. [Citation.]” [Citation.]” (*Rosen v. St. Joseph Hospital of Orange County* (2011) 193 Cal.App.4th 453, 458 (*Rosen*).

““When a demurrer is sustained without leave to amend, the reviewing court must determine whether there is a reasonable probability that the complaint could have been amended to cure the defect . . . .’ [Citation.] The abuse of discretion standard governs our review of that question. [Citation.] ‘The plaintiff bears the burden of proving there is a reasonable possibility of amendment.’ [Citation.]” (*Rosen, supra*, 193 Cal.App.4th at p. 458.) As stated, Karimlou does not assert there is a possibility of amendment, and therefore, our review is entirely de novo.

#### *B. Some General Principles Regarding Deeds of Trust and Nonjudicial Foreclosure*

We begin by reciting some general principles regarding deeds of trust and nonjudicial foreclosure because it appears Karimlou is confused about the applicable law. The financing or refinancing of real property in California is generally accomplished by the use of a deed of trust. (*Calvo v. HSBC Bank USA, N.A.* (2011) 199 Cal.App.4th 118, 125.) A deed of trust conveys title to real property from the trustor-debtor to a third-party trustee to secure the payment of a debt owed to the beneficiary-creditor under a promissory note. Importantly, the provisions of a valid deed of trust must include a power of sale clause, which empowers the beneficiary-creditor to foreclose on the real property security if the trustor-debtor fails to pay back the debt owed under the promissory note. (*Alliance Mortgage. Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1235-1236.) California courts have described the security interest created by a deed of trust as the functional equivalent of “a lien on the property.” (*Monterey S.P. Partnership v. W. L. Bangham, Inc.* (1989) 49 Cal.3d 454, 460.)

The provisions setting forth California’s nonjudicial foreclosure scheme (Civ. Code, §§ 2924-2924k)<sup>4</sup> “cover every aspect of [the] exercise of [a] power of sale

---

<sup>4</sup> All further statutory references are to the Civil Code, unless otherwise indicated.

contained in a deed of trust.’ [Citation.] ‘The purposes of this comprehensive scheme are threefold: (1) to provide the creditor/beneficiary with a quick, inexpensive and efficient remedy against a defaulting debtor/trustor; (2) to protect the debtor/trustor from wrongful loss of the property; and (3) to ensure that a properly conducted sale is final between the parties and conclusive as to a bona fide purchaser.’ [Citation.]” (*Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1154 (*Gomes*)). And finally, because the statutory provisions broadly authorize a “trustee, mortgagee, or beneficiary, or *any of their authorized agents*” to initiate a nonjudicial foreclosure, there is no requirement the foreclosing party have an actual beneficial interest in both the promissory note and deed of trust to commence and execute a nonjudicial foreclosure sale. (*Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 433, 440-442 (*Debrunner*), italics added.)

### *C. The Demurrer Was Properly Sustained*

The factual basis for Karimlou’s complaint can be categorized into two distinct time periods. First, there is the conduct and events surrounding the loan’s origination in 2006, which includes her objections to the actual terms of the loan agreement. Second, there is the alleged misconduct surrounding Karimlou’s attempts to modify the loan’s terms from 2009 to 2012. Although the pleadings are unclear, it appears from the undisputed facts contained in other briefing that Aurora was not assigned a beneficial interest in the deed of trust until November 2011, after Karimlou apparently defaulted on the loan. Karimlou also challenges Aurora’s “standing” to bring the foreclosure action.

#### *i. Standing to Foreclose*

We find it somewhat ironic that Karimlou asserts Aurora should be liable for the misconduct of other lenders, and at the same time she complains Aurora lacked standing to proceed with a foreclosure sale. In essence, she is arguing Aurora agreed to

assume liabilities but was not assigned any benefits surrounding the deed of trust. She is wrong.

This claim is erroneously based on the notion that improper securitization and lack of compliance with the securitized investment trust's pooling and servicing agreement extinguished the security interest. Specifically, Karimlou asserts the promissory note obligation was "fragment[ed] and repackage[ed]" and, accordingly, none of "the banks" have a security interest to foreclose upon. She inexplicably states no "party in the world" can lawfully enforce the promissory note or deed of trust. Her only authority for this novel theory is Commercial Code sections 3301 and 3309. But she does not explain how or why those sections apply. She also suggests only the original holder of the note could initiate foreclosure proceedings. Not so.

In *Debrunner, supra*, 204 Cal.App.4th 433, our colleagues in the Sixth District answered the specific question of whether the foreclosing party must have actual possession of the promissory note and be able to produce it before pursuing nonjudicial foreclosure. The *Debrunner* court reasoned "the procedures to be followed in a nonjudicial foreclosure are governed by sections 2924 through 2924k, which do not require that the note be in the possession of the party initiating the foreclosure. [Citations.] We likewise see nothing in the applicable statutes that precludes foreclosure when the foreclosing party does not possess the original promissory note. They set forth "a comprehensive framework for the regulation of a nonjudicial foreclosure sale pursuant to a power of sale contained in a deed of trust. . . . Notably, section 2924, subdivision (a)(1), permits a notice of default to be filed by the 'trustee, mortgagee, or beneficiary, or any of their authorized agents.' The provision does not mandate physical possession of the underlying promissory note in order for this initiation of foreclosure to be valid." (*Debrunner, supra*, 204 Cal.App.4th at p. 440.)

In *Debrunner*, the court also rejected plaintiff's assertion Commercial Code provisions regarding assignment of negotiable instruments imposed additional legal

constraints on the lenders. The court concluded plaintiff's reliance on the Commercial Code provisions was misplaced because, "'The comprehensive statutory framework established [in sections 2924 to 2924k] to govern nonjudicial foreclosure sales is intended to be exhaustive.' [Citations] 'Because of the exhaustive nature of this scheme, California appellate courts have refused to read any additional requirements into the non-judicial foreclosure statute.' [Citation.] 'There is no stated requirement in California's non-judicial foreclosure scheme that requires a beneficial interest in the [n]ote to foreclose. Rather, the statute broadly allows a trustee, mortgagee, beneficiary, or any of their agents to initiate non-judicial foreclosure. Accordingly, the statute does not require a beneficial interest in both the [n]ote and the [d]eed of [t]rust to commence a non-judicial foreclosure sale.' Likewise, we are not convinced that the cited sections of the . . . Commercial Code (particularly section 3301) displace the detailed, specific, and comprehensive set of legislative procedures the Legislature has established for nonjudicial foreclosures. [Citations.]" (*Debrunner, supra*, 204 Cal.App.4th at p. 441.)

*ii. Claims Based on Loan Origination*

Each of Karimlou's causes of action refers to, at least in part, allegations of improper loan origination. For example, she claims: (1) "Defendants" falsely induced her to take the loan she could not afford by misrepresenting the loan's terms and other information regarding the loan and her ability to refinance; (2) "Defendants" breached their professional and fiduciary duties by knowingly placing her in a loan destined to result in default and foreclosure; (3) "Defendants" drafted a loan containing unconscionable and unfair terms "not in compliance with industry of federal guidelines[;]" and (4) "Defendants" knew about the impending real estate market crash and had a duty to tell her.

However, it appears Karimlou abandoned these claims on appeal. Her opening brief focuses only on seeking recovery for misconduct occurring during the years after Aurora was assigned the deed of trust (2011-2012). To the extent she may hope to

recover for deceptive events occurring in 2006, and if we assume for the sake of argument Aurora's assignment of the deed of trust included assumption of all these alleged liabilities,<sup>5</sup> we must agree with the trial court that her claims are time barred.

The statute of limitations for negligent misrepresentation is two years (Code Civ. Proc., § 339, subd. 1) and the statute of limitations for intentional misrepresentation, or fraud, is three years (Code Civ. Proc., § 338, subd. (d)). At a minimum, Karimlou would have known her loan contained an adjustable rate mortgage and a balloon payment soon after executing the documents. She mentions her mortgage payment rose to \$7,720 by 2008 from the original \$3,228 in 2006. Any claims regarding the loan or deception in the loan origination would have accrued, at the latest, in 2008 when Karimlou was struggling to make a \$7,720 mortgage payment. Therefore, she was required to file an action no later than 2011 to meet the statute of limitations. Karimlou filed her complaint at the end of February, 2012.

*iii. Claims Based on Loan Modification Efforts*

Karimlou divided her tort cause of action into two counts, one entitled negligent misrepresentation and the other entitled constructive fraud. Her two claims both rest on the same factual allegations of fraud, regarding Aurora's allegedly false promise to modify Karimlou's loan. Karimlou asserts she was led on a "wild goose chase" for several years before Aurora foreclosed on the property. To support her theory Aurora had a duty to modify her loan, Karimlou cites generally to "[President] Obama['s] Administration['s] . . . government backed solutions for the lenders to work with the

---

<sup>5</sup> In her opposition to the demurrer, Karimlou made the legal conclusion Aurora assumed all the liabilities of the proceeding lenders because Aurora was assigned a beneficial interest in the loan. However, Karimlou failed to allege any factual or legal basis to support this conclusion. She did not discuss the scope or nature of the assignment. It would be speculation to assume Aurora agreed to assume the liabilities created by the allegedly fraudulent acts of a different lender's employees.

mortgagees to stay in their home[s].” She is under the mistaken impression Aurora owed a duty to modify her loan.

We recognize the California Legislature has enacted a new statutory scheme “to ensure that, as part of the nonjudicial foreclosure process, borrowers are considered for, and have meaningful opportunities to obtain available loss mitigation options, if any offered, by or through the borrower’s mortgage servicer, such as loan modifications or other alternatives to foreclosure.” (§ 2923.4). There are many new rules regarding how the mortgage servicer must communicate with the borrower (by letter and telephone) before it can record a notice of default. (See § 2923.5.) “It is the intent of the Legislature that the mortgage servicer offer the borrower a loan modification or workout plan if such a modification or plan is consistent with its contractual or other authority.” (§ 2923.6, subd. (b).)

However, the Legislature made very clear, “Nothing in the act . . . shall be interpreted to require a particular result of that process.” (§ 2923.4.) Indeed, if the mortgage servicer makes a written determination “that the borrower is not eligible for a first lien loan modification” the servicer may record a notice of default. (§ 2923.6, subd. (c)(1).) In short, Aurora had no duty under California law to modify the loan if Karimlou was deemed ineligible. Karimlou cites to no authority, and we found none, stating there was a duty under the federal law (based on President Obama’s wishes) to modify her loan.

Moreover, Karimlou’s complaint lacked the required specificity needed for a fraud or misrepresentation claim. To state a fraud cause of action Karimlou must adequately allege (1) a misrepresentation as to a material fact; (2) knowledge of its falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. (See *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) “In California, fraud must be pled specifically; general and conclusory allegations do not suffice.” (*Id.* at p. 645.) The normal policy of liberally construing pleadings against a demurrer will not be invoked to

sustain a fraud cause of action that fails to set forth such specific allegations. (*Ibid.*) The heightened pleading standard for fraud requires “pleading *facts* which “show how, when, where, to whom, and by what means the representations were tendered.” [Citation.]” (*Ibid.*) Thus, “every element of the cause of action for fraud must be alleged in full, factually and specifically.” (*Wilhelm v. Pray* (1986) 186 Cal.App.3d 1324, 1331.)

Here, Karimlou failed to specifically plead the “when,” “to whom,” “how,” and “where” of the alleged fraud. The complaint simply alleges unnamed “Defendants” requested documents to consider modifying Karimlou’s home, that she sent several bundles of documents to “Defendants” over a period of *two years*, and the lender did not modify her loan. She believes Aurora fraudulently stalled the foreclosure proceedings so it could collect more mortgage payments. The complaint does not explain how or by what means the fraudulent representations were conveyed to her. Karimlou does not attach any written communications from any lending institution suggesting she would actually qualify for a loan modification. She attached to her opposition to the demurrer copies of many “hardship letters” she wrote, begging the bank to consider modifying her loan. In addition, Karimlou makes no reference to any particular individual within Aurora who gave assurances the loan could be modified or that she qualified for a modification. Karimlou refers to only one bank representative named “Natasha,” but she does not allege Natasha was employed by Aurora. Moreover, Karimlou does not allege she relied on Natasha’s statements to her detriment. Rather, Karimlou quickly learned Natasha falsely congratulated her about a loan modification and that Natasha soon afterwards left her employment.

We appreciate the law now requires mortgage servicers to affirmatively offer the defaulting borrower a loan modification or workout plan (§ 2923.6). The new statutory scheme is full of detailed directions on the many steps mortgage servicers must take to contact the borrower, to assess their situation, to explore options, and to provide specific information. (See e.g. § 2923.5, subd. (a)(2).) We conclude, if it is determined

the borrower is not eligible for a loan modification, default can be entered, and thereafter borrowers should not be permitted to use the statutorily required levels of negotiations to later base a claim for fraud or misrepresentation without some other specific evidence of misconduct.

Karimlou also raised several contract-type claims related to Aurora's failure to modify the loan, i.e., breach of the covenant of good faith and fair dealing and, unjust enrichment. We conclude these claims also failed to state a viable cause of action.

Karimlou's complaint and opening brief fail to unambiguously identify a contract Aurora allegedly breached, which is a "prerequisite for any action for breach of the implied covenant of good faith and fair dealing." (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 49.) It appears the deed of trust is the only written instrument referenced in the complaint in which Aurora and Karimlou may be held to enforceable duties. We shall construe Karimlou's contract-based claims as arising from a purported breach of the deed of trust's implied covenant of good faith and fair dealing.

However, modifying the loan and stopping foreclosure proceedings are not benefits Karimlou has the right to receive under the deed of trust. An action alleging a breach of the implied covenant cannot be used by a plaintiff to try to extend existing, or to create new, obligations that were not contemplated by the parties when the contract was executed. (See *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 373.) Karimlou lists other conclusory and vague allegations of wrongful conduct by Aurora. But nowhere in her complaint or opening brief does Karimlou identify an express term or underlying purpose of the deed of trust that was breached or frustrated by Aurora's alleged actions, and she fails to assert any actions Aurora failed to perform that were reasonably contemplated by the terms of the contract and needed to accomplish the agreement's purposes. For these reasons, Karimlou's contract-based causes of action fail.

*iv. Unfair Business Practices*

California Business & Professions Code sections 17200 et seq.—UCL—prohibits “unfair competition,” which is defined as any “unlawful, unfair or fraudulent business act or practice.” In her opening brief, Karimlou simply states Aurora engaged in unfair business practices, but does not cite to any particular statute, rule, or case. To state a cause of action based on an unlawful business act or practice under the UCL, a plaintiff must allege facts sufficient to show a violation of some underlying law. (*People v. McKale* (1979) 25 Cal.3d 626, 635; *Olsen v. Breeze, Inc.* (1996) 48 Cal.App.4th 608, 618.) Nor does Karimlou allege how the unfair practices *caused* her damages. As we will explain, these omissions are fatal to her cause of action.

The approval of Proposition 64 by the California electorate in November 2004 substantially revised the standing requirements for private individuals seeking to bring an unfair competition claim. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 320 (*Kwikset Corp.*)) Business and Professions Code section 17204 limits private standing to bring a unfair competition action to “a person who has *suffered injury in fact* and has *lost money or property as a result* of unfair competition.” (Bus. & Prof. Code, § 17204, as amended by Prop. 64, as approved by voters, Gen. Elec. (Nov. 2, 2004) § 3, italics added.)

Although not verified in Karimlou’s complaint, we can presume her economic injury would be the nonjudicial foreclosure of her home. This economic loss would satisfy the minimal pleading requirements with regard to the economic injury prong of the statute. However, Karimlou’s action must also satisfy the causation prong of the standing requirements. Karimlou must allege a causal link between her economic injury and the purported unlawful acts allegedly committed by Aurora. (Bus. & Prof. Code, § 17204.) Karimlou defaulted on her loan before Aurora was assigned the deed of trust. It is undisputed her default lawfully triggered enforcement of the power of sale clause in the deed of trust, and it was the triggering of the power of sale clause that

subjected her home to nonjudicial foreclosure. Karimlou cannot show any of the purported violations have a causal link to her economic injury, especially since Aurora was uninvolved until after she defaulted. In light of these facts, we conclude the trial court properly sustained the demurrer.

III

The judgment is affirmed. Respondent shall recover its costs on appeal.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.