

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Cynthia Covington v. Aryming Asset Management, LLC; Madison
Management Services, LLC; PHH Mortgage Corporation; Veripro
Solutions, Inc.; Nationstar Mortgage, LLC; ARY LS 4 LLC; and
Does 1–50**

Covington · No. 2:25-cv-01734 WBS CSK · Decided September 16, 2025

SUMMARY

The United States District Court for the Eastern District of California granted PHH Mortgage Corporation’s motion to dismiss claims arising from a defaulted residential mortgage. The court held that the plaintiff had not adequately pleaded successor liability, breach of the implied covenant of good faith and fair dealing, a violation of 12 C.F.R. § 1026.41, or a California Unfair Competition Law claim against PHH. The dismissal was without prejudice, and the plaintiff was granted 14 days to amend.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 ----oo0oo---- 11 12 CYNTHIA COVINGTON, an No. 2:25-cv-01734 WBS
CSK individual, 13 Plaintiff, 14 MEMORANDUM AND ORDER RE: v. DEFENDANT PHH
MORTGAGE 15 CORPORATION’S MOTION TO ARYMING ASSET MANAGEMENT, LLC,
DISMISS 16 a limited liability company; MADISON MANAGEMENT SERVICES, 17 LLC;
PHH MORTGAGE CORPORATION; VERIPRO SOLUTIONS, INC.; 18 NATIONSTAR
MORTGAGE, LLC, a limited liability company; ARY 19 LS 4 LLC, a limited liability company;
and DOES 1-50, 20 inclusive, 21 Defendants.

22 ----oo0oo---- 23 Plaintiff Cynthia Covington brought this action against 24 defendants
Aryming Asset Management, LLC (“AAM”); Madison 25 Management Services, LLC; PHH
Mortgage Corporation (“PHH”); 26 Veripro Solutions, Inc.; Nationstar Mortgage, LLC
(“Nationstar”); 27 ARY LS 4 LLS; and Does 1-50, inclusive. (First Am. Compl. 28 1 (“FAC”)
(Docket No. 12).)

Plaintiff alleges various contract law 2 and statutory violations against defendants in connection
with a 3 defaulted mortgage. (See *id.*) Defendant PHH moves to dismiss 4 the claims brought
against it. (See Docket No. 15.) 5 I. Factual Background 6 This action concerns a residential loan
transaction. 7 (FAC ¶ 29.) Plaintiff initially obtained financing for the 8 purchase of her home

with an entity called Argent Mortgage 9 Corporation, LLC (“Argent”) in or around September 2005.

(See 10 id. ¶ 31.) Defendant PHH is a successor to an entity called 11 Ocwen Loan Servicing, LLC (“Ocwen”), which in turn was a 12 successor to Argent. (Id. ¶ 79.) Plaintiff asserts that “PHH 13 Mortgage Corporation is liable for the actions of its 14 predecessor[]... Ocwen.” (Id. ¶ 79.) 15 The financing plaintiff obtained from Argent 16 constituted a “piggyback mortgage,” under which Argent had a 17 first lien loan for 80 percent of the value of the property and a 18 second lien loan for the remaining 20 percent of the value of the 19 property.

(See id. ¶ 31.) On September 30, 2005, “a first 20 position Deed of Trust was recorded in favor of Argent... to 21 secure a loan in the amount of \$412,000,” and “a second position 22 Deed of Trust was recorded in favor of Argent... to secure a 23 loan in the amount of \$130,000.” (Id. ¶¶ 32-33.) At issue here 24 is the second loan. (Id. ¶ 33.) 25 Argent went out of business in or around 2007.

(See 26 id. ¶ 34.) Thereafter, “Plaintiff stopped receiving 27 correspondence related to” the second loan. (Id.) After Argent 28 went out of business, “the loan apparently began transferring 1 between beneficiaries and servicers.” (Id. ¶ 36.)

On or about 2 May 22, 2024, Ocwen transferred the beneficial interest in the 3 Deed of Trust to Nationstar pursuant to an Assignment of Deed of 4 Trust. (See id. ¶ 37.) That same day, Nationstar transferred 5 the beneficial interest in the Deed of Trust to ARY LS 4 LLC. 6 (See id. ¶ 38.) 7 Plaintiff began receiving statements demanding over 8 \$180,000 for the second loan in July or August 2024.

(See id. ¶ 9 42.) In September 2024, defendant AAM sent Plaintiff a demand 10 for \$271,304.71 to be paid by September 30, 2024, upon penalty of 11 foreclosure. (See id. ¶ 44.) A notice of default in the amount 12 of \$183,295.90 was recorded for the loan and corresponding 13 property in November 2024. (See id. ¶ 45.) 14 On February 25, 2025, a trustee’s sale of plaintiff’s 15 property was recorded.

(See id. ¶ 49.) Plaintiff filed a 16 lawsuit against defendants in state court on May 16, 2025, which 17 PHH removed to federal court on June 19, 2025. (See Docket No. 1 18 at 1-2.) Plaintiff filed her FAC on July 17, 2025. 19 II. Legal Standard 20 Federal Rule of Civil Procedure 12(b)(6) allows for 21 dismissal when a complaint fails to state a claim upon which 22 relief can be granted.

See Fed. R. Civ. P. 12(b)(6). “A Rule 23 12(b)(6) motion tests the legal sufficiency of a claim.” Navarro 24 v. Block, 250 F.3d 729, 732 (9th Cir. 2001). The inquiry before 25 the court is whether, accepting the allegations in the complaint 26 as true and drawing all reasonable inferences in the plaintiff’s 27 favor, the complaint has alleged “sufficient facts... to 28 support a

cognizable legal theory,” *id.*, and thereby stated “a claim to relief that is plausible on its face,” *Bell Atl.*

Corp. 2 v. Twombly, 550 U.S. 544, 570 (2007). Courts are not, however, “required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); see *Twombly*, 550 U.S. at 555. III. Discussion A. Successor Liability As plaintiff’s claims against PHH largely rest upon the theory that PHH is liable for the actions of its predecessors.

Under California law, “[t]he general rule of successor nonliability provides that where a corporation purchases, or otherwise acquires by transfer, the assets of another corporation, the acquiring corporation does not assume the selling corporation’s debts and liabilities.” *Fisher v. Allis–Chalmers Corp. Prod. Liab. Tr.*, 95 Cal.App.4th 1182, 1188 (2002).

However, “a successor company may be liable for a predecessor’s actions if: (1) the successor expressly or impliedly agrees to assume the subject liability..., (2) the transaction amounts to a consolidation or merger of the successor and the predecessor, (3) the successor is a mere continuation of the predecessor, or (4) the transfer of assets to the successor is for the fraudulent purpose of escaping liability for the predecessor’s debts.” *City of Los Angeles v. Wells Fargo & Co.*, 252 F.Supp.3d 1047, 1062 (C.D.

Cal. 2014) (citing *CenterPoint Energy, Inc. v. Superior Ct.*, 157 Cal.App.4th 1101, 1120 (2007)) (alterations in original). A transaction constitutes a merger “where one corporation takes all of another’s assets without providing any consideration that could be made available to meet claims of the other’s creditors or where the consideration consists wholly of shares of the purchaser’s stock which are promptly distributed to the seller’s shareholders in conjunction with the seller’s liquidation.” *Ray v. Alad Corp.*, 19 Cal.3d 22, 28, 560 P.2d 3, 7 (1977) (citation omitted).

Plaintiff states only that “PHH is a successor by merger to Ocwen Loan Serving, LLC, which was a successor by merger to Argent Mortgage Corporation, LLC.” (FAC ¶ 9.) That is insufficient. Plaintiff does not allege that PHH “[took] all of [Ocwen’s] assets without providing any consideration that could be made available to meet claims of [Ocwen’s] creditors or...

the consideration consist[ed] wholly of shares of [PHH’s] stock.” *Ray*, 19 Cal.3d at 28, 560 P.2d at 7; cf. *Schwartz v. Pillsbury Inc.*, 969 F.2d 840, 846 (9th Cir. 1992) (finding no successor liability by merger where neither condition in *Ray* was met). Accordingly, plaintiff has failed to adequately plead that PHH can be held liable for the actions of its predecessors.

B. Breach of Implied Covenant of Good Faith and Fair Dealing “Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.”

24 Marsu, B.V. v. Walt Disney, Co., 185 F.3d 932, 937 (9th Cir. 25 1999). “In order to establish a breach of the implied covenant 26 of good faith and fair dealing under California law, a plaintiff 27 must show: (1) benefits due under the [contract] were withheld; 28 and (2) the reason for withholding benefits was unreasonable or 1 without proper cause.” Guebara v. Allstate Ins.

Co., 237 F.3d 2 987, 992 (9th Cir. 2001). “[O]nly parties to an agreement can be 3 liable for breach [of] the covenant of good faith.” Hammes Co. 4 Healthcare, LLC v. Tri-City Healthcare Dist., 801 F.Supp.2d 1023, 5 1039 (S.D. Cal. 2011). 6 Plaintiff argues that PHH breached the implied covenant 7 of good faith and fair dealing under a theory of successor 8 liability.

(See FAC ¶¶ 79-83.) She claims that, because PHH is 9 a “successor by merger” to Argent -- the entity with whom she 10 originally entered into the loan agreement (see FAC ¶ 31.) -- she 11 was in a contractual relationship with PHH that PHH allegedly 12 interfered with. (See FAC ¶¶ 79-80, 83.)

As discussed above, 13 plaintiff has failed to plead that PHH is liable for its 14 predecessors’ actions or has assumed its predecessors’ 15 obligations, such as the loan agreement. 16 Plaintiff also alleges that PHH was independently 17 required to provide her with periodic statements. (See FAC ¶¶ 18 80-83.)

As Plaintiff herself acknowledges, that obligation rests 19 with loan servicers. (See id. ¶ 82.) Plaintiff does not allege 20 that PHH ever serviced her loan (see id. ¶¶ 79-83.), and, 21 correspondingly, that PHH “withheld” any “benefit[] due under the 22 [contract].” Guebara, 237 F.3d at 992. 23 Accordingly, plaintiff’s claim for breach of the 24 implied covenant of good faith and fair dealing will be dismissed 25 as to PHH.

26 C. Violation of 12 C.F.R. § 1026.41 27 12 C.F.R. § 1026.41(a)(1) provides that “[a] servicer 28 of a transaction... shall provide the consumer, for each 1 billing cycle, a periodic statement” that meets certain 2 requirements. A “servicer” includes a “creditor, assignee, or 3 servicer, as applicable,” but “[a] creditor or assignee that does 4 not currently own the mortgage loan” at-issue is “not subject to 5 the requirement... to provide a periodic statement.” Id. 6 §(a)(2).

7 Plaintiff’s allegations against PHH for this claim rest 8 again on her theory of successor liability. (See FAC ¶ 99.) As 9 discussed above, plaintiff has failed to plead that PHH is liable 10 for its predecessors’ actions. Plaintiff also does not allege 11 that PHH ever independently owned or serviced the loan agreement 12 as required under 12 C.F.R. § 1026.41(a)(2).

(See FAC ¶ 102.) 13 Accordingly, plaintiff’s claim under 12 C.F.R. § 14 1026.41 will be dismissed as to PHH. 15 D. Violation of Cal. Bus. & Prof. Code § 17200 et seq. 16 California’s Unfair Competition Law (“UCL”) prohibits 17 “any unlawful, unfair, or fraudulent business act or practice.” 18 Lane v. Vitek Real Est. Indus. Grp., 713 F.Supp.2d 1092, 1103 19 (E.D.

Cal. 2010) (Shubb, J.). A claim under the UCL “is 20 generally derivative of some other illegal conduct or fraud 21 committed by a defendant, and ‘[a] plaintiff must state with 22 reasonable particularly the facts supporting the statutory 23 elements of the violation.’” Id. (quoting Khoury v. Maly’s of 24 Cal., Inc., 14 Cal.App.4th 612, 619 (1993)). 25 Plaintiff’s allegations for this claim lump all 26 defendants together.

(See FAC ¶¶ 107-113.) By not 27 “identif[ying] a specific practice of” PHH she contends violates 28 the UCL, *Lingad v. Indymac Fed. Bank*, 682 F.Supp.2d 1142, 1155 ee nee OE OS IIE EIEN 1 (E.D. Cal. 2010) (Burrell, Jr., J.), plaintiff’s allegations fall 2 short of “Federal Rule of Civil Procedure 8(a) (2), which requires 3 a short and plain statement of the claim to put defendants on 4 sufficient notice of the allegations against them,” *Gauvin v. 5 Trombatore*, 682 F.Supp.1067, 1071 (N.D.

Cal. 1988). Although 6 plaintiff alludes to breach of contract, breach of the implied 7 covenant of good faith and fair dealing, and violations of the 8 FDCPA as the underlying predicates for her UCL claim (see FAC 9 108.), the court has found that plaintiff’s breach of implied 10 covenant claim is inadequately pled, and plaintiff has not 11 alleged that PHH purportedly breached the contract or violated 12 the FDCPA.

Accordingly, plaintiff’s claim under the UCL will be 13 | dismissed as to PHH. 14 IT IS THEREFORE ORDERED that defendants’ motion to 15 dismiss (Docket No. 15) be, and the same hereby is, GRANTED. 16 Counts III, V, and VII of the complaint are DISMISSED as against 17 defendant PHH Mortgage Corporation. Plaintiff is given 14 days 18 from the date of this Order to file an amended complaint if she 19 | can do consistent with this Order.

20 | Dated: September 16, 2025 tleom ah. A. be—~ 21 WILLIAM B. SHUBB UNITED STATES DISTRICT JUDGE 22 23 24 25 26 27 28