

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:
Julie Elizabeth Sagatelian,

Debtor.

Case No.: 2:24-bk-17763-NB
Chapter: 13

Julie Sagatelian,

Plaintiff,

v.
U.S. Bank, N.A., as Trustee for Banc of
America Funding Corporation Mortgage
Pass-through Certificates Series 2007-C,
and Nationstar Mortgage LLC dba Mr.
Cooper,

Defendants.

Adv. No.: 2:24-ap-01262-NB

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Hearing:
Dates: March 24, 2026
Time: 11:00 a.m.
Place: Courtroom 1545
255 E. Temple Street
Los Angeles, CA 90012
(or via Zoomgov per posted procedures)

1. INTRODUCTION

This Court conducted a hearing on Defendants' motion for summary judgment (adv. dkt. 34–38, the "MSJ") at the time and place set forth above, and took the MSJ under submission at the conclusion of the hearing. This written order memorializes and supplements this Court's tentative ruling posted prior to the hearing and attached hereto as **Exhibit A**. For the reasons stated in the tentative ruling, in this order, and on the

1 record at the hearing (incorporated herein as permitted by Rule 52(a) (Fed. R. Civ. P.),
2 made applicable by Rule 7052 (Fed. R. Bankr. P.)), this order grants summary judgment
3 in Defendants' favor.

4 **2. UNAUTHORIZED SUPPLEMENTAL BRIEFING**

5 Subsequent to the hearing, Plaintiff/Debtor filed an unauthorized supplemental
6 brief (dkt. 58 & 60), to which Defendants responded (adv. dkt. 61). First, this Court
7 disregards Plaintiff/Debtor's supplemental brief because it was unauthorized.

8 Second, and alternatively, the supplemental brief is unpersuasive.
9 Plaintiff/Debtor's assertion that Simon-Ward Brown lacks personal knowledge of the
10 statements in his declaration (see Plaintiff/Debtor Supplemental Brief (adv. dkt. 60)
11 p. 3:5–10) is unavailing, because as Defendants point out Mr. Ward-Brown does have
12 "personal knowledge of the contents of all of the business records that are relevant to
13 [the loan at issue]" based on his position as a Principal Litigation Ambassador employed
14 by Defendant Nationstar Mortgage LLC dba Mr. Cooper ("Mr. Cooper"). Defendants'
15 Supplemental Brief (adv. dkt. 61) pp. 2:10–4:2.

16 Plaintiff/Debtor maintains that Mr. Ward-Brown's deposition testimony
17 establishes that he lacks personal knowledge with respect to his statements regarding
18 Plaintiff/Debtor's loan. Plaintiff/Debtor Supplemental Brief (adv. dkt. 60) p. 3:5–10. To
19 the contrary, it does the opposite.

20 Plaintiff/Debtor does not clearly explain the basis for her allegation that Mr. Ward-
21 Brown's deposition testimony shows a lack of personal knowledge. As best this Court
22 can determine, her theory appears to be that Mr. Ward-Brown acquired his knowledge
23 regarding the loan from his review of Mr. Cooper's business records, rather than from
24 day-to-day involvement in all activities pertaining to the loan, and that somehow this
25 disqualifies Mr. Ward-Brown from testifying as to the loan. If that is in fact
26 Plaintiff/Debtor's theory, it is incorrect as a matter of law, as explained in *Schaffer v.*
27 *Litton Loan Servicing, LP*, No. CV 05-07673-MMM CTX, 2008 WL 9758641, at *15
28 (C.D. Cal. July 31, 2008):

1 It is permissible to infer from a declarant's position within a company or
2 business that he has personal knowledge of the contents of the company's
3 business records. See *E.E.O.C. v. Peabody Coal Co.*, 214 F.R.D. 549,
4 562 (D. Ariz. 2002) (holding that a corporation's general counsel is
5 presumed to have personal knowledge of corporate agreements), *rev'd on*
6 *other grounds*, 400 F.3d 774 (9th Cir. 2005). Such a declarant may
7 properly testify to information contained in the business records so long as
8 it is within his personal knowledge. See, e.g., *Zakre v. Norddeutsche*
9 *Landesbank Girozentrale*, 396 F.Supp.2d 483, 504 (S.D.N.Y.2005) ("An
10 affiant may also testify as to the contents of records that she reviewed in
11 her official capacity," citing *Searles v. First Fortis Life Ins. Co.*, 98
12 F.Supp.2d 456, 461 (S.D.N.Y.2000)); *Dow v. Abercrombie & Kent*
13 *International, Inc.*, No. 99 C 6923, 2000 WL 688949, *8 n. 4 (N.D.Ill. May
14 24, 2000) ("The Dows contend Fitch's declaration fails to meet the
15 requirements of Fed.R.Civ.P. 56(e) because it is not based on his
16 personal knowledge and is instead based on speculation and conjecture.
17 However, the statements regarding A & K International's lack of
18 knowledge of prior attacks concerns information in A & K International's
19 business records and within the personal knowledge of a vice-president,
20 and Fitch reviewed those records in preparing his affidavit.... Such
21 statements are admissible," citing *Jenkins v. Heintz*, 124 F.3d 824, 831
22 (7th Cir.1997) (stating that the head of a law firm "can and has permissibly
23 made statements under oath concerning the firm's numerous business
24 records, as well as his own knowledge as a firm partner who dealt chiefly
25 with the bank"). [*Schaffer v. Litton Loan Servicing, LP*, No. CV 05-07673-
26 MMM CTX, 2008 WL 9758641, at *15 (C.D. Cal. July 31, 2008).]

17 **3. PLAINTIFF/DEBTOR'S UNFOUNDED ASSERTIONS THAT THE AUTOMATIC** 18 **STAY WAS VIOLATED, AND HER UNPERSUASIVE EVIDENTIARY OBJECTIONS**

19 Plaintiff/Debtor asserts that Defendants violated the automatic stay in her
20 parents' bankruptcy case by sending her parents a notice that the interest rate on the
21 loan had been increased while the bankruptcy was pending. Opposition (adv. dkt. 48)
22 p. 11:20–24. First, this argument is incorrect as a matter of law. Nothing prohibited
23 Defendants from altering the interest rate on the loan during bankruptcy (provided that
24 Defendants made no attempt to collect during the bankruptcy – and there are no
25 allegations that they did).

26 Second, Defendants submitted papers and additional evidence to refute
27 Plaintiff/Debtor's contention that they violated the automatic stay (see adv. dkt. 55–57).
28 Plaintiff/Debtor objects to these papers and requests that they be stricken, asserting

1 that Defendants are improperly attempting to introduce new evidence in their reply
2 papers that should have been presented in the MSJ, thereby depriving Plaintiff/Debtor
3 of an opportunity respond (*see* adv. dkt. 57).

4 Plaintiff/Debtor's objection is overruled and this Court declines to strike the
5 aforementioned papers (adv. dkt. 55–57), because they are directly responsive to
6 Plaintiff/Debtor's arguments regarding Defendants' alleged violation of the automatic
7 stay. Put another way, Defendants' papers do not introduce new evidence in support of
8 their request for summary judgment that should have been presented in Defendants'
9 original motion papers; instead, the papers properly refute an additional argument that
10 Plaintiff/Debtor raised.

11 In addition, for the reasons discussed in Section 2, above, Plaintiff/Debtor's
12 evidentiary objections (adv. dkt. 51) to Mr. Ward-Brown's declaration are also overruled.
13 From an evidentiary standpoint, it is Plaintiff/Debtor, not Defendants, whose assertions
14 are frequently unsupported.

15 **4. PLAINTIFF/DEBTOR HAS FAILED TO IDENTIFY ANY GENUINE DISPUTE OF**
16 **MATERIAL FACT SUFFICIENT TO DEFEAT DEFENDANTS' ENTITLEMENT TO**
17 **SUMMARY JUDGMENT**

18 According to Plaintiff/Debtor, genuine disputes of material fact defeat
19 Defendants' entitlement to summary judgment. For example, Plaintiff/Debtor asserts
20 that “[a] dispute concerning whether or not the Borrowers were in default at the time of
21 their deaths” means that triable issues of fact exist with respect to Plaintiff/Debtor's
22 breach of contract claim. Opposition (adv. dkt. 48) p. 20:22–24. But Plaintiff/Debtor's
23 assertion is contradicted by her own deposition testimony:

24 **Defendants' Question:** Let me ask one question I probably should have
25 asked sometime before. Is there any dispute that the loan was in default
26 when your father passed away?

27 **Plaintiff/Debtor's Answer:** No. [Sagatelian Depo. (adv. dkt. 37) p.
28 54:10–14.]

1 Plaintiff/Debtor also contends that she has “raised material fact issues
2 demonstrating that Mr. Cooper failed to promptly establish a single point of contact and
3 provide her one or more direct means of communication.” Opposition (adv. dkt. 48) p.
4 26:5–8. Once again, that contention is contradicted by the record. Not only does
5 Plaintiff/Debtor’s own evidence show that in connection with multiple loan modification
6 requests a single point of contact was offered (*see, e.g.*, Opposition (adv. dkt. 48) Ex. E
7 (stating that “your Dedicated Loan Specialist is Shila Dichirico-Rios” and providing a
8 telephone number and mailing address)), but her own correspondence complains about
9 the single point of contact that she was given (*see id.* at Ex. G (letter to Mr. Cooper
10 stating that “our ‘Dedicated Loan Specialist’ ... is always ‘on the phone’ and when we
11 ask for the Specialist to call us back, we never hear from her”). In other words,
12 Plaintiff/Debtor might have been frustrated by her single point of contact, but that is very
13 different from (i) alleging that there was no such person, (ii) failing to cite evidence, and
14 (iii) presenting evidence that actually shows that on multiple occasions she was in fact
15 given a single point of contact.

16 More generally, throughout her opposition papers Plaintiff/Debtor takes the
17 position that various issues of fact are disputed, but she fails to cite to evidence in the
18 record backing up her contention that a dispute exists. And in some cases – such as in
19 the examples cited above – Plaintiff/Debtor makes assertions that are in no way
20 consistent with the record.

21 It is not the task of this Court “to scour the record in search of a genuine issue of
22 triable fact.” *Keenan v. Allan*, 91 F.3d 1275, 1278–79 (9th Cir. 1996). Nevertheless,
23 this Court has carefully reviewed the record to see if there is merit to any of
24 Plaintiff/Debtor’s arguments. Not only has this Court found a lack of merit, but to the
25 contrary what this Court has found is that the opposition papers are inaccurate and
26 misleading.

27

28

1 **5. CONCLUSION**

2 This Court recognizes how difficult it is to lose the family home, particularly after
3 losing one's parents. Moreover, it can be difficult to deal with bureaucracies that are
4 reluctant to communicate with an heir or a trustee – and although that reluctance
5 sometimes arises, in this Court's experience, from broad protections of customers'
6 privacy, or of the rights of unknown heirs, or safeguards against potential scams, etc.,
7 those rationales can only go so far. Historically, some loan originators, servicers, and
8 other persons in the lending industry have gone beyond bureaucratic fumbling and have
9 at times engaged in financial elder abuse and other wrongdoing. This Court was
10 anticipating that there might be evidence of some sort of legally cognizable wrongdoing
11 in this case, but no such evidence has been forthcoming.

12 Plaintiff/Debtor's burden was to rebut the evidence and arguments in the MSJ by
13 presenting sufficient factual and legal grounds to establish a genuine dispute as to
14 some violation of law or contract by Defendants. She has not done so.

15 As this Court pointed out in the adopted Tentative Ruling:

16 In common sense terms, a loan modification request is a request by
17 a borrower (or their authorized representative or successor in interest) to
18 pay less, or later, than what they contractually agreed to. This Court is not
19 aware of any legal cause of action against a lender for declining to do
20 those things, even if they do so in a way that a borrower or a court would
21 not consider sufficiently "careful[]" or "complete[]." [Last page, Part "(3)(h)," of the adopted Tentative Ruling attached hereto as **Exhibit A.**]

22 To be clear, the record does not even show any unfairness, lack of care, or lack
23 of completeness by Defendants. But, supposing for the sake of discussion that
24 Defendants had reviewed some of Plaintiff/Debtor's loan modification requests in a way
25 that was somehow unfair or unprofessional (for which, again, there is no evidence),
26 Defendants have met their initial burden to show that any acts or omissions by them did
27 not rise to the level of legally cognizable claims against them. That shifted the burden
28 to Plaintiff/Debtor to rebut Defendants' showing by establishing the existence of a
genuine dispute of material fact. She has not done so.

1 **5. CONCLUSION**

2 Based upon the foregoing, it is hereby ORDERED that Defendants are entitled to
3 summary judgment in their favor on all claims asserted in Plaintiff/Debtor's Complaint.
4 Defendants are directed to lodge a proposed form of summary judgment within **seven**
5 **days** after this order is entered on the CM/ECF docket.

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24 Date: April 20, 2026



Neil W. Bason
United States Bankruptcy Judge

Exhibit A – Adopted Tentative Ruling

Grant Defendant’s motion for summary judgment. Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court’s website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Key documents reviewed: Plaintiff/Debtor’s Complaint (adv. dkt. 1); Motion for Summary Judgment filed by U.S. Bank, N.A. (adv. dkt. 34, the “MSJ”), Request for Judicial Notice (adv. dkt. 35), Statement of Uncontroverted Facts (adv. dkt. 36), and Declarations of Jennifer M. Wade (adv. dkt. 37) and Simon Ward-Brown (adv. dkt. 38); Plaintiff/Debtor’s Opposition (adv. dkt. 48), Request for Judicial Notice and Errata (adv. dkt. 49 & 53), Statement of Genuine Issues (adv. dkt. 50), and Evidentiary Objections (adv. dkt. 51); Defendant’s Reply to Opposition (adv. dkt. 54), Reply to Statement of Genuine Issues (adv. dkt. 55), and Request for Judicial Notice (adv. dkt. 56); Plaintiff/Debtor’s request to strike (adv. dkt. 57) Defendant’s Reply to Plaintiff/Debtor’s Statement of Genuine Issues (adv. dkt. 55), and Request for Judicial Notice (adv. dkt. 56)

(1) Background

Plaintiff/Debtor inherited property located at 2168 Highland Oaks Drive, Arcadia, CA 91006 (the “Property”) from her parents. At the time Plaintiff/Debtor inherited the Property, it was encumbered by a Deed of Trust in favor of U.S. Bank, N.A. (“Defendant”).

Plaintiff/Debtor alleges that Defendant failed to respond to her application to modify the loan against the Property in the manner required by Cal. Civ. Code 2923.1 *et seq.* Opp. (adv. dkt. 48) pp. 24:24–27:12. She also asserts claims for breach of contract, breach of the duty of good faith and fair dealing, violations of the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), violations of the Garn St. Germain Depository Institutions Act (12 U.S.C. 1701j-3(d)), violations of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), and for declaratory and injunctive relief.

Defendant moves for summary judgment in its favor, and Plaintiff/Debtor opposes the motion.

(2) Legal standards

Under Rule 56(a) (Fed. R. Civ. P., made applicable by Rule 7056, Fed R. Bankr. P.), summary judgment (on all or on part of a claim) is proper when the pleadings, discovery, and affidavits show that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law. The evidence and inferences therefrom must be viewed in the light most favorable to the non-moving party. *Matsushita Elec. Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). But a mere “scintilla” of evidence in opposition to summary judgment is insufficient. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986).

1 **"Genuine"**: If one party's "version of events is so utterly discredited by the
2 record that no reasonable jury could have believed him" summary judgment is
3 appropriate. *Scott v. Harris*, 550 US 372, 380 (2007). But the Ninth Circuit has
4 observed that "cases where intent is a primary issue generally are inappropriate for
5 summary judgment[.]" *Provenz v. Miller*, 102 F.3d 1478, 1489 (9th Cir. 1996). As the
6 Bankruptcy Appellate Panel for the Ninth Circuit has explained: "Fraud claims, in
7 particular, normally are so attended by factual issues (including those related to intent)
8 that summary judgment is seldom possible." *In re Stephens*, 51 B.R. 591, 594 (9th Cir.
9 BAP 1985).

10 **"Material"**: Material facts which would preclude entry of summary judgment are
11 those which, under applicable substantive law, could affect the outcome of the case.
12 The substantive law will identify which facts are material. *Anderson v. Liberty Lobby,*
13 *Inc.*, 477 U.S. 242, 248 (1986). At the summary judgment stage, the court does not
14 weigh the evidence and determine the truth of the matter, but determines whether there
15 is a genuine issue for trial. *Id.* at 249.

16 **Shifting burdens**: The moving party bears the initial burden of showing that
17 there is no genuine issue of material fact. If the moving party meets its initial burden,
18 the burden then shifts to the non-moving party to set out, by affidavits or admissible
19 discovery material, specific facts showing a genuine issue for trial. *Celotex*, 477 U.S. at
20 324. The party opposing summary judgment must produce affirmative evidence that is
21 sufficiently probative on the issue that a jury reasonably could rely on that evidence to
22 decide the issue in his or her favor at trial. *Matsushita Elec. Indust. Co., Inc. v. Zenith*
23 *Radio Corp.*, 475 U.S. 574, 588 (1986). Without such evidence, there is no reason for a
24 trial. *Celotex*, 477 U.S. at 323. See also *Nissan Fire and Marine Ins. Co. v. Fritz*, 210
25 F.3d 1099, 1103 (9th Cir. 2000) (analyzing burdens of production and proof).

26 **Evidence**: Finally, the evidence presented by the parties must be admissible, or
27 at least it must be capable of later being presented in admissible form if the litigation
28 were to proceed to trial. *JL Beverage Co., LLC v. Jim Beam Brands Co.*, 828 F.3d
1098, 1110 (9th Cir. 2016); *Sec. & Exch. Comm'n v. Strategic Glob. Invs., Inc.*, 262
F.Supp.3d 1007, 1019 (S.D. Cal. 2017) (hearsay evidence could be considered on
summary judgment "if the content of the evidence proffered could later be provided in
an admissible form at trial") (citing *JL Beverage*).

A party cannot create a genuine issue of fact simply by filing a sworn statement
that contradicts an earlier sworn statement. See, e.g., *Kennedy v. Allied Mut. Ins. Co.*,
952 F.2d 262, 266 (9th Cir. 1991).

(3) Discussion

(a) Plaintiff/Debtor's request to strike (adv. dkt. 57) Defendant's Reply to
Plaintiff/Debtor's Statement of Genuine Issues (adv. dkt. 55), and Request for Judicial
Notice (adv. dkt. 56)

Plaintiff/Debtor asserts that by filing a Reply to Plaintiff/Debtor's Statement of
Genuine Issues (adv. dkt. 55) and an additional Request for Judicial Notice (adv. dkt.
56), Defendant is improperly attempting to introduce evidence in connection with its
reply papers that should have been first presented in the MSJ. The tentative ruling is to
overrule Plaintiff/Debtor's objection, and to decline to strike these documents, based on

1 a determination that the documents are directly responsive to arguments raised by
2 Plaintiff/Debtor in her opposition papers.

3 (b) Plaintiff/Debtor has standing

4 Defendant's first argument is that Plaintiff/Debtor lacks standing with respect to
5 all her claims because she was not a party to the loan transaction. MSJ (adv. dkt. 34)
6 p. 9:7–10:9. Defendant cites *Wilkinson v. PHH Mortg. Corp.*, No. 2:24-CV-1416 TLN
7 AC PS, 2025 WL 565971 (E.D. Cal. Feb. 20, 2025), *report and recommendation*
8 *adopted*, No. 2:24-CV-01416-TLN-AC, 2025 WL 1262873 (E.D. Cal. May 1, 2025) and
9 *Cleveland v. Deutsche Bank Nat. Tr. Co.*, No. 08-CV-0802-JM-(NLS), 2009 WL 250017,
10 (S.D. Cal. Feb. 2, 2009) in support of its position.

11 In *Wilkinson*, the court's conclusion that plaintiffs lacked standing was based in
12 part on the fact that plaintiffs brought the case "on behalf of themselves, and not on
13 behalf of the decedent's estate." *Wilkinson*, 2025 WL 565971, at *4 n. 2. The
14 *Wilkinson* court further observed that "even if plaintiffs were attempting to bring this
15 case on behalf of the estate, dismissal would be necessary because they have not
16 alleged facts demonstrating that they have any sort of legal authority to do so, such as
17 facts demonstrating that one of them was legally appointed in probate as the executor,
18 trustee, or administrator of the estate." *Wilkinson*, 2025 WL 565971, at *4 n. 2 (internal
19 citation omitted).

20 Here, by contrast, Plaintiff/Debtor alleges that she is the trustee of the trust that
21 holds title to the Property. The tentative ruling is that unlike the situation in *Wilkinson*,
22 Plaintiff/Debtor has alleged sufficient facts to establish that she has standing in her
23 capacity as a trustee.

24 In *Cleveland*, the court dismissed the complaint as to a non-borrower on standing
25 grounds, but with leave to amend to provide the non-borrower an opportunity to allege
26 facts establishing that the non-borrower possessed an "interest in the underlying
27 property, transactions or occurrences." *Cleveland*, 2009 WL 250017, at *2. The
28 tentative ruling is that *Cleveland* does not support Defendant's position because unlike
the situation in that case, Plaintiff/Debtor has alleged facts showing she has an interest
in the Property – as discussed above, Plaintiff alleges that she is the trustee of the trust
that holds title to the Property.

In sum, this Court is not persuaded that Debtor lacks standing. Nevertheless, the
tentative ruling is that Defendant is entitled to summary judgment on the other grounds
set forth below.

(c) Defendant is entitled to summary judgment in its favor with respect to
Plaintiff/Debtor's claims under Cal. Civ. Code 2923.1

The tentative ruling is that Defendant is entitled to summary judgment in its favor
with respect to Plaintiff/Debtor's claims under Cal. Civ. Code 2923.1 *et seq.* (the
"Homeowner Bill of Rights"). There is no genuine dispute that Defendant reviewed
Plaintiff/Debtor's application for a loan modification on eight different occasions, and
determined each time that Plaintiff/Debtor did not qualify. MSJ (adv. dkt. 34) p. 13:24–
25. Nor is there any genuine dispute that each time Defendant denied Plaintiff/Debtor's
loan modification application, Defendant issued a denial letter explaining the basis for
the decision. Reply (adv. dkt. 54) p. 2:11–13.

1 Plaintiff/Debtor alleges that Defendant violated the “dual tracking” provisions of
2 the Homeowner Bill of Rights. The tentative ruling is that regardless of whether there is
3 any genuine dispute of fact as to this issue, Plaintiff/Debtor’s remedy for any violation
4 would be an injunction halting any scheduled foreclosure sale until the violations have
5 been cured. However, because no foreclosure sale is currently scheduled, the
6 injunction remedy is not available to Plaintiff/Debtor.

7 Moreover, this Court’s understanding of the “dual tracking” prohibition is that a
8 borrower cannot obtain endless continuances of foreclosure by filing endless requests
9 for loan modifications after denial of any prior loan modifications. In the absence of
10 persuasive legal arguments and evidence from Debtor showing precisely how any dual
11 tracking prohibition has been violated, Debtor’s arguments on this issue are not
12 persuasive.

13 (d) Defendant is entitled to summary judgment in its favor with respect to
14 Plaintiff/Debtor’s claims under the Truth in Lending Act (“TILA”)

15 Plaintiff/Debtor argues that genuine disputes exist with respect to her claims
16 under TILA, because Plaintiff/Debtor “was misled in her efforts to comply with the loan
17 modification process and, in addition, she was misled about the foreclosure process and
18 was told that would be halted while the loan modification process was occurring.” Opp.
19 (adv. dkt. 48) p. 23:19–26.

20 The tentative ruling is that Defendant is entitled to summary judgment in its favor
21 as to Plaintiff/Debtor’s TILA claims, because Plaintiff/Debtor’s allegations that she was
22 misled during the loan modification are not actionable under TILA, for the reasons
23 stated by Defendant.

24 (e) Defendant is entitled to summary judgment in its favor with respect to
25 Plaintiff/Debtor’s claims under the Federal Fair Debt Collections Practices Act
26 (“FDCPA”)

27 In her opposition, Plaintiff/Debtor merely states the elements of the FDCPA. She
28 does not point to any specific facts that are in genuine dispute suggesting that she may
be able to prevail upon her FDCPA claims. A party asserting that a fact is genuinely
disputed within the context of a motion for summary judgment must cite “to particular
parts of materials in the record, including depositions, documents, electronically stored
information, affidavits or declarations, stipulations ..., admissions, interrogatory answers,
or other materials” Rule 56(c)(1)(A) (Fed. R. Civ. P., made applicable by Rule 7056,
Fed. R. Bankr. P.). The tentative ruling is that because Plaintiff/Debtor has not met this
burden, Defendant is entitled to summary judgment in its favor on Plaintiff/Debtor’s
FDCPA claims.

(f) Defendant is entitled to summary judgment in its favor with respect to
Plaintiff/Debtor’s claims for breach of contract

Plaintiff/Debtor asserts that a genuine dispute exists regarding whether
Plaintiff/Debtor’s parents “were in default at the time of their deaths” Opp. (adv. dkt.
48) p. 20:22–24. Plaintiff/Debtor’s position is that a genuine dispute is present because
the testimony proffered by Defendant in support of the alleged default – a declaration
from Simon Ward-Brown, an employee of Defendant – is hearsay.

1 The tentative ruling is that Mr. Ward-Brown's testimony is admissible as a record
2 of a regularly conducted activity under Rule 803(7) (Fed. R. Evid.). Nor has Debtor
3 presented evidence and argument to overcome Defendant's *prima facie* showing of a
4 default. Accordingly, the tentative ruling is that there is no genuine dispute that
5 Plaintiff/Debtor's parents were in default at the time of their deaths, and that as a result
6 of this non-performance under the loan contract, Defendant is entitled to summary
7 judgment in its favor with respect to Plaintiff/Debtor's claim for breach of contract.

8 (h) Defendant is entitled to summary judgment in its favor with respect to
9 Plaintiff/Debtor's claims for breach of the duty of good faith and fair dealing

10 Plaintiff/Debtor cites *Alvarez v. BAC Home Loans Servicing, L.P.*, 228 Cal. App.
11 4th 941, 943 (Cal. 2014) for the proposition that Defendant can be held liable for
12 breaching a duty to care it owed Plaintiff/Debtor with respect to the processing of
13 Plaintiff/Debtor's application for a loan modification. Opp. (adv. dkt. 34) p. 22:9–12.
14 The tentative ruling is that, as Defendant points out, *Alvarez* is of no assistance to
15 Plaintiff/Debtor because it was subsequently overruled by *Sheen v. Wells Fargo Bank,*
16 *N.A.*, 12 Cal. 5th 905 (Cal. 2022), which held that lenders do not owe "a tort duty to
17 'process, review and respond carefully and completely to [a borrower's] loan
18 modification application[s].'" *Sheen*, 12 Cal. 5th 905, 925 (Cal. 2022).

19 In common sense terms, a loan modification request is a request by a borrower
20 (or their authorized representative or successor in interest) to pay less, or later, than
21 what they contractually agreed to. This Court is not aware of any legal cause of action
22 against a lender for declining to do those things, even if they do so in a way that a
23 borrower or a court would not consider sufficiently "careful[]" or "complete[]."

24 (i) Defendant is entitled to summary judgment in its favor with respect to
25 Plaintiff/Debtor's claims for declaratory and injunctive relief

26 The tentative ruling is that Plaintiff/Debtor's claims for declaratory and injunctive
27 relief are duplicative of her other claims for relief, and that because Defendant is entitled
28 to summary judgment in its favor with respect to those other claims, Defendant is also
entitled to summary judgment as to the claims for declaratory and injunctive relief.

(4) Conclusion

For all the foregoing reasons, the tentative ruling is that Defendant is entitled to
summary judgment in its favor as to all claims asserted in the Complaint.

Proposed order(s): Unless otherwise ordered, Defendant is directed to lodge
(i) a proposed order granting its motion for summary judgment and (ii) a
proposed judgment via LOU within 7 days after the hearing date (per LBR
9021-1(b)(1)(B)) and attach a copy of this tentative ruling to the former,
thereby incorporating it as this Court's actual ruling.