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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

Angelita Mangindin, et al.,

NO. C 09-01268 JW

Plaintiffs,

**ORDER GRANTING DEFENDANTS'  
MOTION TO DISMISS; DENYING  
PLAINTIFFS' MOTION FOR  
PRELIMINARY INJUNCTION**

v.

Washington Mutual Bank, et al.,

Defendants.

**I. INTRODUCTION**

Angelita Mangindin, Bernadette Pantaleon and Theodore Pantaleon (“Plaintiffs”) bring this action against Washington Mutual Bank (“Washington Mutual”), California Reconveyance Company (“Reconveyance”), JP Morgan Chase Bank (“JP Morgan”), and Quality Loan Service (“Quality”), alleging, *inter alia*, violations of the Truth in Lending Act (“TILA”), 15 U.S.C. §§ 1601, *et seq.*, fraud and unjust enrichment. Plaintiffs allege that Defendants engaged in predatory lending and have attempted to foreclose on Plaintiffs’ home without following California law.

Presently before the Court are Plaintiffs’ Motion for a Preliminary Injunction<sup>1</sup> and Defendants’ Motion to Dismiss.<sup>2</sup> The Court finds it appropriate to take the matter under submission

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<sup>1</sup> (Memorandum of Points and Authorities in support of Plaintiffs’ *Ex Parte* Application for Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction, hereafter, “Plaintiffs’ Motion,” Docket Item No. 11.)

<sup>2</sup> (Memorandum of Points and Authorities in Support of Motion to Dismiss Pursuant to Rule 12(b)(6), hereafter, “Defendants’ Motion,” Docket Item No. 14.)

1 without oral argument. See Civ. L.R. 7-1(b). Based on the papers submitted to date, the Court  
2 GRANTS Defendants’ Motion to Dismiss and DENIES Plaintiffs’ Motion for Preliminary  
3 Injunction.

4 **II. BACKGROUND**

5 In a Complaint<sup>3</sup> filed on March 10, 2009, Plaintiffs allege as follows:

6 Plaintiffs are residents at 1041 Ruge Drive, San Jose, California 95132 (“the Subject  
7 Property”). (Complaint ¶ 1.) On August 29, 2006, Plaintiffs obtained a loan for the Subject  
8 Property pursuant a deed of trust, for which Defendant Washington Mutual was the original  
9 beneficiary. (Id. ¶¶ 2, 17.)

10 Defendant Washington Mutual failed to follow reasonable underwriting standards in  
11 that it failed to verify Plaintiffs’ income. (Complaint ¶ 18.) Defendants also failed to  
12 provide all the requisite disclosures under federal and state laws. (Id. ¶¶ 19-20.) In  
13 particular, the Adjustable Rate Note reports an interest rate of 1.35% and a loan amount of  
14 \$627,440, but makes no mention of the monthly payment. (Id. ¶ 41.)

15 On July 31, 2008, Defendant Washington Mutual filed a Notice of Default.  
16 (Complaint ¶ 17.) On November 11, 2008, Washington Mutual filed a Notice of Trustee  
17 Sale, which was set aside because Plaintiffs filed bankruptcy. (Id.) On December 4, 2008,  
18 the Subject Property was foreclosed upon, and Defendant JP Morgan became the owner of  
19 record. (Id.) On February 23, 2009, a second Notice of Trustee Sale was again filed by  
20 Defendant Quality. (Id.)

21 On the basis of the allegations outlined above, Plaintiffs allege seventeen causes of action:  
22 (1) Declaratory Relief; (2) Civil Conspiracy; (3) Breach of the Covenant of Good Faith and Fair  
23 Dealing; (4) Violation of TILA; (5) Rescission; (6) Fraud; (7) Constructive Fraud; (8) Intentional  
24 Misrepresentation; (9) Concealment; (10) Negligent Misrepresentation; (11) Unfair Business

25  
26  
27 <sup>3</sup> (Notice of Removal, Ex. A, hereafter, “Complaint,” Docket Item No. 1.)

1 Practices; (12) Breach of Fiduciary Duty; (13) Negligence; (14) Unjust Enrichment; (15) Undue  
2 Influence; (16) Injunctive Relief; and (17) Quiet Title.

3 Presently before the Court are Plaintiffs' Motion for Preliminary Injunction and Defendants'  
4 Motion to Dismiss.

### 5 **III. STANDARDS**

#### 6 **A. Motion to Dismiss**

7 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint may be dismissed against  
8 a defendant for failure to state a claim upon which relief may be granted against that defendant.  
9 Dismissal may be based on either the lack of a cognizable legal theory or the absence of sufficient  
10 facts alleged under a cognizable legal theory. Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699  
11 (9th Cir. 1990); Robertson v. Dean Witter Reynolds, Inc., 749 F.2d 530, 533- 534 (9th Cir. 1984).  
12 For purposes of evaluating a motion to dismiss, the court "must presume all factual allegations of the  
13 complaint to be true and draw all reasonable inferences in favor of the nonmoving party." Usher v.  
14 City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987). Any existing ambiguities must be resolved  
15 in favor of the pleading. Walling v. Beverly Enters., 476 F.2d 393, 396 (9th Cir. 1973).

16 However, mere conclusions couched in factual allegations are not sufficient to state a cause  
17 of action. Papasan v. Allain, 478 U.S. 265, 286 (1986); see also McGlinchy v. Shell Chem. Co., 845  
18 F.2d 802, 810 (9th Cir. 1988). The complaint must plead "enough facts to state a claim for relief  
19 that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). Courts may  
20 dismiss a case without leave to amend if the plaintiff is unable to cure the defect by amendment.  
21 Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000).

#### 22 **B. Preliminary Injunction**

23 To obtain injunctive relief a plaintiff must show either (1) a combination of probable  
24 success on the merits and the possibility of irreparable harm, or (2) that serious questions are raised  
25 and the balance of hardships tips sharply in the moving party's favor. See Roe v. Anderson, 134  
26 F.3d 1400, 1402 (9th Cir. 1998); GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199, 1204-05 (9th  
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1 Cir. 2000) (quoting Sardi's Restaurant Corp. v. Sardie, 755 F.2d 719, 723 (9th Cir. 1985). “These  
2 two formulations represent two points on a sliding scale in which the required degree of irreparable  
3 harm increases as the probability of success decreases.” Id.; See Rodeo Collection Ltd. v. W.  
4 Seventh, 812 F.2d 1215, 1217 (9th Cir. 1987).

#### 5 **IV. DISCUSSION**

6 Since Plaintiffs must establish a likelihood of success on the merits to obtain a preliminary  
7 injunction, the Court first considers Defendants’ Motion to Dismiss to determine what, if any, of  
8 Plaintiffs’ claims have been adequately alleged.

##### 9 **A. Defendants’ Motion to Dismiss**

10 Defendants move to dismiss each of Plaintiffs’ seventeen causes of action on various  
11 grounds. The Court considers each cause of action in turn.

##### 12 **1. Fourth Cause of Action for Violation of TILA**<sup>4</sup>

13 Defendants move to dismiss Plaintiffs’ Fourth Cause of Action for violation of TILA on the  
14 grounds that Plaintiffs’ TILA claim is barred by the statute of limitations, Plaintiffs have failed to  
15 allege reliance on Defendants’ failure to disclose and Plaintiffs have failed to tender repayment of  
16 the loan to Defendants. (Defendants’ Motion at 10-11.)

17 Under TILA, a borrower has two remedies for loan disclosure violations. TILA gives a  
18 borrower the right to rescind any credit transaction in which a security interest is created in the  
19 borrower’s home. 15 U.S.C. § 1635. TILA also gives a borrower a right to civil damages. 15  
20 U.S.C. § 1640. A claim for rescission must be brought within three years “after the date of  
21 consummation of the transaction or upon sale of the property, whichever occurs first,” while a claim  
22 for damages must be brought within one year “from the date of the occurrence of the violation.” 15  
23 U.S.C. §§ 1635(f), 1640(e).

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26 <sup>4</sup> The Court first considers Plaintiffs’ only federal cause of action since removal to this Court  
27 was pursuant to 28 U.S.C. § 1441(b).

1 For a rescission claim, TILA establishes the following framework:

2 Within 20 days after receipt of a notice of rescission, the creditor shall return to the  
3 obligor any money or property given as earnest money, downpayment, or otherwise,  
4 and shall take any action necessary or appropriate to reflect the termination of any  
5 security interest created under the transaction. If the creditor has delivered any  
6 property to the obligor, the obligor may retain possession of it. Upon the  
7 performance of the creditor's obligations under this section, the obligor shall tender  
8 the property to the creditor, except that if return of the property in kind would be  
9 impracticable or inequitable, the obligor shall tender its reasonable value. Tender  
10 shall be made at the location of the property or at the residence of the obligor, at the  
11 option of the obligor. If the creditor does not take possession of the property within  
12 20 days after tender by the obligor, ownership of the property vests in the obligor  
13 without obligation on his part to pay for it. The procedures prescribed by this  
14 subsection shall apply except when otherwise ordered by a court.

15 15 U.S.C. 1635(b); see also 12 C.F.R. § 226.23(d). However, the Ninth Circuit has held that TILA's  
16 framework gives a trial court discretion to condition rescission on a tender by the borrower of the  
17 property, or the property's reasonable value, to the lender. Yamamoto v. Bank of New York, 329  
18 F.3d 1167, 1171 (9th Cir. 2003).

19 Here, Plaintiffs' loan was consummated on August 29, 2006. Therefore, since Plaintiffs did  
20 not file this action prior to August 29, 2007, they cannot seek damages under § 1640 of TILA.<sup>5</sup>

21 With respect to Plaintiffs' claim for rescission, the Complaint alleges, in relevant part, as follows:

22 Defendant Washington Mutual provided inaccurate disclosures in violation of TILA.  
23 The Adjustable Rate Note reports an interest rate of 1.35%, a loan amount of  
24 \$627,440.00 and makes no mention of the monthly payment. (Complaint ¶ 41.)

25 Defendants [JP Morgan, Reconveyance and Quality] are secondarily liable,  
26 contributorily liable, and/or vicariously liable for [Washington Mutual's] fraud under  
27 the civil conspiracy cause of action. (Complaint ¶ 43.)

28 Notably absent from Plaintiffs' Complaint is any allegation that they attempted to tender, or are  
capable of tendering, the value of the property pursuant to the rescission framework established by  
TILA. Nor do Plaintiffs allege that such equitable circumstances exist that conditioning rescission

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<sup>5</sup> Plaintiffs allege that "[a]ny and all statute(s) of limitation relating to disclosure and notices required pursuant to [TILA] were tolled due to Defendants' failure to effectively provide the proper TILA disclosure." (Complaint ¶ 42.) However, Plaintiffs' allegation as to tolling is conclusory and unsupported.

1 on any tender would be inappropriate. Thus, the Court finds that Plaintiffs have failed to adequately  
2 allege that they are entitled to rescission under TILA.

3 Accordingly, the Court GRANTS Defendants' Motion to Dismiss Plaintiffs' Fourth Cause of  
4 Action for violations of TILA.

5 **2. Sixth, Seventh, Eighth, Ninth and Tenth Causes of Action Sounding in Fraud**

6 Defendants move to dismiss all of Plaintiffs' claims sounding in fraud on the ground that  
7 Plaintiffs have failed to allege those causes of action with sufficient particularity as required by Rule  
8 9(b). (Defendants' Motion at 12.)

9 Fed. R. Civ. P. Rule 9(b) provides that, "[i]n alleging fraud or mistake, a party must state  
10 with particularity the circumstances constituting fraud or mistake." Allegations under Rule 9(b)  
11 must be stated with "specificity including an account of the time, place, and specific content of the  
12 false representations as well as the identities of the parties to the misrepresentations." Swartz v.  
13 KPMG LLP, 476 F.3d 756, 764 (9th Cir. 2007); Kaplan v. Rose, 49 F.3d 1363, 1370 (9th Cir. 1994).  
14 The pleading must be "specific enough to give defendants notice of the particular misconduct . . . so  
15 that they can defend against the charge and not just deny that they have done anything wrong." Vess  
16 v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotation omitted).

17 Finally, a plaintiff seeking to state a claim for fraud must also plead knowledge of falsity, or  
18 scienter. See In re GlenFed, Inc. Sec. Litig., 42 F.3d 1541, 1546 (9th Cir. 1994) (*en banc*). The  
19 requirement for pleading scienter is less rigorous than that which applies to allegations regarding the  
20 "circumstances that constitute fraud" because Rule 9(b) states that "malice, intent, knowledge, and  
21 other condition of mind of a person may be averred generally." Fed. R. Civ. P. 9(b). Nonetheless,  
22 nothing in the Federal Rules of Civil Procedure relieves a plaintiff of the obligation to "set forth  
23 facts from which an inference of scienter could be drawn." Cooper v. Pickett, 137 F.3d 616, 628  
24 (9th Cir. 1997) (quoting GlenFed, 42 F.3d at 1546). This heightened pleading standards applies to  
25 allegations of fraud and allegations that sound in fraud, including false misrepresentations. Vess,  
26 317 F.3d at 1106-07; see also Meridian Project Sys., Inc. v. Hardin Constr. Co., LLC, 404 F. Supp.

1 2d 1214, 1219 (E.D. Cal. 2005); Neilson v. Union Bank of Cal., N.A., 290 F. Supp. 2d 1101, 1141  
2 (C.D. Cal. 2003).

3 Here, Plaintiffs have alleged five causes of action sounding in fraud: Actual Fraud, pursuant  
4 to Cal. Civ. Code § 1572, Constructive Fraud, pursuant to Cal. Civ. Code § 1573, Intentional  
5 Misrepresentation, Concealment, and Negligent Misrepresentation. The allegations under each  
6 cause of action are virtually identical and repeat, in relevant part, the following:

7 Defendants [JP Morgan, Reconveyance and Quality] are secondarily liable,  
8 contributorily liable, and/or vicariously liable for [Washington Mutual's] fraud under  
the civil conspiracy cause of action.

9 Defendants and each and every one of them, breached their duty by, *inter alia*,  
10 engaging in the deceptive and fraudulent conduct described above. Defendants,  
11 further breached that duty by misrepresenting or failing to disclose material facts  
12 about the transaction including, but not limited to, Defendant Washington Mutual's  
13 failure to disclose and/or provide and/or explain at any time during the loan process,  
14 on or about, August 29, 2006: That they breached their fiduciary duty to Plaintiffs by  
15 putting her [sic] in a loan that was not in Plaintiffs' best interest; and disclosures  
16 required at closing as required by TILA, RESPA, and California Law.

17 (Complaint ¶¶ 52-53.) These vague allegations are insufficient to put Defendants on notice as to  
18 precisely what fraudulent conduct they are alleged to have engaged in. Plaintiffs do not allege who  
19 made the alleged misrepresentations, other than generally identifying "Defendants." Additionally,  
20 Plaintiffs fail to allege the specific content of the misrepresentations. Thus, the Court finds that  
21 Plaintiffs have failed to plead their causes of action sounding in fraud with the particularity required  
22 under Rule 9(b).

23 Accordingly, the Court GRANTS Defendants' Motion to Dismiss Plaintiffs' Sixth, Seventh,  
24 Eighth, Ninth and Tenth Causes of Action sounding in fraud.

25 **3. First Cause of Action for Declaratory Relief**

26 Defendants move to dismiss Plaintiffs' First Cause of Action for declaratory relief on the  
27 grounds that, *inter alia*, a determination on such a claim would be entirely redundant with the relief  
28 sought under Plaintiffs' other causes of action. (Defendants' Motion at 5.)

1 A claim for declaratory relief is unnecessary where an adequate remedy exists under some  
2 other cause of action. StreamCast Networks, Inc. v. IBIS LLC, C 05-04239, 2006 WL 5720345, at  
3 \*4-5 (C.D. Cal. May 2, 2006).

4 Here, Plaintiffs seek declaratory relief in the form of a judicial declaration that “Defendants  
5 do not have the right to foreclose on the Subject Property because Defendants’ security interest in  
6 the Subject Property has been rendered void by reason of Defendants’ violations of California and  
7 Federal[s] law during the loan origination process,” and “Defendants have no authority to sell the  
8 Subject Property because they failed to comply with the strict requirements of [Cal. Civ. Code §  
9 2924, *et seq.*]” (Complaint ¶ 22.) Upon review of Plaintiffs’ other causes of action, the Court finds  
10 that the declaratory relief Plaintiffs seek is entirely commensurate with the relief sought through  
11 their other causes of action. Thus, Plaintiffs’ declaratory relief claim is duplicative and unnecessary.

12 Accordingly, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’ First Cause of  
13 Action for declaratory relief.

14 **4. Second Cause of Action for Civil Conspiracy**

15 Defendants move to dismiss Plaintiffs’ Second Cause of Action for civil conspiracy on the  
16 ground that it is not an independent cause of action, but depends on some other form of liability.  
17 (Defendants’ Motion at 8.)

18 A conspiracy is not an independent cause of action, but “a legal doctrine that imposes  
19 liability on persons who, although not actually committing a tort themselves, share with the  
20 immediate tortfeasors a common plan or design in its perpetration.” Applied Equip. Corp. v. Litton  
21 Saudi Arabia Ltd., 7 Cal. 4th 503, 510-11 (1994). “By participation in a civil conspiracy, a  
22 coconspirator effectively adopts as his or her own the torts of other coconspirators within the ambit  
23 of the conspiracy.” Id. at 511. Liability for civil conspiracy generally requires three elements: (1)  
24 formation of a conspiracy (an agreement to commit wrongful acts); (2) operation of a conspiracy  
25 (commission of the wrongful acts); and (3) damage resulting from operation of a conspiracy. Id. at  
26 511.



1 Although Plaintiffs have pleaded a civil conspiracy as a separate cause of action, the Court  
2 construes their claim as merely attempting to plead certain Defendants’ secondary liability for the  
3 other torts alleged. Accordingly, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’  
4 Second Cause of Action for civil conspiracy.

5 **5. Third Cause of Action for Breach of the Covenant of Good Faith and Fair**  
6 **Dealing**

7 Defendants move to dismiss Plaintiffs’ Third Cause of Action for breach of the covenant of  
8 good faith and fair dealing on the ground that Plaintiffs have failed to allege sufficient facts giving  
9 rise to such a claim. (Defendants’ Motion at 9.)

10 Under California law, “every contract contains an implied covenant of good faith and fair  
11 dealing, obligating the parties to refrain from doing anything which will have the effect of  
12 destroying or injuring the right of the other party to receive the fruits of the contract.” Wolf v.  
13 Superior Court, 107 Cal. App. 4th 25, 31 (2003). “The covenant of good faith finds particular  
14 application in situations where one party is invested with a discretionary power affecting the rights  
15 of another. Such power must be exercised in good faith.” Carma Developers, Inc. v. Marathon Dev.  
16 California, Inc., 2 Cal. 4th 342, 374 (1992). “A ‘breach of a specific provision of the contract is not  
17 a necessary prerequisite’ to a breach of the implied covenant of good faith and fair dealing.” Marsu,  
18 B.V. v. Walt Disney Co., 185 F.3d 932, 937 (9th Cir. 1999) (quoting Carma, 2 Cal. 4th at 373).  
19 Rather, the “covenant is implied to prevent a contracting party from engaging in conduct which  
20 (while not technically transgressing the express covenant) frustrates the other party’s rights of the  
21 benefits of the contract.” Id. (quoting Los Angeles Equestrian Ctr., Inc. v. City of Los Angeles, 17  
22 Cal. App. 4th 432, 447 (1993)).

23 In this case, Plaintiffs’ claim is premised on the following allegations:

24 Defendants, and each of them, willfully breached their implied covenant of good faith  
and fair dealing with Plaintiffs when Defendants, *inter alia*:

- 25 i. misled Plaintiffs as to the fees associated with the loan and never disclosed  
26 them accurately prior to and after execution of the loan docs;



1 a particular business practices is unfair under § 17200, the court must weigh the utility of the  
2 defendant’s conduct against the gravity of the harm to the alleged victim. Gregory, 104 Cal. App.  
3 4th at 852. Further, § 17200 prohibits any violations of § 17500. Section 17500 makes it unlawful  
4 for a business to disseminate any statement “which is untrue or misleading, and which is known, or  
5 which by the exercise of reasonable care should be known, to be untrue or misleading . . . .” Ariz.  
6 Cartridge Remanufacturers Ass’n v. Lexmark Int’l, Inc., 421 F.3d 981, 985 (9th Cir. 2005).  
7 Therefore, under §§ 17200 and 17500, a plaintiff may make a claim based on unlawful business  
8 practices, but he need only allege unfair or fraudulent business practices or knowing dissemination  
9 of untrue or misleading statements.

10 With respect to their § 17200 claim, Plaintiffs allege as follows:

11 Defendants, and each of them, have committed acts of unfair business practices  
12 defined by California Business and Professions Code § 17200, *et seq.*, including but  
13 not limited to, by engaging in acts and practices as alleged above, including using bait  
14 and switch tactics; making loans without providing borrowers with sufficient,  
15 accurate and understandable information regarding the terms and conditions of the  
16 loan; making loans without providing borrowers with sufficient, accurate and  
17 understandable information regarding the nature and extent of the financial risk being  
18 assumed by the borrowers; and attempting to foreclose on a property without  
19 following California law.

20 (Complaint ¶ 94.) As with many of their other causes of action, Plaintiffs fail to plead facts to  
21 support their conclusory allegations that Defendants used “bait and switch tactics” and made loans  
22 without providing sufficient information regarding the terms, conditions and financial risk associated  
23 with those loans. Thus, the Court finds that Plaintiffs have failed to state a claim for unfair business  
24 practices.

25 Accordingly, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’ Eleventh Cause  
26 of Action for unfair business practices.

27 **8. Twelfth Cause of Action for Breach of Fiduciary Duty**

28 Defendants move to dismiss Plaintiffs’ Twelfth Cause of Action for breach of fiduciary duty  
on the ground that Defendants did not owe Plaintiffs a fiduciary duty. (Defendants’ Motion at 15.)

1 The relationship between a lending institution and its borrower-client is not fiduciary in  
2 nature. Nymark v. Heart Fed. Sav. & Loan Ass'n, 231 Cal. App. 3d 1089, 1095 (1991). “A  
3 commercial lender is entitled to pursue its own economic interests in a loan transaction.” Id.

4 Since Defendants’ breach of fiduciary duty is alleged to have arisen out of Defendant  
5 Washington Mutual’s role as Plaintiffs’ lender, the Court finds that Plaintiffs cannot state a claim  
6 under California law.

7 Accordingly, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’ Twelfth Cause  
8 of Action for breach of a fiduciary duty.

9 **9. Thirteenth Cause of Action for Negligence**

10 Defendants move to dismiss Plaintiffs’ Thirteenth Cause of Action for negligence on the  
11 ground that, as Plaintiffs’ lender, Defendants did not owe Plaintiffs a duty of care.

12 Under California law, a lender generally owes no duty of care to a borrower. Nymark, 231  
13 Cal. App. 3d at 1086. However, negligence liability can arise when the lender actively participates  
14 in the negotiations of a loan, including through a broker as the lender’s agent. Plata v. Long Beach  
15 Mortgage Co., No. C 05-02746 JF, 2005 WL 3417375, at \*7-8 (N.D. Cal. 2004) (collecting various  
16 California cases). Although a broker is customarily retained by the buyer, courts have rejected a  
17 bright line rule that a mortgage broker may never be the agent of a lender. Id. at \*8. Accordingly,  
18 general allegations of agency between a broker and lender are sufficient to survive a motion to  
19 dismiss on a negligence claim under California law. Id.

20 Here, Plaintiffs allege that Defendants “owed Plaintiffs a duty to act with that degree of skill,  
21 prudence and diligence as other mortgage brokers and lenders of ordinary skill . . . .” (Complaint ¶  
22 108.) However, Plaintiffs do not allege that Defendants actively participated in an enterprise  
23 financed by the loan at issue in this case. Thus, the Court finds that Plaintiffs have failed to  
24 adequately allege that Defendants owed Plaintiffs a duty of care.

25 Accordingly, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’ Thirteenth  
26 Cause of Action for negligence.

1           **10. Fourteenth Cause of Action for Unjust Enrichment**

2           Defendants move to dismiss Plaintiffs’ Fourteenth Cause of Action for unjust enrichment on  
3 the ground that Plaintiffs’ allegations are conclusory. (Defendants’ Motion at 18.)

4           To plead a claim for unjust enrichment, a plaintiff must allege that defendant (1) received a  
5 benefit that was (2) unjustly retained at the expense of another. Lechtrodryer v. Seoul Bank, 77 Cal.  
6 App. 4th 723, 726 (2000). Ordinarily, a plaintiff must show that the benefit was conferred on the  
7 defendant through mistake, fraud or coercion. Nebbi Vros., Inc. v. Brannon Street Inv., 205 Cal.  
8 App. 3d 1415, 1422 (1988).

9           In this case, Plaintiffs allege that Defendants were unjustly enriched in the amount paid to  
10 them by Plaintiffs in monthly mortgage payments. (Complaint ¶ 115.) The bases for Plaintiffs’  
11 allegation that the money was unjustly received by Defendants are the same allegations, outlined  
12 above, that Plaintiffs contend entitles them to rescind their loan (Id.) Since Plaintiffs have failed to  
13 adequately allege a single cause of action giving rise to a right of rescission, the Court finds that  
14 Plaintiffs’ unjust enrichment claim must concomitantly be dismissed.

15           Accordingly, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’ Fourteenth  
16 Cause of Action for unjust enrichment.

17           **11. Fifteenth Cause of Action for Undue Influence**

18           Defendants move to dismiss Plaintiffs’ Fifteenth Cause of Action for undue influence on the  
19 ground that Plaintiffs have failed to allege a confidential relationship between Defendants and  
20 Plaintiffs and a “weakness of mind” on the part of Plaintiffs. (Defendants’ Motion at 19.)

21           Under Cal. Civ. Code § 1575, undue influence consists of (1) a person who is in a position of  
22 confidence (2) taking “unfair advantage of another’s weakness of mind . . . [or] another’s necessities  
23 or distress.”

24           In this case, Plaintiffs have alleged as follows:

25           Plaintiff Angelita Mangindin is an elderly senior citizen.

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1 By way of the violations committed against her as alleged herein, Defendants have  
2 used undue influence and further committed unfair and deceptive practices against  
senior citizens in violation of Cal. Civ. Code § 3345.

3 Defendant Washington Mutual engaged in the conduct alleged herein for the purpose  
4 of advancing their own financial interest and in callous disregard of the foreseeable  
consequences to Plaintiffs.

5 (Complaint ¶¶ 120-22.) Plaintiffs' Complaint does not identify a confidential relationship between  
6 Washington Mutual and themselves. Further, Plaintiffs do not allege facts showing that Defendants  
7 took advantage of Plaintiff Angelita Mangindin's elderly status. Thus, the Court finds Plaintiffs  
8 have failed to sufficiently allege a cause of action for undue influence.

9 Accordingly, the Court GRANTS Defendants' Motion to Dismiss Plaintiffs' Fifteenth Cause  
10 of Action for undue influence.

11 **13. Seventeenth Cause of Action for Quiet Title**

12 Defendants move to dismiss Plaintiffs' Seventeenth Cause of Action for quiet title on the  
13 ground that the Complaint does not contain sufficient factual allegations to state such a claim.

14 (Defendants' Motion at 20-21.)

15 Cal. Code Civ. Proc. § 760.010 provides for an action "to establish title against adverse  
16 claims to real or personal property or any interest therein." Section 761.020 mandates a verified  
17 complaint that includes: (1) A legal description and street address of the subject real property; (2)  
18 The title of plaintiff as to which determination is sought and the basis of the title; (3) The adverse  
19 claims to the title of the plaintiff against which a determination is sought; (4) The date as of which  
20 the determination is sought; and (5) A prayer for the determination of the title of the plaintiff against  
21 the adverse claims. In addition, under California law, a plaintiff seeking to quiet title in the face of a  
22 foreclosure must allege tender or an offer of tender of the amount borrowed. Arnolds Management  
23 Corp. v. Eischen, 158 Cal. App. 3d 575, 578 (1984).

24 Here, Plaintiffs' bare allegations simply state, in relevant part, that "Plaintiffs seek to quiet  
25 title against the claims of Defendants," and that "Plaintiffs have an ownership interest in the Subject  
26 Property." (Complaint ¶¶ 132-33.) Plaintiffs do not identify the adverse claims to the title of the  
27

1 Subject Property outside of alleging that “Defendants’ claims are without any right.” (Id. ¶ 32.)  
2 Moreover, Plaintiffs do not allege a tender, or offer of tender, for the amount borrowed from  
3 Defendants.

4 Accordingly, the Court GRANTS Defendants’ Motion to Dismiss Plaintiffs’ Seventeenth  
5 Cause of Action for quiet title.

6 **B. Plaintiffs’ Motion for Preliminary Injunction**


7 In light of the Court’s determination on Defendants’ Motion to Dismiss, the Court finds that  
8 Plaintiffs’ have not shown a likelihood of success on the merits of their claims. Accordingly, the  
9 Court DENIES Plaintiffs’ Motion for Preliminary Injunction.

10 **V. CONCLUSION**

11 The Court GRANTS Defendants’ Motion to Dismiss and DENIES Plaintiffs’ Motion for  
12 Preliminary Injunction. Since the Court finds that Plaintiffs may be able to cure the deficiencies of  
13 their Complaint, the Court GRANTS Plaintiffs leave to amend as to all causes of action except  
14 Plaintiffs’ Second, Fifth and Sixteenth Causes of Action.

15 On or before **June 29, 2009**, Plaintiffs shall file their Amended Complaint consistent with  
16 the directions of this Order. Failure to timely amend or amend pursuant to the terms of this Order  
17 may result in sanctions, including, dismissal pursuant to Rule 41(b) of the Federal Rules of Civil  
18 Procedure.

19  
20 Dated: June 17, 2009

  
\_\_\_\_\_  
JAMES WARE  
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 David C. Scott [dscott@mccarthyholthus.com](mailto:dscott@mccarthyholthus.com)  
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6 **Dated: June 17, 2009**

**Richard W. Wieking, Clerk**

7 **By: /s/ JW Chambers**  
8 **Elizabeth Garcia**  
9 **Courtroom Deputy**

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