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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 George Munoz; Magda Reyes,
10 Plaintiffs,

No. CV-13-01826-PHX-GMS

ORDER

11 v.

12 Federal National Mortgage Association;
13 Bank of America Corporation; Greentree
Servicing LLC; Unknown Parties,

14 Defendants.

15 Pending before the Court is Defendant Green Tree Servicing's Motion to Dismiss
16 First Amended Complaint. (Doc. 15.) For the following reasons, the Motion is granted in
17 part and denied in part.

18 **BACKGROUND**

19 Plaintiffs George Munoz and Magda Reyes obtained a mortgage in October 2006
20 on their home in Surprise, Arizona. (Doc. 11 ¶ 13.) The other defendant in this case,
21 Bank of America, formerly Countrywide Home Loans or CFC, initially provided and
22 serviced the loan in question. (*Id.* ¶¶ 13–25.) The allegations related to Bank of
23 America's conduct are not relevant to this Motion to Dismiss, which concerns only
24 defendant Green Tree Servicing, LLC ("Green Tree").¹

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27 ¹ Although Plaintiffs generally allege that "Green Tree participated in the acts and
28 practices described herein," (*Id.* ¶ 3) they plead no facts to suggest that Green Tree had
anything to do with their loan until April 10, 2012.

1 On April 10, 2012, all beneficial interests and the servicing responsibilities for the
2 loan were assigned to Defendant Green Tree Servicing, LLC (“Green Tree”). (*Id.* ¶ 26.)
3 Plaintiffs had previously been pursuing various forms of assistance with their loan from
4 Bank of America when Green Tree took over. Plaintiffs unsuccessfully sought a loan
5 modification from Green Tree and later unsuccessfully presented a buyer for a short sale.
6 (*Id.* ¶¶ 26–36.) Plaintiffs allege that Green Tree provided false and misleading
7 information in both of these transactions and failed to inform them of other available
8 options for relief. (*Id.*)

9 After Plaintiffs ceased paying their mortgage, Green Tree recorded a notice of
10 trustee sale on November 5, 2012. (Doc. 15 at 4.) That foreclosure has been postponed
11 and has not yet occurred. (*Id.*) For a period of time, Plaintiffs were under the impression
12 that the foreclosure had already occurred even though they remained in the home. (Doc.
13 11 ¶ 37.) On June 11, 2013 and again on June 25, Green Tree offered Plaintiffs a
14 permanent modification of their loan. (*Id.* ¶¶ 37–40.) Plaintiffs did not accept either offer
15 and allege that Green Tree provided them with an unreasonable deadline of five or ten
16 days to reply to those offers. (*Id.*)

17 On August 9, 2013 the Plaintiffs initiated this action in Arizona Superior Court
18 and Defendants removed to this Court. (Docs. 1, 1-2.) The Plaintiffs filed an Amended
19 Complaint (“FAC”) on October 23, 2013 and Defendant Green Tree filed the instant
20 Motion to Dismiss on December 4, 2013. (Docs. 11, 15.)

21 DISCUSSION

22 I. Legal Standard

23 Federal Rule of Civil Procedure 12(b)(6) is designed to “test[] the legal sufficiency
24 of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To survive dismissal
25 for failure to state a claim pursuant to Rule 12(b)(6), a complaint must contain more than
26 “labels and conclusions” or a “formulaic recitation of the elements of a cause of action”;
27 it must contain factual allegations sufficient to “raise a right to relief above the
28 speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While “a

1 complaint need not contain detailed factual allegations . . . it must plead ‘enough facts to
2 state a claim to relief that is plausible on its face.’” *Clemens v. DaimlerChrysler Corp.*,
3 534 F.3d 1017, 1022 (9th Cir. 2008) (quoting *Twombly*, 550 U.S. at 570). “A claim has
4 facial plausibility when the plaintiff pleads factual content that allows the court to draw
5 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft*
6 *v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). The plausibility
7 standard “asks for more than a sheer possibility that a defendant has acted unlawfully.”
8 *Id.*

9 When analyzing a complaint for the failure to state a claim under Rule 12(b)(6),
10 “[a]ll allegations of material fact are taken as true and construed in the light most
11 favorable to the nonmoving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996).
12 However, legal conclusions couched as factual allegations are not given a presumption of
13 truthfulness, and “conclusory allegations of law and unwarranted inferences are not
14 sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir.
15 1998).

16 Federal Rule of Civil Procedure 9(b) requires more specificity for allegations of
17 fraud, including an account of the “time, place, and specific content of the false
18 representations as well as the identities of the parties to the misrepresentations.” *Edwards*
19 *v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004) (citation omitted). In addition to
20 time, place, and content allegations, the plaintiff also must explain what is false or
21 misleading about the statements or omissions. *In re Stac Electronics Sec. Litig.*, 89 F.3d
22 1399, 1404 (9th Cir. 1996). “To comply with Rule 9(b), allegations of fraud must be
23 specific enough to give defendants notice of the particular misconduct which is alleged to
24 constitute the fraud charged so that they can defend against the charge and not just deny
25 that they have done anything wrong.” *Bly–Magee v. California*, 236 F.3d 1014, 1019 (9th
26 Cir. 2001) (citation, quotations omitted).

27 As a general rule, “a district court may not consider any material beyond the
28 pleadings in ruling on a Rule 12(b)(6) motion.” *Branch v. Tunnell*, 14 F.3d 449, 453 (9th

1 Cir. 1994), *overruled on other grounds by Galbraith v. Cnty. of Santa Clara*, 307 F.3d
2 1119 (9th Cir. 2002) (citation omitted). However, documents subject to judicial notice
3 may be considered on a motion to dismiss. In doing so, the Court does not convert a
4 motion to dismiss to one for summary judgment. *See Mack v. South Bay Beer Distrib.*,
5 798 F.2d 1279, 1282 (9th Cir. 1986), *overruled on other grounds by Astoria Fed. Sav. &*
6 *Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).

7 **II. Analysis**

8 Green Tree first argues that dismissal is appropriate on all counts under Rule 8(a),
9 which requires “a short and plain statement of the claim showing that the pleader is
10 entitled to relief.” Fed. R. Civ. P. 8(a). It argues that the Plaintiffs have failed to comply
11 with Rule 8(a) because they provide only “threadbare accusations and conclusions and
12 recitations of law.” (Doc. 15 at 7.)

13 Here, the Plaintiffs set out occasions on which Defendants made promises or
14 assurances with respect to various refinancing, short-sale, and other loan modification
15 opportunities. Plaintiffs’ claim that they were misled and harmed by these alleged
16 actions. Although the FAC does include legal conclusions and recitations of law,
17 Plaintiffs also plead enough factual material to demonstrate facial plausibility if those
18 facts are taken as true. As discussed below, not all of the Claims survive this Motion to
19 Dismiss, but the Court will not dismiss the entire FAC as failing to meet the Rule 8(a)
20 standards.

21 **A. Arizona’s Consumer Fraud Act Claims (Counts One and Two)**

22 The Arizona Consumer Fraud Act (“CFA”) grants an implied private right of
23 action against persons who violate its provisions. *Dunlap v. Jimmy GMC of Tucson, Inc.*,
24 136 Ariz. 338, 342, 666 P.2d 83, 87 (Ct. App. 1983). To prevail on a CFA claim in
25 Arizona, the plaintiff must show “(1) a false promise or misrepresentation made in
26 connection with sale or advertisement of merchandise, and (2) consequent and proximate
27 injury.” *Stratton v. Am. Med. Sec., Inc.*, No. CV-07-1491-PHX-SMM, 2008 WL 2039313
28 at *7 (D. Ariz. May 12, 2008) (citing *Kuehn v. Stanley*, 208 Ariz. 124, 129, 91 P.3d 346,

1 351 (Ct. App. 2004)). Because claims brought under the CFA involve allegations of
2 fraud, they must be pled with particularity. *Silving v. Wells Fargo Bank, NA*, 800 F. Supp.
3 2d 1055, 1075 (D. Ariz. 2011).

4 Green Tree argues that Counts One and Two should be dismissed because
5 Plaintiffs allegations do not relate to “merchandise,” a “sale,” or an “advertisement” as
6 those terms are used in the CFA. Its position is directly contradicted by the case it cites.
7 *Villegas v. Transamerica Fin. Servs., Inc.*, 147 Ariz. 100, 102–03, 708 P.2d 781, 783–84
8 (Ct. App. 1985). *Villegas* held that for purposes of the CFA: the money in a loan is
9 merchandise, the loan itself is a sale, and an oral inducement to take a loan is an
10 advertisement. *Id.* Green Tree’s attempt to distinguish this case based on the holding in
11 *Walker v. Gallegos* is unavailing. 167 F. Supp. 2d 1105, 1106–08 (D. Ariz. 2001). In
12 *Walker* a son was being removed from his deceased mother’s trailer based on the loan she
13 had taken on it. *Id.* This court made it clear in *Gallegos* that based on *Villegas* the
14 mother’s loan did fall under the CFA but that the son’s claims against an attorney seeking
15 to repossess the collateral were too attenuated to state a CFA claim. *Id.*

16 Here, Plaintiffs allege multiple occasions in which defendants made oral
17 inducements about refinancing, short sales, and other loan modification opportunities. All
18 of those events were attempted sales of merchandise in the form of loan money. There is
19 not attenuation because the actual parties to these transactions are the plaintiff and
20 defendant here, unlike *Gallegos* in which neither the son nor the attorney were parties to
21 the underlying loan transaction. Claims One and Two are not dismissed for failing to
22 state a claim that involves merchandise, a sale, or an advertisement under the CFA.²

23 **B. Breach of Contract (Count Three)**

24 Under Arizona law, a breach of contract claim contains three elements: “an
25 agreement, the right to seek relief, and breach by a defendant.” *Narramore v. HSBC Bank*

26
27 ² Plaintiffs’ Response argues that Green Tree failed to dispute that it is bound by
28 the conditions of various government programs including MHA and HAMP. Green Tree
did not allege that as a basis for its motion and this Court makes no finding regarding
Plaintiffs’ contentions that these programs apply or provide a cause of action.

1 USA, N.A., No. 09-CV-635-TUC-CKJ, 2010 WL 2732815 at *4 (D. Ariz. July 7, 2010).
2 A plaintiff must also allege that the plaintiff was damaged as a result of the breach. *Id.*
3 Green Tree asserts that the Plaintiffs’ claim should be dismissed because it fails to allege
4 any agreement with specificity and because oral agreements are barred by the statute of
5 frauds.

6 Count Three alleges promises contained in “documents developed by the parties in
7 the origination of the loan and mortgage” but it does not specify what those documents
8 are. The loan documentation is mentioned but there is no indication about how it was
9 breached. Modifications that were offered and short-sale packets are also mentioned but
10 the FAC does not allege that any of these were completed contracts. Nor does it allege
11 how they were breached. Plaintiffs’ claim that these contracts include promises as to loss
12 mitigation, loan modification, payment collection, and foreclosure but they do not specify
13 such promises in a way that makes a right to relief plausible. Instead Plaintiffs’ claim that
14 they and the Defendants “understood” that things were subject to modification based on
15 economic circumstances. Even if such an understanding could be a contract, Green Tree
16 did in fact offer a modification on two occasions. Here, the FAC does not allege enough
17 factual material about the contracts or how they were allegedly breached in order to raise
18 the right to relief above a speculative level. The Plaintiffs have failed to state any claim in
19 relation to these contracts and Claim Three is dismissed as to Green Tree.

20 **C. Ariz. Rev. Stat. Title 33 Chapter 6.1 (Count Four)**

21 Chapter 6.1 of Title 33 of the Arizona Revised Statutes contains twenty-three
22 sections relating to Deeds of Trust. These sections establish requirements for everything
23 from appointing successor trustees to the disposition of proceeds from a trustee’s sale.
24 *See* A.R.S. § 33-801 *et seq.* The Plaintiffs do not specify which section of Chapter 6.1
25 Green Tree violated. Plaintiffs also make assertions that Arizona court precedent requires
26 Defendants to strictly comply with all of the requirements of Title 33, which should be
27 strictly construed in Plaintiffs’ favor. Finally, Plaintiffs argue that Defendants failed to
28 provide loss mitigation and foreclosure process that includes substantive fairness.

1 Green Tree initially hypothesizes that Plaintiffs intended to make a claim for
2 wrongful foreclosure, and later suggests that Plaintiffs may be alleging that the entire
3 chapter was violated. The Court does not know which of the various requirements of
4 Title 33, Chapter 6.1 Plaintiffs believe were violated. Plaintiffs' Response does not
5 provide any guidance to understanding its FAC. As in other places, Plaintiffs' Response
6 is primarily just a copy of the same language found in the FAC. The allegation that the
7 process lacked "substantive fairness" is a legal conclusion that is insufficient to state a
8 claim.

9 The Court need not read through an entire chapter of Arizona statutes and then
10 through the background section of Plaintiffs' FAC searching for a claim. Plaintiffs have
11 failed to identify what section and requirement was violated. The only possible violation
12 for which they have stated any factual material is that they were not informed of the
13 rescheduling of the foreclosure sale. Aside from this, they have failed to state a claim
14 under Title 33, Chapter 6.1 of the Arizona Revised Statutes, and Count Four of their FAC
15 is dismissed as to Green Tree for all allegations except the claim that they were not
16 provided with the required notice that the foreclosure sale had been rescheduled.

17 **D. Tortious Negligent Misrepresentation (Count Five)**

18 Arizona recognizes the tort of negligent misrepresentation as set out in the
19 Restatement (Second) of Torts. *McAlister v. Citibank (Ariz.), a Subsidiary of Citicorp*,
20 171 Ariz. 207, 215, 829 P.2d 1253, 1261 (Ct. App. 1992). Negligent misrepresentation is
21 defined as supplying "false information for the guidance of others in their business
22 transactions" in the course of the tortfeasor's business, profession, employment, or any
23 other transaction in which he has a pecuniary interest. *St. Joseph's Hosp. & Med. Ctr. v.*
24 *Reserve Life Ins. Co.*, 154 Ariz. 307, 312, 742 P.2d 808, 813 (1987). Recovery is limited
25 to the persons or limited group of persons "for whose benefit and guidance [the
26 tortfeasor] intends to supply the information." *Id.* Liability is limited in scope "because it
27 is premised on the reasonable expectations of a foreseeable user of information supplied
28 in connection with commercial transactions." *Id.* at 312–13, 742 P.2d at 813–14.

1 Here, this Court has already determined that the FAC provides sufficient factual
2 information about the alleged misrepresentations to meet the requirements of Rule 8(a).
3 The question on this and other fraud based claims is whether there is sufficient additional
4 detail to survive dismissal based on the requirements of Rule 9(b) that fraud based claims
5 are plead with particularity.

6 The FAC does provide sufficient particularity about time, place, and specific
7 content of the allegedly fraudulent communications. The FAC includes dates of the
8 communications and tells whether they were by phone or letter. In some cases Plaintiffs
9 provide the name of the employee they spoke with on the phone. They also describe the
10 false information given to them about which loss mitigation programs were available.
11 They allege that these statements were untrue because other forms were available and
12 should have been offered. This information was given by Green Tree in the course of its
13 business in a way that guided Plaintiffs' financial decisions. Therefore, Count Five is not
14 dismissed.

15 **E. Tortious Fraudulent Concealment (Count Six)**

16 Arizona recognizes the tort of fraudulent concealment as set out in the
17 Restatement (Second) of Torts. *Wells Fargo Bank v. Ariz. Laborers Local No. 395*
18 *Pension Trust Fund*, 201 Ariz. 474, 496, 38 P.3d 12, 34 (2002). The tort is defined as
19 concealing or by other action intentionally preventing a party to a transaction from
20 acquiring material information. *Id.*

21 For the reasons just described, Plaintiffs adequately plead this fraud based claim
22 with particularity. Plaintiffs allege that Green Tree concealed the availability of other loss
23 mitigation programs. They also allege that Green Tree concealed accurate information
24 during the processing of the short sale application and throughout their dealings. Count
25 Six is not dismissed.

26 **F. Tortious Failure to Hire, Train or Supervise Employee (Count Seven)**

27 In Arizona, the "failure to hire" tort has only been discussed in the context of job
28 applicants bringing suits against prospective employers, and Arizona courts have

1 specified that the Arizona Civil Rights Act does not create common law action for
2 wrongful failure to hire. *Burris v. City of Phoenix*, 179 Ariz. 35, 43, 875 P.2d 1340, 1348
3 (Ct. App. 1993). The Plaintiffs do not cite to any case law that supports a failure to hire
4 claim on the facts of this case. Because a wrongful failure to hire claim does not apply to
5 this context, The Plaintiffs’ claim on that theory is dismissed.

6 “For an employer to be held liable for the negligent hiring, retention, or
7 supervision of an employee, a court must first find that the employee committed a tort.”
8 *Kuehn*, 208 Ariz. at 130, 91 P.3d at 352. The Plaintiffs do not identify in their FAC or in
9 their Response which employee is alleged to have committed what tort. Thus, they have
10 failed to allege with sufficient specificity which Green Tree employee committed a tort,
11 much less what tort it was, or how Green Tree was negligent in hiring, training, or
12 supervising the unidentified employee. They have further failed to plead any facts that
13 would indicate that any mistake by any employee was caused by poor hiring, training, or
14 supervision. As such, Plaintiffs do not state a claim that Green Tree failed to properly
15 hire, train, or supervise employees. Count Seven is dismissed as to Green Tree.

16 **G. Consent Judgment (Count Eight)**

17 Count Eight alleges that the Defendants actions were in violation of a 2012
18 Consent Judgment. Green Tree argues that Plaintiffs do not have standing to enforce that
19 Consent Judgment and that Green Tree was not a party to that judgment. Plaintiffs
20 concede that Green Tree is not bound by the Consent agreement. Therefore Count Eight
21 is dismissed as to Green Tree. Plaintiffs’ argument about MHA requirements is
22 immaterial because Count Eight does not allege a violation of MHA.

23 **H. Tortious Constructive Fraud (Count Nine)**

24 Arizona defines the tort of constructive fraud as “a breach of legal or equitable
25 duty which, irrespective of the moral guilt or intent of the party charged, the law declares
26 fraudulent because of its tendency to deceive others, to violate public or private
27 confidence, or to injure public interests.” *Rhoads v. Harvey Publications, Inc.*, 145 Ariz.
28 142, 148, 700 P.2d 840, 846 (Ct. App. 1984). For the cause of action to arise, “a

1 relationship, akin to a fiduciary relationship must exist.” *McAlister*, 829 P.2d at 1261.
2 The requisite relationship approximates “business agency, professional relationship, or
3 family tie.” *Rhoads*, 700 P.2d at 847. If a “relationship of trust and confidence exists
4 between [the] two parties so that one of them places a peculiar reliance in the
5 trustworthiness of another, the latter is under a duty to make a full and truthful disclosure
6 of all material facts and is liable for misrepresentation or concealment.” *Id.* at 846–47.

7 Here, Green Tree argues that Count Nine should be dismissed for a lack of
8 particularity and failure to plead detrimental reliance. Plaintiffs do not respond to the
9 Motion to Dismiss as to Claim Nine. Therefore, Claim Nine is dismissed as to Green
10 Tree.

11 **I. Equitable Estoppel and Promissory Estoppel (Counts Ten and Eleven)**

12 Arizona defines equitable estoppel as “an affirmative misrepresentation of a
13 present fact or state of facts and detrimental reliance by another thereon.” *Tiffany Inc. v.*
14 *W. M. K. Transit Mix, Inc.*, 16 Ariz. App. 415, 419, 493 P.2d 1220, 1224 (1972). In
15 Arizona, equitable estoppel “is available only as a defense, while promissory estoppel can
16 be used as a cause of action for damages.” *Id.* However, Arizona courts have allowed
17 claims based on equitable estoppel to continue as promissory estoppel claims if the
18 plaintiffs adequately alleged the elements of promissory estoppel. *Gorman v. Pima Cnty.*,
19 230 Ariz. 506, 287 P.3d 800, 804 n.4 (Ct. App. 2012). “The critical distinction between
20 the two is that equitable estoppel refers to reliance on a misrepresentation of some present
21 or past fact, whereas ‘promissory estoppel rests upon a promise to do something in the
22 future.’” *Id.* (citing *Trollope v. Koerner*, 106 Ariz. 10, 18, 470 P.2d 91, 99 (1970)).
23 Otherwise, “promissory estoppel includes all elements of equitable estoppel.” *Id.*

24 Here, the Plaintiffs plead both equitable and promissory estoppel. Under *Gorman*,
25 the Plaintiffs’ equitable estoppel claim only exists as an affirmative cause of action to the
26 extent that their promissory estoppel theory survives. The question is whether the
27 Plaintiffs have adequately alleged the elements of promissory estoppel. Estoppel as a
28 cause of action contains three elements: “(1) the party to be estopped commits acts

1 inconsistent with a position it later adopts; (2) reliance by the other party; and (3) injury
2 to the latter resulting from the former's repudiation of its prior conduct." *Id.* at 511, 287
3 P.3d at 805.

4 Here, the Plaintiffs allege reliance and injury based on Green Tree's actions as
5 alleged in the FAC. They also allege reliance and injury based on Green Tree's promises
6 to comply with Arizona Law. The Plaintiffs allege that they relied on Green Tree's
7 representation that loan modification and short sale were the only options available when
8 in fact other programs would have helped. They also allege that they relied on Green
9 Tree's statement that they had to be late on their payments in order to be eligible for any
10 relief. The Plaintiffs have adequately pled reliance and injury based on these promises
11 and actions. Counts Ten and Eleven is not dismissed.

12 **J. Duty of Good Faith and Fair Dealing (Count Twelve)**

13 The duty of good faith and fair dealing is implied in every contract. *Rawlings v.*
14 *Apodaca*, 151 Ariz. 149, 153, 726 P.2d 565, 569 (1986). That duty prohibits either party
15 from acting "to impair the right of the other to receive the benefits which flow from their
16 agreement or contractual relationship." *Id.* "[B]ecause a party may be injured when the
17 other party to a contract manipulates bargaining power to its own advantage, a party may
18 nevertheless breach its duty of good faith without actually breaching an express covenant
19 in the contract." *Ariz. Laborers Local No. 395*, 201 Ariz. at 491, 38 P.3d at 29).

20 Here, the Plaintiffs have failed to identify any benefit under the Deed of Trust or
21 other contract that was impaired by Green Tree. They do not identify what contract they
22 are referring to or what provisions were impaired. Plaintiffs only reference loss
23 mitigation and loan modification in terms of government programs and consent decrees
24 that do not involve Green Tree. None of these are contracts between Plaintiffs and Green
25 Tree. The Plaintiffs generally allege that Green Tree made false statements to them
26 regarding the status of their short sale and the availability of other programs for loss
27 mitigation. They have not identified anything in the Deed of Trust or other contract that
28 guarantees them the right to receive truthful information about a short sale process or

1 other loan modification or refinance process. Thus, the Plaintiffs have failed to state a
2 claim that Green Tree breached the duty of good faith and fair dealing. Count Twelve is
3 dismissed as to Green Tree for failing to adequately state a claim.

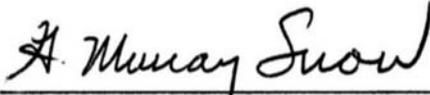
4 **K. Common Law Fraud (Count Thirteen)**

5 The elements for common law fraud are: (1) A representation; (2) its falsity; (3) its
6 materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his
7 intent that it should be acted upon by the person and in the manner reasonably
8 contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on its truth; (8) his
9 right to rely thereon; (9) his consequent and proximate injury. *See, e.g., Nielson v.*
10 *Flashberg*, 101 Ariz. 335, 338-39, 419 P.2d 514, 517-18 (1966) (internal quotations and
11 citations omitted).

12 The parties have not argued that the common law fraud requirements differ in a
13 significant way from the claims under the CFA. The elements for common law fraud are
14 similar and Green Tree has not argued a different basis for the common law fraud claims
15 to be dismissed. The Common Law Fraud count is not dismissed.

16 **IT IS HEREBY ORDERED** that Defendant Green Tree Servicing's Motion to
17 Dismiss First Amended Complaint (Doc. 15) is **GRANTED IN PART AND DENIED**
18 **IN PART**. Counts 3, 7, 8, 9, and 12 of the Amended Complaint are dismissed as to Green
19 Tree. Counts 1, 2, 4, 5, 6, 10, 11, and 13 are not dismissed or are only partially dismissed
20 as described herein.

21 Dated this 14th day of July, 2014.

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23 
24 _____
25 G. Murray Snow
26 United States District Judge
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