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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

|                            |   |   |
|----------------------------|---|---|
| PATRICIA ARREOLA, ALFREDO  | ) | Case No. CV 11-06237 DDP (PLAx)         |
| PARRA, LILLIAN A. RAMIREZ, | ) |   |
| JAVIER A. GALINDO, PASCUAL | ) |   |
| CHAVEZ-RAMIREZ, JOSE       | ) |   |
| RENTERIA, JESSE MORENO,    | ) |   |
| MARIA PLIEGO, RENE PLIEGO, | ) |   |
| JOSE GARCIA,               | ) | <b>ORDER DENYING DEFENDANT'S MOTION</b> |
|                            | ) | <b>TO DISMISS</b>                       |
| Plaintiffs,                | ) |   |
|                            | ) |   |
| v.                         | ) |   |
|                            | ) |   |
| BANK OF AMERICA, NATIONAL  | ) |   |
| ASSOCIATION, a National    | ) |   |
| Banking Association; PABLO | ) | [Dkt. No. 10]                           |
| ARAQUE,                    | ) |   |
|                            | ) |   |
| Defendants.                | ) |   |
|                            | ) |   |
|                            | ) |   |

Presently before the court is Defendant Bank of America ("the bank" or "Defendant")'s Motion to Dismiss. Having considered the submissions of the parties and heard oral argument, the court denies the motion and adopts the following order.

**I. Background**

Plaintiffs invested money in nonparty Financial Plus Investments, Inc. ("Financial Plus"), a "massive Ponzi scheme," run by nonparty Juan Rangel ("Rangel"). (Complaint ¶¶ 1, 14-22.)

1 Certain Plaintiffs also refinanced their homes with the assistance  
2 of Financial Plus, which arranged for straw buyers to purchase the  
3 homes, then deposited loan proceeds into Financial Plus accounts.  
4 (Id. ¶¶ 20-22.) Rangel and his associates encouraged working  
5 class, Spanish-speaking families to invest in by fraudulently  
6 promising unrealistically high rates of return and offering to save  
7 the homes of victims who were behind on their mortgage payments,  
8 but had equity in their homes. (Id. ¶¶ 1-2, 27.) All Plaintiffs  
9 lost some or all of their investments in Financial Plus. (Id. ¶¶  
10 14-22.)

11 Rangel was eventually convicted of several crimes related to  
12 his Ponzi and mortgage fraud schemes, including bribery of a bank  
13 official. (Id. ¶¶ 4,9,10.) Dony Gonzalez ("Gonzalez"), a branch  
14 manager at Bank of America, pleaded guilty to receipt of bribes by  
15 a bank official in connection with Rangel's scheme. (Id. ¶ 5.)

16 Rangel conducted banking activities on behalf of Financial  
17 Plus and related entities at two Bank of America branches managed  
18 by Gonzalez. (Id. ¶ 55.) Gonzalez accepted bribes from Rangel,  
19 and in return released holds on funds before the expiration of  
20 required waiting periods, authorized the deposit of funds into the  
21 account of entities not listed as payees, failed to file reports  
22 for large cash transactions, and falsified Verification of Deposit  
23 forms. (Id. ¶ 56.) Gonzalez's activities raised several internal  
24 "red flags" at the bank related to money laundering and fraudulent  
25 activities. (Id. ¶ 66, 67.) Nevertheless, the bank, including  
26 employees other than Gonzalez, continued to provide suspicious  
27 banking services to Rangel, including wiring large sums of money to  
28 Rangel's personal accounts in Mexico. (Id. ¶68.)

1 Plaintiffs filed this purported class action, alleging four  
2 causes of action against the bank for aiding and abetting breach of  
3 fiduciary duty, aiding and abetting fraud, aiding and abetting  
4 intentional misrepresentation, and aiding and abetting negligent  
5 misrepresentation. The bank now moves to dismiss the complaint.

## 6 **II. Legal Standard**

7 A complaint will survive a motion to dismiss when it contains  
8 "sufficient factual matter, accepted as true, to state a claim to  
9 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.  
10 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,  
11 570 (2007)). When considering a Rule 12(b)(6) motion, a court must  
12 "accept as true all allegations of material fact and must construe  
13 those facts in the light most favorable to the plaintiff." Resnick  
14 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint  
15 need not include "detailed factual allegations," it must offer  
16 "more than an unadorned, the-defendant-unlawfully-harmed-me  
17 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or  
18 allegations that are no more than a statement of a legal conclusion  
19 "are not entitled to the assumption of truth." Id. at 679. In  
20 other words, a pleading that merely offers "labels and  
21 conclusions," a "formulaic recitation of the elements," or "naked  
22 assertions" will not be sufficient to state a claim upon which  
23 relief can be granted. Id. at 678 (citations and internal  
24 quotation marks omitted).

25 "When there are well-pleaded factual allegations, a court should  
26 assume their veracity and then determine whether they plausibly  
27 give rise to an entitlement of relief." Id. at 679. Plaintiffs  
28 must allege "plausible grounds to infer" that their claims rise

1 "above the speculative level." Twombly, 550 U.S. at 555.

2 "Determining whether a complaint states a plausible claim for  
3 relief" is a "context-specific task that requires the reviewing  
4 court to draw on its judicial experience and common sense." Iqbal,  
5 556 U.S. at 679.

### 6 **III. Discussion**

#### 7 A. Fiduciary Duty

8 Defendant first argues that Plaintiffs' first cause of action  
9 should be dismissed because Plaintiffs have not alleged that the  
10 bank owed them a fiduciary duty. As Defendant acknowledges, courts  
11 in this district have held that a plaintiff need not show that an  
12 aider and abettor independently owed plaintiff a fiduciary duty.  
13 Neilson v. Union Bank of California, N.A., 290 F. Supp. 2d 1101,  
14 1137 (C.D. Cal 2003).

15 The bank next argues that Plaintiffs have failed to plead  
16 facts sufficient to show that Rangel owed Plaintiffs a fiduciary  
17 duty. (Mot. at 8.) The existence of a fiduciary relationship is a  
18 factual question, which depends on the particular characteristics  
19 of the relationship at issue. In re Daisy Systems Corp., 97 F.3d  
20 1171, 1178 (9th Cir. 1996). A fiduciary relationship may exist  
21 where one party voluntarily accepts the trust and confidence of  
22 another and enjoys a superior position of influence over the  
23 trusting party. Id. at 1177. Here, Rangel specifically targeted  
24 vulnerable, distressed homeowners who were facing the loss of their  
25 homes. (Complaint ¶¶ 36, 38.) By assuring his victims that they  
26 would be able to continue living in their homes, Rangel earned  
27 their confidence, which he then exploited to transfer title or  
28 divert loan proceeds to Financial Plus. In appealing to

1 Plaintiffs' fundamental need for shelter and preying on their fear  
2 of losing their largest asset, Rangel went far beyond a mere arms-  
3 length transaction, and assumed a fiduciary duty to Plaintiffs.

4 While the question is closer with respect to victims of the  
5 Ponzi scheme alone, the Complaint alleges that Rangel intentionally  
6 preyed on members of his own community who, by dint of their  
7 limited language abilities, working-class origins, and lack of  
8 sophistication, were particularly vulnerable to and trusting of  
9 Rangel. (Complaint ¶¶ 2, 27.) While this issue may arise again at  
10 the class certification or summary judgment stage, Plaintiffs'  
11 allegations are sufficient to survive a motion to dismiss. See  
12 City of Hope Nat. Med. Center v. Genentech, Inc., 43 Cal.4th 375,  
13 389 (2008) ("[F]iduciary obligations[] generally come into play  
14 when one party's vulnerability is so substantial as to give rise to  
15 equitable concerns underlying the protection afforded by the law  
16 governing fiduciaries.").

17 B. Knowledge

18 The bank further argues that Plaintiff's first claim must fail  
19 because Dony Gonzalez's actions cannot be imputed to the bank.  
20 While the bank is correct that knowledge acquired by an agent  
21 acting adversely to the principal is not attributable to the  
22 principal, the Complaint adequately alleges that Gonzalez was  
23 acting in the bank's interest. See Meyer v. Glenmoor Homes, Inc.,  
24 246 Cal.App.2d 242, 264 (1967). The Complaint alleges that  
25 Gonzalez was a high level branch manager, and that he committed  
26 wrongful acts while in the course of conducting official bank  
27 business. See Grigsby v. Hagler, 25 Cal.App.2d. 714, 715 (1938)  
28 ("[A] principal is liable to third parties . . . for the frauds or

1 other wrongful acts committed by such agent in and as a part of the  
2 transaction of [the principal's] business."). Gonzalez knew, at  
3 the very least, that the falsified Verification of Deposit forms  
4 were being used in connection with fraudulent mortgage  
5 applications.

6 Furthermore, the Complaint alleges that the bank itself, aside  
7 from Gonzalez's actions, ignored multiple "red flags," choosing  
8 instead to enjoy the benefits of its financial relationship with  
9 Rangel and his business entities. (Compl. ¶ 68.) Plaintiffs  
10 allege that the bank knew that Rangel's business accounts involved  
11 the receipt of investor funds, knew of the multiple internal "red  
12 flags" that Rangel's banking activities triggered, and knew that  
13 Rangel was transferring money from investor-funded accounts to  
14 Rangel's personal accounts in Mexico. (Compl. ¶¶ 66, 68.) A  
15 common-sense reading of these allegations, taken together,  
16 sufficiently establish, at this stage, that the bank had actual  
17 knowledge of Rangel's fraud.<sup>1</sup>

18 C. Aiding and Abetting Negligent Misrepresentation

19 The bank argues that Plaintiffs' claim for aiding and abetting  
20 negligent misrepresentation must be dismissed as a matter of law  
21 because aiding and abetting claims are limited to those based on  
22 intentional torts. (Mot. at 15.) The bank provides no authority  
23 to support its contention, and a court in this district has  
24 explicitly held that, to the contrary, "an aider and abettor could  
25 knowingly further a misrepresentation that was negligently made by

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27 <sup>1</sup> To the extent that the bank's arguments regarding claims two  
28 through four overlap with its arguments regarding claim one, the  
motion is denied for the reasons stated above.

1 another party." In re ZZZ Best Securities Litigation, No. CV 87-  
2 3574 RSWL, 1990 WL 132715 \*13 (C.D. Cal. July 23, 1990); See also  
3 McKay v. Hageseth, No. C-06-1377, 2007 WL 1056784 \*2 (N.D. Cal.  
4 April 6, 2007) ("California courts have relied on § 876 of the  
5 Restatement 2d of Torts, which expressly states that liability may  
6 exist for aiding and abetting negligent acts.").

7 D. Rule 9(b) Concerns

8 Lastly, the bank argues that Plaintiffs have not alleged a  
9 fraud claim against Rangel with sufficient detail to satisfy  
10 Federal Rule of Procedure 9(b). Rule 9(b) requires that the  
11 alleged circumstances of the fraud give defendants sufficient  
12 notice of the misconduct at issue to allow defendants to defend  
13 against the charge. Kearns v. Ford Motor Co., 567 F.3d 1120 (9th  
14 Cir. 2009). The court is satisfied that the Complaint provides  
15 Defendant with sufficient details to allow for an informed defense.

16 **IV. Conclusion**

17 For the reasons stated above, Defendant's Motion to Dismiss is  
18 DENIED.

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20 IT IS SO ORDERED.

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23 Dated: October 5, 2012

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DEAN D. PREGERSON  
United States District Judge

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