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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VICTORIA URENIA, an)	Case No. CV 13-01934 DDP (AJWx)
individual; SOLEDAD CORONA,)	
an individual,)	ORDER GRANTING IN PART AND
)	DENYING IN PART DEFENDANTS BANK
Plaintiffs,)	OF AMERICA, N.A., PUBLIC STORAGE,
)	AND MICHAEL ANZ'S MOTION TO
v.)	DISMISS PLAINTIFFS' COMPLAINT
)	
PUBLIC STORAGE, a real)	[DKT. NO. 25]
estate investment trust;)	
CITY OF LOS ANGELES, a)	
governmental entity; BANK OF)	
AMERICA, N.A.; MICHAEL ANZ,)	
)	
Defendants.)	
<hr/>)	

Presently before the Court is Defendants Bank of America, N.A., Public Storage, and Michael Anz's motion to dismiss Plaintiffs' complaint (the "Motion"). (Docket No. 25.) For the reasons stated in this Order, the Motion is GRANTED IN PART and DENIED IN PART.

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1 **I. Background**¹

2 Plaintiffs Victoria Urenia and Soledad Corona ("Plaintiffs")
3 bring this class action complaint against Bank of America, N.A.,
4 Public Storage, Michael Anz, and the City of Los Angeles
5 (collectively, "Defendants"). Bank of America, Public Storage, and
6 Anz (collectively, "Private Defendants") have filed this Motion,
7 while City of Los Angeles has filed an answer and has not sought
8 dismissal of this action. (Docket No. 28.) Plaintiffs failed to
9 timely file an opposition to the Motion, but later filed an *ex*
10 *parte* application to allow them to file a late opposition. (Docket
11 No. 41.) The Court granted the *ex parte* application (Docket No.
12 45), and now the Motion has been fully briefed by the parties.

13 Plaintiff Corona was the owner of the real property located at
14 2200 Daly Street, Los Angeles, California 90031 (the "Property").
15 (Complaint, Docket No. 1, ¶ 3.) Plaintiff Urenia is the daughter of
16 Ms. Corona. (*Id.* ¶ 2.) In 2009, Plaintiffs allege that Bank of
17 America foreclosed on the Property while Ms. Corona was in the
18 middle of a loan modification, in violation of HUD regulations.
19 (*Id.* ¶¶ 24-25, 27.) A Notice of Trustee's Sale was recorded on
20 October 29, 2009, and Bank of America obtained title to the
21 Property on December 14, 2009. (*Id.* ¶¶ 26, 28.) Bank of America
22 obtained a judgment for possession through an unlawful detainer
23 action against Ms. Corona in 2010. (*Id.* ¶ 30.) However, Plaintiffs

24
25 ¹Defendants include a variety of factual statements in their
26 Motion. To the extent that those facts are supported by judicially
27 noticeable documents, the Court shall take those facts into account
28 in ruling on the Motion. Otherwise, such facts shall not be
considered in determining the sufficiency of Plaintiffs' pleadings.
Plaintiffs also include alleged facts in their opposition to the
Motion that were not included in the Complaint. Such facts shall
not be considered in ruling on the Motion.

1 allege that Bank of America did not obtain actual possession of the
2 Property at that time. (Id. ¶ 31.)²

3 In April 2012, Ms. Corona joined Occupy Fights Foreclosures
4 ("OFF"), an offshoot of the larger Occupy movement. (Id. ¶ 32.) On
5 December 6, 2012, Plaintiffs received a Notice to Vacate, which
6 required them to vacate the Property no later than December 11,
7 2012. (Id. ¶ 35.) On December 13, 2012, the Los Angeles County
8 Sheriffs locked Plaintiffs out of the Property. (Id. ¶ 37.)
9 Plaintiffs allege that the Sheriffs Department allowed them to
10 return to the Property on December 23, 2012. (Id. ¶ 38.) During the
11 time period when Plaintiffs were locked out of the Property, OFF
12 members had set up tents in the front yard in protest. (Id. ¶ 39.)

13 Bank of America called the Los Angeles Police Department
14 ("LAPD") on January 18, 2013 and demanded that the locks be changed
15 and all persons evicted from the Property. (Id. ¶ 41.) LAPD
16 allegedly went to the Property, forced Ms. Urenia out of the
17 Property, changed the locks, and erected a chicken-wire fence
18 around the Property. (Id. ¶¶ 94-95.) LAPD allegedly refused to
19 allow Plaintiffs to obtain their personal belongings from the
20 Property and threatened arrest if Plaintiffs returned. (Id. ¶¶ 42,
21 97.) Plaintiffs allege that on January 22, 2013, they returned to
22 the Property to find Michael Anz, a Bank of America representative,
23 loading their personal property onto a moving truck.³ (Id. ¶¶ 100-

24
25 ²Though Plaintiffs do not allege facts indicating as much, it
26 appears that Plaintiffs filed an action in state court for breach
27 of contract relating to alleged failures to properly conduct the
state a claim, and the dismissal was affirmed on appeal.

28 ³The alleged timeline of the events following LAPD locking
(continued...)

1 02.) Plaintiffs allege that they were allowed only one hour to pack
2 as many of their belongings as they could because OFF was holding a
3 candlelight vigil at the Property that evening. (Id. ¶¶ 103-04.)

4 On February 28, 2013, Michael Anz allegedly took Plaintiffs'
5 personal belongings from the Property. (Id. ¶ 43.) Ms. Corona asked
6 whether she could have her personal belongings, but various
7 Defendants refused. (Id. ¶¶ 44-46.) Plaintiffs later learned that
8 their belongings had been taken to a Public Storage facility
9 located at 4009 Mission Road, Los Angeles, California. (Id. ¶ 47.)
10 Public Storage allegedly refused to turn over their belongings,
11 saying that they belonged to Michael Anz. (Id. ¶¶ 48-49.)
12 Plaintiffs allege that Public Storage insisted that Ms. Corona sign
13 a release and rental lease agreement before they could return her
14 belongings. (Id. ¶ 54.) Ms. Corona refused to sign the document
15 because it contained untrue statements, including a statement that
16 none of the stored property contained important documents, personal
17 identification, perishables, or sentimental items. (Id. ¶¶ 55-56.)

18 Plaintiffs allege that Michael Anz contacted Plaintiffs'
19 attorney and said that Plaintiffs could obtain their belongings
20 from him. (Id. ¶ 61.) As a result, Ms. Corona returned to Public
21 Storage on March 16, 2013 along with seven people to help her move
22 her belongings. (Id. ¶ 62.) However, Plaintiffs' attorney was
23 allegedly presented with the same lease agreement document
24 containing untrue statements. (Id. ¶ 63.) Plaintiffs' attorney

25
26 ³(...continued)

27 Plaintiffs out of the Property is not entirely clear, especially
28 with regard to how many times and on what dates Ms. Corona alleges
that she spoke with Michael Anz and/or Public Storage to attempt to
get her belongings returned to her. The exact dates on which these
events happened do not appear to be significant.

1 wrote disclaimers on the document. (Id. ¶ 64.) As a result, Public
2 Storage refused to return Plaintiffs' belongings, stating that it
3 was Public Storage policy not to release belongings from foreclosed
4 homes unless the lease agreement document was signed in unaltered
5 form. (Id. ¶ 65.)

6 Plaintiffs bring a variety of claims arising out of these
7 events. Plaintiffs allege violations of the First Amendment, Fourth
8 Amendment, RICO, the Sherman Act, and Cal. Bus. & Prof. Code §
9 17200. Further, Plaintiffs seek to set aside the foreclosure sale.
10 Plaintiffs purportedly bring all of their claims on behalf of a
11 class of similarly situated individuals who have been subjected to
12 the same alleged acts that Plaintiffs experienced.⁴

13 **II. Legal Standard**

14 A complaint will survive a motion to dismiss when it contains
15 "sufficient factual matter, accepted as true, to state a claim to
16 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
17 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
18 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
19 "accept as true all allegations of material fact and must construe
20 those facts in the light most favorable to the plaintiff." Resnick
21 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
22 need not include "detailed factual allegations," it must offer
23 "more than an unadorned, the-defendant-unlawfully-harmed-me
24 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
25 allegations that are no more than a statement of a legal conclusion

26
27 ⁴Though the issue is not before the Court at this time, the
28 Court expresses skepticism as to whether the causes of action and
facts asserted by Plaintiffs may properly be adjudicated as a class
action.

1 "are not entitled to the assumption of truth." Id. at 679. In other
2 words, a pleading that merely offers "labels and conclusions," a
3 "formulaic recitation of the elements," or "naked assertions" will
4 not be sufficient to state a claim upon which relief can be
5 granted. Id. at 678 (citations and internal quotation marks
6 omitted).

7 "When there are well-pleaded factual allegations, a court
8 should assume their veracity and then determine whether they
9 plausibly give rise to an entitlement of relief." Id. at 679.
10 Plaintiffs must allege "plausible grounds to infer" that their
11 claims rise "above the speculative level." Twombly, 550 U.S. at
12 555. "Determining whether a complaint states a plausible claim for
13 relief" is a "context-specific task that requires the reviewing
14 court to draw on its judicial experience and common sense." Iqbal,
15 556 U.S. at 679.

16 **III. Discussion**

17 **A. Section 1983 Claims**⁵

18 Plaintiffs' § 1983 claims appear to be based on purported
19 violations of Plaintiffs' First Amendment and Fourth Amendment
20 rights. (Complaint ¶¶ 88-142.) Private Defendants argue that
21 Plaintiffs' Section 1983 claims should be dismissed as to them
22 because they are not state actors and did not act under color of
23 law. "To state a claim under § 1983, a plaintiff must allege two
24 essential elements: (1) that a right secured by the Constitution or
25

26 ⁵The existence of underlying constitutional violations by LAPD
27 officers was not challenged in the Motion, although Private
28 Defendants dispute that there were any such violations in their
Reply. The Court does not decide here whether or not any viable §
1983 claims exist against the City of Los Angeles.

1 laws of the United States was violated, and (2) that the alleged
2 violation was committed by a person acting under the color of State
3 law." Long v. County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir.
4 2006).

5 Generally, private actors do not act under color of state law.
6 Price v. State of Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991).
7 Further, "it is generally not a constitutional violation for a
8 police officer to enforce a private entity's rights." Villegas v.
9 Gilroy Garlic Festival Ass'n, 541 F.3d 950, 957 (9th Cir. 2008).
10 Nor does a private party's invocation of remedies provided by state
11 law constitute state action. See Harper v. Federal Land Bank of
12 Spokane, 878 F.2d 1172, 1178 (9th Cir. 1989) ("[T]he fact that a
13 state permits the use of foreclosure procedures and subsequent
14 sheriff sales as the execution of a judgment is not sufficient to
15 constitute state action.").

16 However, there are situations where a private individual or
17 entity can be held liable under § 1983. Plaintiffs contend in their
18 opposition to the Motion that the Private Defendants acted in
19 concert with the LAPD such that the Private Defendants can be
20 deemed to have acted under color of state law. See Kirtley v.
21 Rainey, 326 F.3d 1088, 1093-95 (9th Cir. 2003); Tsao v. Desert
22 Palace, Inc., 698 F.3d 1128, 1140 (9th Cir. 2012). Joint action
23 exists where the state has "so far insinuated itself into a
24 position of interdependence with [the private entity] that it must
25 be recognized as a joint participant in the challenged activity."
26 Gorenc v. Salt River Project Agric. Improvement & Power Dist., 869
27 F.2d 503, 507 (9th Cir. 1989) (quoting Burton v. Wilmington Parking
28 Auth., 365 U.S. 715, 725 (1961)).

1 As to Plaintiffs' First Amendment claim, the Court finds that
2 Plaintiffs have not pled sufficient facts to support a claim that
3 their rights of "free speech, freedom of association and to
4 petition for redress of grievances" (Complaint ¶ 90) were violated
5 by Private Defendants. The only allegation that clearly pertains to
6 their First Amendment claim is a single, isolated statement that
7 defendants would "arriv[e] on the scene at [Ms. Corona's] home each
8 time she tried to associate with Occupy Fights Foreclosures and
9 then demand[] identification of all individuals present
10 intimidating any assertion of rights." (Id. ¶ 125.) However, this
11 pleading does not establish any connection between the purported
12 acts of the LAPD officers, presumably the party that arrived at the
13 Property demanding identification, and any acts by Private
14 Defendants.⁶ There is no allegation that the LAPD officers went to
15 the Property to demand identification of present OFF members at the
16 direction of or in coordination with Private Defendants. Therefore,
17 Plaintiffs have not stated a claim against the Private Defendants
18 for violation of the First Amendment, and the Court GRANTS the
19 Motion with leave to amend as to Plaintiffs' First Amendment claim
20 against Private Defendants.

21 With regard to Plaintiffs' Fourth Amendment claim, Plaintiffs
22 have pled sufficient facts to give rise to a plausible claim
23 against Bank of America. Plaintiffs allege that "Bank of America
24 called the Los Angeles Police Department on a Friday late morning
25

26 ⁶Plaintiffs' Complaint is unclear in this regard. Further, the
27 Complaint is unclear as to which acts by which defendants
28 purportedly violated Plaintiffs' First Amendment rights. Should
Plaintiffs choose to amend, any amended complaint should clarify
the predicate acts upon which Plaintiffs seek to base this claim.

1 to early afternoon and demanded that the locks be changed and all
2 persons immediately evicted from the [Property] on or about January
3 18, 2013." (Complaint ¶ 41.) Further, Plaintiffs allege that "LAPD
4 officer Gonzalez ... allowed Bank of America's agent, a locksmith,
5 to change the locks on the [Property] and erect a 15 to 20 feet
6 chicken-wire fence around the [Property]." (Id. ¶ 95.) Further,
7 Plaintiffs allege that on January 22, 2013, Bank of America's
8 representative Michael Anz, as well as LAPD officers, were present
9 when Plaintiffs were forced from the Property, with some of their
10 belongings already loaded into a moving truck. (Id. ¶¶ 100-04.)

11 These facts give rise to a plausible claim that LAPD and Bank
12 of America, through Michael Anz, were engaged in "joint action"
13 such that Anz and Bank of America could have been acting "under
14 color of law" when they seized Plaintiffs' personal property from
15 the home and forced Ms. Urenia from the Property. Where police
16 officers do more than merely "stand by" in case of trouble, but
17 instead affirmatively participate in assisting private actors in
18 effectuating an eviction or repossession of property, the private
19 actors may be said to be acting under color of law. Howerton v.
20 Gabica, 708 F.2d 380, 383-84 (9th Cir. 1983) ("This case involves
21 more than a single incident of police consent to 'stand by' in case
22 of trouble. Police were on the scene at each step of the
23 eviction... The actions of [the officer] created an appearance that
24 the police sanctioned the eviction."); see also Harris v. City of
25 Roseburg, 664 F.2d 1121, 1127 (9th Cir. 1981) ("[T]here may be a
26 deprivation within the meaning of § 1983 ... when the officer
27 assists in effectuating a repossession over the objection of the
28 debtor."). Here, Plaintiffs' alleged facts indicate that the LAPD

1 officers did more than merely "stand by" when Bank of America
2 locked Plaintiffs out of the Property, evicted Plaintiffs from the
3 Property, and took possession of Plaintiffs' personal belongings.
4 However, the alleged facts do not demonstrate that Public Storage
5 performed any acts jointly with LAPD officers, such that any acts
6 performed by Public Storage were not performed "under color of
7 law." Therefore, the Court DENIES the Motion as to Plaintiffs'
8 Fourth Amendment claim against Bank of America and Michael Anz and
9 GRANTS the Motion with leave to amend as to Plaintiffs' claim
10 against Public Storage.⁷

11 B. RICO Claims

12 The elements of a civil RICO claim are "(1) conduct (2) of an
13 enterprise (3) through a pattern (4) of racketeering activity."
14 Rezner v. Bayerische Hypo-Und Vereinsbank AG, 630 F.3d 866, 873
15 (9th Cir. 2010). Private Defendants argue that Plaintiffs' RICO
16 claim should be dismissed because (a) Plaintiffs fail to allege
17 facts showing the existence of an enterprise and (b) Plaintiffs
18 fail to allege facts showing the existence of a pattern of
19 racketeering activity. (Docket No. 25-1, pp. 11-14.) Further,
20 Private Defendants argue that Plaintiffs' RICO conspiracy claim
21 fails because the underlying RICO claim fails. (Id. at 14-15.)
22 Finally, Private Defendants argue that there is no cognizable claim
23 for aiding and abetting a civil RICO claim. (Id. at 15.)

24 _____
25 ⁷The Court expresses some doubt as to whether the facts in
26 this case will establish that any underlying Fourth Amendment
27 violation occurred in the eviction and repossession process.
28 However, as Private Defendants offered no substantial or convincing
argument as to why Plaintiffs' facts do not establish a violation
of their right to be free from unreasonable searches and seizures,
either in their Motion or upon reply, the Court declines to dismiss
the claim on that basis.

1 An "enterprise" is a "group of persons associated together for
2 a common purpose of engaging in a course of conduct." United States
3 v. Turkett, 452 U.S. 576, 583 (1981). To plead the existence of an
4 enterprise, a plaintiff must allege "an ongoing organization,
5 formal or informal, and by evidence that the various associates
6 function as a continuing unit." Id.; see also Odom v. Microsoft
7 Corp., 486 F.3d 541, 552 (9th Cir. 2007).

8 The Court finds that Plaintiffs have failed to plead the
9 existence of an ongoing enterprise between Defendants. Plaintiffs
10 conclusorily plead that Defendants engage in an ongoing enterprise
11 by which Defendants routinely conduct post-foreclosure activities
12 exactly the way they happened to Plaintiffs in this case:
13 Defendants change the locks on foreclosed properties, lock up
14 personal property inside the foreclosed residence, refuse to
15 coordinate a way to return the personal property to its owner, haul
16 the property to Public Storage, and force the owner to sign a
17 release and lease agreement in order for him or her to obtain the
18 personal property. (Complaint ¶ 162.) However, Plaintiffs allege no
19 facts that would suggest the existence of an ongoing enterprise;
20 instead, Plaintiffs' only factual allegations relate to these
21 actions being performed *once*, to *their* personal property. See
22 Gamboa v. Trustee Corps, 2009 WL 656285, at *5-6 (N.D. Cal. 2009)
23 (finding that plaintiffs failed to plead a RICO claim where the
24 complaint is "focused on one foreclosure sale" and does "not
25 describe any other attempted foreclosure or loan collection
26 activities" but makes only "the conclusory allegation" of a pattern
27 or practice); Martinez v. Quality Loan Service Corp., 2009 WL
28 586725, at *8 (C.D. Cal. 2009) (same). Therefore, Plaintiffs have

1 not alleged sufficient facts to support the existence of an ongoing
2 enterprise.⁸ Therefore, their RICO claim fails.⁹

3 Plaintiffs also bring a RICO conspiracy claim. (Complaint ¶¶
4 193-98.) As their underlying RICO claim is insufficiently pled, the
5 conspiracy claim fails as well. See Howard v. America Online, Inc.,
6 208 F.3d 741, 751 (9th Cir. 2000) ("Plaintiffs cannot claim that a
7 conspiracy to violate RICO existed if they do not adequately plead
8 a substantive violation of RICO.").

9 Finally, Plaintiffs attempt to assert a cause of action for
10 "aiding and abetting" RICO violations. (Complaint ¶¶ 199-206.) The
11 Third Circuit has found that no private right of action exists for
12 aiding and abetting a RICO violation. Rolo v. City Investing Co.
13 Liquidating Trust, 155 F.3d 644, 657 (3d Cir. 1998) (adopting the
14 reasoning of Central Bank of Denver, N.A. v. First Interstate Bank
15 of Denver, N.A., 511 U.S. 164 (1994), which held that there was no
16 private right of action for aiding and abetting a violation of
17 Section 10(b) of the Securities and Exchange Act). At least one
18

19 ⁸Plaintiffs also argue that they have pled facts regarding a
20 statistical increase in short-term tenancies at Public Storage
21 facilities and that this increase implies that Defendants' actions
22 toward Plaintiffs have been repeated many times. (Opp. to Mtn.,
23 Docket No. 46, p. 7; see Complaint ¶¶ 70-75.) However, a mere
24 increase in short-term rentals at Public Storage, without more, is
25 insufficient to support Plaintiffs' allegation of an ongoing
26 enterprise between the Private Defendants and the City of Los
27 Angeles. There are many possible explanations for such a
28 statistical trend. Without facts suggesting any sort of link
between the trend and repeated acts similar to those alleged in
this action, these statistics are insufficient to support a
plausible RICO claim.

⁹The Court does not reach the additional issues of whether
Plaintiffs have properly alleged a "pattern" of racketeering
activity, nor whether Plaintiffs have pled sufficient facts to
support the predicate acts of mail fraud and wire fraud for their
RICO claims.

1 district court in the Ninth Circuit has adopted the Third Circuit
2 approach. In re Countrywide Financial Corp. Mortgage Marketing and
3 Sales Practice Litigation, 601 F.Supp.2d 1201, 1219 (S.D. Cal.
4 2009). The Court agrees with this approach and concludes that there
5 is no private right of action for aiding and abetting a RICO
6 violation. Further, in the absence of a sufficiently pled predicate
7 RICO violation, Plaintiffs' derivative claim for aiding and
8 abetting would fail even if they could, in theory, bring such a
9 claim. See Westways World Travel, Inc. v. AMR Corp., 265 F. App'x.
10 472, 474 (9th Cir. 2008) ("Because the [plaintiffs] cannot maintain
11 a substantive RICO claim, their derivative RICO claim[] for aiding
12 and abetting ... also fail[s]"). Therefore, the Court GRANTS the
13 Motion as to all of Plaintiffs' RICO claims with leave to amend.
14 Any amendment must correct the deficiencies identified in this
15 Order.

16 C. Sherman Act Claims

17 A claim under Section 2 of the Sherman Act requires "(1) the
18 defendant possessed monopoly power in the relevant market; (2) the
19 defendant willfully acquired or maintained that power through
20 exclusionary conduct; and (3) the defendant's conduct caused
21 antitrust injury." InfoStream Group, Inc. v. PayPal, Inc., 2012 WL
22 3731517, at *4 (N.D. Cal. 2012). Private Defendants argue that
23 Plaintiffs have not stated a claim under Section 2 of the Sherman
24 Act because (a) they have not suffered an antitrust injury and (b)
25 they have not alleged facts showing Public Storage's market
26 power.¹⁰ (Docket No. 25-1, pp. 15-17.)

27
28 ¹⁰Plaintiffs' antitrust claims appear to be asserted only
(continued...)

1 Though not made explicit, it appears that Plaintiff's Sherman
2 Act claims are based on an alleged agreement between Public Storage
3 and Bank of America that all personal property recovered from homes
4 upon which Bank of America has foreclosed will be taken to a Public
5 Storage facility. Plaintiffs have not alleged, however, that as a
6 result of that purported agreement, they have suffered a cognizable
7 antitrust injury. An antitrust injury "means harm to the process of
8 competition and consumer welfare." LiveUniverse, Inc. v. MySpace,
9 Inc., 304 F. App'x. 554, 557 (9th Cir. 2008). Even taking
10 Plaintiffs' allegations as true and accepting that there was some
11 sort of agreement between Public Storage and Bank of America,
12 Plaintiffs still plead no facts indicating that they were charged
13 higher prices or otherwise harmed by any purported lack of
14 competition between Public Storage and other self-storage entities.
15 Plaintiffs do not allege any facts suggesting that the alleged
16 harms to Plaintiffs flow from the fact that Public Storage controls
17 a large market share of the self-storage industry. Plaintiffs could
18 have suffered the same alleged harmed in the same manner had their
19 personal belongings been removed from the Property and taken to any
20 storage facility. Therefore, Plaintiffs have not sufficiently pled
21 the existence of an antitrust injury. As a result, their Sherman
22 Act claims fail, and the Court GRANTS the Motion as to these
23 claims.¹¹

24
25 ¹⁰(...continued)
 against Public Storage.

26 ¹¹The Court does not reach the question of whether Plaintiffs
27 have alleged sufficient facts demonstrating that Public Storage has
28 monopoly power, though the Court expresses doubt that the facts, as
 currently alleged, are sufficient to support such a finding.

(continued...)

1 D. UCL Claims

2 Plaintiffs allege their UCL claim only against Bank of
3 America.¹² Plaintiffs premise their claim on Bank of America's
4 alleged practice of "evict[ing] homeowners and search[ing] and
5 seiz[ing] their personal property, when there is no valid search
6 warrant and no arrest ... made." (Complaint ¶ 223.) Further,
7 Plaintiffs allege that Bank of America threatens "to arrest and
8 take property without due process as a bargaining tool in order to
9 coerce those to stop associating with the OFF movement to chill
10 free speech." (Id. ¶ 225.)

11 To the extent that Plaintiffs' underlying claims survive, or
12 are amended to state a claim, the Court finds that the UCL claim
13 survives under the "unlawful" prong of Cal. Bus. & Prof. Code §
14 17200. To the extent that the underlying claims are insufficient,
15 Plaintiffs have failed to state a claim. To the extent that
16 Plaintiffs seek to base their § 17200 claim on predicate acts that
17 are not unlawful, but nevertheless are "unfair" or violate public
18 policy, Plaintiffs must amend their complaint to state with
19 sufficient specificity which acts allegedly fall into these
20 categories.

21 E. Claim to Set Aside Foreclosure

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24 ¹¹(...continued)
25 Moreover, there are no facts in the complaint demonstrating Public
Storage's willful acquisition and maintenance of monopoly power.

26 ¹²Some of the allegations appear to indicate that Plaintiffs
27 wish to assert this cause of action against other defendants.
28 However, Plaintiffs specify in their section heading that they wish
to assert this claim against only Bank of America. (See Complaint,
pg. 36.)

1 Plaintiffs base this claim for relief on their allegation that
2 the Deed of Trust on the Property contained a provision requiring
3 Bank of America to follow HUD guidelines, including counseling, to
4 attempt to avoid foreclosure and that Bank of America failed to
5 follow those requirements. (See Complaint ¶¶ 238-42.) Private
6 Defendants advance four arguments as to why Plaintiffs' claim to
7 set aside the foreclosure sale should be dismissed: (1) the alleged
8 failure to follow HUD guidelines cannot provide a basis for setting
9 aside a foreclosure; (2) res judicata bars Plaintiffs' claim; (3)
10 Plaintiffs have failed to allege tender; and (4) Plaintiffs' claim
11 is barred by the statute of limitations.

12 The Court notes at the outset that it appears that Ms. Urenia
13 lacks standing to pursue this claim, as she is not named on the
14 Deed of Trust. (See RJN, Docket No. 25-2, Exh. A.) Therefore, the
15 Court's analysis will focus solely on whether Ms. Corona has stated
16 a claim to set aside the foreclosure.

17 As to Private Defendants' first argument, the sole case cited
18 in support of their contention that the failure to follow HUD
19 guidelines is insufficient grounds to set aside a foreclosure does
20 not support that conclusion. See Pfeifer v. Countrywide Home Loans,
21 Inc., 211 Cal.App.4th 1250, 1269-79 (2012). The court in that case
22 found that the mortgagors could assert a cause of action to prevent
23 the foreclosure sale based on violations of HUD regulations, as
24 incorporated into the deed of trust. Id. at 1279. The quotation
25 offered by Private Defendants does not capture the holding of the
26 case. Therefore, the Court does not dismiss Plaintiffs' claim on
27 this basis.

28

1 As to Private Defendants' statute of limitations argument, the
2 sole case cited in support of their contention that the claim is
3 time-barred expressly limits the three-year statute of limitations
4 to claims to set aside a foreclosure "based on fraud, a fraudulent
5 conspiracy or breach of statutory duty." Susilo v. Wells Fargo
6 Bank, N.A., 796 F.Supp.2d 1177, 1195 (C.D. Cal. 2011). In this
7 case, Plaintiffs have a plausible claim to set aside the
8 foreclosure arising from their *contractual* rights in the Deed of
9 Trust, which requires the lender to follow HUD guidelines prior to
10 instituting foreclosure proceedings, rather than a claim based on
11 fraud or on breach of a statutory duty. The statute of limitations
12 for contract claims is four years under California law. Cal. Code
13 Civ. Proc. § 337(1). Therefore, the Court does not dismiss
14 Plaintiffs' claim on this basis.

15 With regard to Private Defendants' other two arguments, the
16 Court finds that Plaintiffs' pleading is insufficient for the Court
17 to determine at this juncture whether the tender requirement should
18 be excused because the foreclosure sale was void or whether the
19 issues adjudicated in the state court proceeding should bar
20 Plaintiffs' pursuit of their current claims under the doctrine of
21 res judicata, as both determinations depend upon the exact nature
22 of Plaintiffs' claims. Plaintiffs have failed to plead sufficient
23 facts to identify which purported acts or failures to act
24 constituted violations of HUD regulations, as incorporated into the
25 Deed of Trust. Plaintiffs merely allege that the HUD regulations
26 were incorporated into the Deed of Trust (Complaint ¶ 25) and that
27 the foreclosure occurred "[w]ithout following HUD regulations" (Id.
28 ¶ 26). Plaintiffs reiterate that "Bank of America never followed

1 the HUD guidelines outlined in the Deed of Trust . . . , such as
2 providing a counseling session to avoid foreclosure." (Id. ¶ 239.)
3 These allegations fail to identify with particularity the course of
4 events that Plaintiffs allege were wrongful, nor the specific HUD
5 provisions that made them wrongful. Therefore, the Court GRANTS the
6 Motion to dismiss this claim without prejudice. Any amended
7 complaint must plead facts in support of this claim and the HUD
8 provisions allegedly violated with specificity.

9 **IV. Conclusion**

10 For the foregoing reasons, the Court GRANTS the Motion IN PART
11 and DENIES the Motion IN PART. Plaintiffs may amend their complaint
12 consistent with the deficiencies identified in this Order. Any
13 amended complaint must be filed on or before June 6, 2014.

14
15 IT IS SO ORDERED.

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18 Dated: May 22, 2014


DEAN D. PREGERSON
United States District Judge

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