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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AHMAD RAZAWI and DANIELA  
RAZAWI,

No. 2:09-cv-00985-MCE-JFM

Plaintiffs,

v.

MEMORANDUM AND ORDER

FEDERAL DEPOSIT INSURANCE  
CORPORATION AS RECEIVER FOR  
DOWNEY SAVINGS, F.A., CENTRAL  
MORTGAGE COMPANY, MTC  
FINANCIAL, INC. dba TRUSTEE  
CORPS, MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,  
COMMUNITY ONE FINANCIAL & REAL  
ESTATE, JAMAL AKBAR, ALEX  
BURHAN AND CHRIS COLON and  
DOES 1-20 INCLUSIVE,

Defendant.

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Through the present lawsuit, Plaintiffs Ahmad and Daniela  
Razawi ("Plaintiffs") seek redress for a litany of alleged  
statutory and common law violations arising from the refinancing  
of their home mortgage and the subsequent non-judicial  
foreclosure and trustee's sale of the mortgaged property.

1 Named Defendants in this matter include: Federal Deposit  
2 Insurance Corporation as receiver for Downey Savings, F.A.;  
3 Central Mortgage Company ("CMC"); MTC Financial, Inc., doing  
4 business as Trustee Corps; Mortgage Electronic Registration  
5 Systems, Inc. ("MERS"); Community One Financial & Real Estate;  
6 and individual Defendants Jamal Akbar, Alex Burhan and Chris  
7 Colon. Defendant CMC now moves to dismiss, pursuant to Rule  
8 12(b)(6), for failure to state a claim. As set forth below,  
9 Defendant's Motion is granted.<sup>1</sup>

10  
11 **BACKGROUND**  
12

13 On December 9, 2005, Plaintiffs secured a \$520,000 loan by  
14 executing a Deed of Trust ("Deed") encumbering their home,  
15 located at 4045 Clover Valley Road, Rocklin, CA 95677 ("Subject  
16 Property"). The Deed identifies Downey Savings and Loan  
17 Association, F.A., as the Lender, and DSL Service Company as the  
18 Trustee.<sup>2</sup>

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22 <sup>1</sup> Because oral argument will not be of material assistance,  
23 the Court orders this matter submitted on the briefs. E.D. Cal.  
Local Rule 78-230(h).

24 <sup>2</sup> "[D]ocuments whose contents are alleged in a complaint and  
25 whose authenticity no party questions, but which are not  
26 physically attached to the pleading, may be considered in ruling  
27 on a Rule 12(b)(6) motion to dismiss" without converting the  
28 motion to one for summary judgment. See Branch v. Tunnell, 14  
F. 3d 449, 454 (9th Cir. 1994), *overruled on other grounds by*  
Galbraith v. County of Santa Clara, 307 F. 3d 1119 (9th Cir.  
2002). To the extent relied upon in this Order, Defendant's  
Request for Judicial Notice is granted. Defendant's remaining  
requests are denied as moot.

1 According to Plaintiffs' First Amended Complaint ("FAC"),  
2 sometime in 2005 several employees from Defendant Community One  
3 Financial and Real Estate Services ("Community One"), including  
4 Defendants Burhan and Colon, approached Plaintiff Daniela Razawi,  
5 whose office is in the same building as Community One. These  
6 employees solicited Plaintiff and her husband and co-Plaintiff,  
7 Ahmad Razawi, to refinance their home. Defendants Burhan and  
8 Colon assured Plaintiffs that they could secure for them the  
9 "best deal" and "best interest rates" available on the market.  
10 Plaintiffs expressed interest in this offer and explained that  
11 they hoped to obtain cash from the refinancing to buy a new home.  
12 They planned to convert their existing home in Rocklin into a  
13 rental property, but intended to retain it to become their  
14 eventual retirement home.

15 Defendants Burhan and Colon advised Plaintiffs that an  
16 Option ARM loan with Downey Savings would best fit their needs.  
17 Defendants Burhan, Colon and Akbar allegedly assured Plaintiffs  
18 that although the Option ARM was an adjustable-rate loan, their  
19 payments would never exceed \$1,924.81 per month. These  
20 individual Defendants also allegedly promised Plaintiffs that if  
21 the loan ever became unaffordable, they could simply refinance it  
22 again into an affordable loan. By September 2008, however,  
23 Plaintiffs' monthly mortgage payments had risen to more than  
24 \$3,600 per month, which Plaintiffs were unable to afford.

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1 Plaintiffs further allege that Defendant Burhan told them he  
2 would have Defendant Community One's appraiser "push" the  
3 appraised value of Plaintiffs' property to ensure approval of the  
4 loan. When Plaintiffs protested and questioned the propriety of  
5 this practice, Defendant Burhan purportedly told them not to  
6 worry about it. In addition, Plaintiffs allege that Defendants  
7 Burhan and Colon falsely promised that Downey Savings, not  
8 Plaintiffs, would pay the broker fee.

9 According to Plaintiffs, they never received a copy of the  
10 required loan documents prior to closing. Instead, a mobile  
11 notary brought the documents and gave them only a few minutes to  
12 sign and initial them. Plaintiffs never had the opportunity to  
13 review the documents, nor did the notary explain to them what  
14 they were signing. In addition, Plaintiffs were never furnished  
15 with a notice of cancellation or disclosure of the amount  
16 financed or the finance charge, as required by the federal Truth  
17 in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq. Plaintiffs  
18 signed the promissory note and Deed on December 9, 2005. The  
19 Deed was recorded at the Placer County Recorder's Office on  
20 December 15, 2005.

21 On November 15, 2006, Downey Savings & Loan Association,  
22 F.A., assigned the Deed and promissory note to MERS, as nominee  
23 for CMC, the assignee. This Corporate Assignment of Deed of  
24 Trust instrument was recorded on November 27, 2006.

25 On April 30, 2008, MERS assigned the Deed to CMC. This  
26 Assignment of Deed of Trust document was not recorded until  
27 April 13, 2009.

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1 On October 1, 2008, CMC substituted Trustee Corps as trustee  
2 under the Deed. The Substitution of Trustee document, however,  
3 was not recorded until January 29, 2009.

4 On October 2, 2008, a Notice of Default and Election to Sell  
5 under Deed of Trust was executed by Trustee Corps, on behalf of  
6 CMC. The notice was recorded that same day. According to the  
7 notice, as of October 2, 2008, Plaintiffs were in default in the  
8 amount of \$27,835.56.

9 On January 5, 2009, CMC assigned the Deed to Deutsche Bank  
10 National Trust Company as Trustee for Downey 2006-AR1 ("Deutsche  
11 Bank"). The Assignment of Deed of Trust document was recorded on  
12 April 13, 2009.

13 On January 29, 2009, Trustee Corps executed a Notice of  
14 Trustee's Sale, which was recorded the same day.

15 On March 18, 2009, Trustee Corps sold the Subject Property  
16 to Deutsche for \$450,540. The Trustee's Deed Upon Sale  
17 instrument was recorded on April 13, 2009.

18 On April 14, 2009, Plaintiffs mailed a self-proclaimed  
19 Qualified Written Request ("QWR"), pursuant to the Real Estate  
20 Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605 et seq., to  
21 Defendant CMC. The QWR purported to rescind the loan under TILA  
22 and demanded a cancellation of the trustee sale.

23 Plaintiffs filed their original complaint with this Court on  
24 April 10, 2009 and their FAC on June 2, 2009. By way of the FAC,  
25 Plaintiffs allege thirteen causes of action, twelve of which are  
26 directed at CMC.

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1 A court granting a motion to dismiss a complaint must then  
2 decide whether to grant leave to amend. A court should "freely  
3 give" leave to amend when there is no "undue delay, bad faith[,]  
4 dilatory motive on the part of the movant,...undue prejudice to  
5 the opposing party by virtue of...the amendment, [or] futility of  
6 the amendment...." Fed. R. Civ. P. 15(a); Foman v. Davis, 371  
7 U.S. 178, 182 (1962). Generally, leave to amend is denied only  
8 when it is clear the deficiencies of the complaint cannot be  
9 cured by amendment. DeSoto v. Yellow Freight Sys., Inc., 957  
10 F.2d 655, 658 (9th Cir. 1992).

11  
12 **ANALYSIS**  
13

14 Plaintiffs' FAC is anything but a model of clarity. From  
15 what this Court can glean from a holistic reading of Plaintiffs'  
16 FAC, it appears that Plaintiffs' claims against CMC rest on two  
17 general factual theories, pled in the alternative. First,  
18 Plaintiffs appear to allege that all of the financial companies  
19 in its FAC, including CMC, were active participants in what  
20 should be deemed an unlawful secondary market that involved the  
21 sale and purchase of mortgage-backed debt. Under this theory,  
22 CMC would be liable for any fraudulent promises made to borrowers  
23 because it profited from real-estate loans like the ARM loan that  
24 Plaintiffs entered into in 2005. Moreover, CMC would be liable  
25 for foreclosing Plaintiffs' loan and selling its property  
26 pursuant to what it knew to be an unlawful deed of trust.

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1 Second, Plaintiffs appear to assert, in the alternative,  
2 that CMC is a third-party stranger to their mortgage agreement  
3 that illicitly foreclosed against and sold a property to which it  
4 had no legal right. Plaintiffs seem to base this theory  
5 predominately on the fact that the current loan servicer and  
6 trustee have not produced the original promissory note. Except  
7 where Plaintiffs' FAC indicates otherwise, this Court will assume  
8 that Plaintiffs rely on one of the two foregoing theories in  
9 assessing the viability of each of Plaintiffs' causes of action.

10 Moreover, as a preliminary observation, this Court notes  
11 that Plaintiffs have pled neither of these factual theories with  
12 sufficient specificity to survive a Rule 12(b)(6) motion to  
13 dismiss. Plaintiffs have not made any factual allegations that  
14 would give rise to a reasonable inference that CMC either  
15 participated in a conspiracy to defraud mortgagors or unlawfully  
16 assumed any of its duties. Accordingly, Plaintiffs have not met  
17 their "obligation to provide the 'grounds' of [their]  
18 'entitlement to relief'" by pleading "more than labels and  
19 conclusions." Twombly, 550 U.S. at 555. Furthermore, these  
20 speculative and conclusory allegations are not entitled to the  
21 presumption of veracity. "[T]he tenet that a court must accept  
22 as true all of the allegations contained in a complaint is  
23 inapplicable to legal conclusions." Ashcroft v. Iqbal, --- U.S.  
24 ----, 129 S. Ct. 1937, 1949 (2009). Nevertheless, because  
25 Plaintiffs' claims against CMC are legally deficient on  
26 additional grounds, this Court will now address each cause of  
27 action in turn.

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1           **1. First Cause of Action: Truth in Lending Act, 15 U.S.C.**  
2           **§ 1601 et seq.**

3           TILA requires creditors to disclose to borrowers certain  
4 terms of their loans, including, *inter alia*, any finance charges,  
5 amount financed, annual percentage rate and consumer's right to  
6 rescission under section 1635(a). See 15 U.S.C. §§ 1631, 1632,  
7 1635, 1638. Plaintiffs aver that, as an assignee of the original  
8 lender, Downey Savings, see 15 U.S.C. § 1641(c)-(d), CMC is  
9 liable for Downey's alleged failure to disclose the statutorily  
10 required information. However, Plaintiffs' instant claim is  
11 barred by the applicable statute of limitations.

12           Plaintiffs seek both damages and rescission of their loan  
13 agreement under TILA. Damages actions under TILA are subject to  
14 a one-year statute of limitations. 15 U.S.C. § 1640(e). The  
15 statute begins to run "from the date of consummation of the  
16 transaction," but is subject to the doctrine of equitable tolling  
17 and fraudulent concealment. King v. State of Cal., 784 F.2d 910,  
18 915 (9th Cir. 1986). A court may exercise its equitable  
19 authority to "suspend the limitations period until the borrower  
20 discovers or had reasonable opportunity to discover the fraud or  
21 nondisclosures that form the basis of the TILA action." Id.

22           A borrower's right to rescission under TILA lasts for three  
23 years from the consummation of the transaction, 15 U.S.C.  
24 § 1635(f), but may not be extended under a theory of equitable  
25 tolling or fraudulent concealment.

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1 See Beach v. Ocwen Federal Bank, 523 U.S. 410, 417 (1998)  
2 (interpreting the language that after three years the "right of  
3 rescission [under the Act] shall expire" as speaking "not of a  
4 suit's commencement but of a right's duration" and therefore  
5 creating an absolute time bar).

6 Plaintiffs executed the instant loan on December 9, 2005,  
7 and did not file this action until April of 2009. Accordingly,  
8 both Plaintiffs' damages and rescission claims are time-barred.  
9 Moreover, Plaintiffs have not pled sufficient facts to support an  
10 equitable tolling or fraudulent concealment claim. Accordingly,  
11 CMC's Motion to Dismiss Plaintiffs' First Cause of Action is  
12 granted with leave to amend.

13  
14 **2. Second Cause of Action: California Civil Code § 1788 et**  
15 **seq. (Rosenthal Act)**

16 The California Rosenthal Fair Debt Collection Practices Act  
17 ("Rosenthal Act") prohibits a host of unfair and oppressive  
18 methods of collecting debt. Plaintiffs allege here that

19 Defendants' actions constitute a violation of the  
20 Rosenthal Act in that they threatened to take actions  
21 not permitted by law, including but not limited to:  
22 foreclosing upon a void security interest; foreclosing  
23 upon a note of which they were not in possession nor  
24 otherwise entitled to payment; falsely stating the  
amount of a debt; increasing the amount of a debt by  
including amounts that are not permitted by law or  
contract; and using unfair and unconscionable means in  
an attempt to collect a debt.

25 FAC, ¶ 57.

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1           These allegations are wholly conclusory and therefore  
2 insufficient to satisfy the Federal Rule's pleading requirement.  
3 Because Plaintiffs have failed to allege any grounds for their  
4 entitlement to relief as to CMC. Accordingly, Defendant's Motion  
5 to Dismiss Plaintiffs' Second Cause of Action is granted with  
6 leave to amend.

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8           **3. Third Cause of Action: Negligence**

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10           It appears from Plaintiffs' FAC that the only negligence  
11 allegations asserted against CMC are that "Defendants failed to  
12 maintain the original mortgage note, failed to properly create  
13 original documents, and failed to make the required disclosures  
14 to the Plaintiffs." FAC, 13:24-26. Plaintiffs cite no facts or  
15 authority to substantiate the existence of any legal duty that  
16 CMC would have breached if it is in fact responsible for these  
17 alleged failures. CMC was not the original lender and had no  
18 relationship with Plaintiffs until approximately one year after  
19 Plaintiffs executed their loan documents. Accordingly,  
20 Plaintiffs have failed to allege grounds capable of sustaining a  
21 conclusion that CMC owed them any duty. Thus, Defendant's Motion  
22 to Dismiss Plaintiffs' Third Cause of Action is granted with  
23 leave to amend.

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1           **4. Fourth Cause of Action: Real Estate Settlement**  
2           **Procedures Act ("RESPA"), 12 U.S.C. § 2605 et seq.**

3           Plaintiffs claim CMC violated RESPA "by failing and refusing  
4 to provide a written explanation or response to Plaintiffs'  
5 Qualified Written Request." FAC, ¶ 71. A RESPA Qualified  
6 Written Request ("QWR") "shall be a written correspondence, other  
7 than notice on a payment coupon or other payment medium supplied  
8 by the servicer, that-- (i) includes, or otherwise enables the  
9 servicer to identify, the name and account of the borrower; and  
10 (ii) includes a statement of the reasons for the belief of the  
11 borrower, to the extent applicable, that the account is in error  
12 or provides sufficient detail to the servicer regarding other  
13 information sought by the borrower." 12 U.S.C. § 2605(e)(1)(B).

14           Plaintiffs allegedly sent its QWR on April 14, 2009, and  
15 "included a demand to cancel the pending Trustee Sale and to  
16 rescind the loan under the provisions of TILA." FAC, ¶ 29.  
17 Nevertheless, Plaintiffs' conclusory, allegations give neither  
18 opposing party nor the Court any information from which to  
19 conclude whether any communication sent by Plaintiffs may have  
20 qualified as such a QWR under 12 U.S.C. § 2605(e)(1). See Jones  
21 v. ABN AMRO Mortg. Group, Inc., 551 F. Supp. 2d 400, 411 (E.D.  
22 Pa. 2008). As such, Defendant's Motion to Dismiss Plaintiffs'  
23 Fourth Cause of Action is granted with leave to amend.

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1           **5. Fifth Cause of Action: Breach of Fiduciary Duty**

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3           Plaintiffs have alleged no basis for a finding that CMC owed  
4 them a fiduciary duty. To the contrary, even if CMC had been the  
5 original lender or subsumed the duties of that lender, "[t]he  
6 relationship between a lending institution and its borrower-  
7 client is not fiduciary in nature. A commercial lender is  
8 entitled to pursue its own economic interests in a loan  
9 transaction. This right is inconsistent with the obligations of  
10 a fiduciary which require that the fiduciary knowingly agree to  
11 subordinate its interests to act on behalf of and for the benefit  
12 of another." Nymark v. Heart Fed. Savings & Loan Assn., 231 Cal.  
13 App. 3d 1089, 1093 n.1 (3d Dist. 1991). Thus, Plaintiffs have  
14 failed to state a claim, and Defendant's Motion to Dismiss their  
15 Fifth Cause of Action is granted with leave to amend.

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17           **6. Sixth Cause of Action: Fraud**

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19           In California, the required elements for a fraud claim are:  
20 "(a) a misrepresentation (false representation, concealment, or  
21 nondisclosure); (b) knowledge of falsity (or 'scienter');  
22 (c) intent to defraud, i.e., to induce reliance; (d) justifiable  
23 reliance; and (e) resulting damage." In re Estate of Young, 160  
24 Cal. App. 4th 62, 79 (2008) (citation omitted). As previously  
25 noted, "[i]n alleging fraud ... a party must state with  
26 particularity the circumstances constituting fraud." Fed. R.  
27 Civ. P. 9(b).

28 ///

1 To attempt to explain how they have satisfied Rule 9(b)'s  
2 pleading standard, Plaintiffs proffer the following argument.  
3 They contend that they "have alleged that in 'selling' these  
4 mortgage notes on the secondary market, Defendants, including  
5 Defendant CMC, failed to follow the basic legal requirements for  
6 the transfer of a negotiable instrument and the transfer of an  
7 interest in real property." Pls.' Opp., 20:17-21. By virtue of  
8 these purportedly illegal sales, Plaintiffs contend, "Defendant  
9 CMC is attempting to obtained [sic] putative legal title to  
10 Plaintiffs' Property without ever establishing that it was ever a  
11 'person entitled to enforce' the security interest under the Note  
12 and Deed of Trust." Id. at 20:26-21:2 (citing FAC, ¶¶ 30-32).

13 These allegations are insufficient to state a claim for  
14 fraud for at least two reasons. First, it is utterly  
15 incomprehensible how allegedly unlawful transfers of mortgage-  
16 backed debt could constitute a "misrepresentation," which is the  
17 essence of a claim for fraud. Second, Plaintiffs' grossly  
18 conclusory allegations fall well short of the applicable pleading  
19 standard. Plaintiffs' naked assertions in its opposition, even  
20 if properly alleged in the FAC, would run afoul of the  
21 prohibition under Rule 8(a)(2) against pleading mere "labels and  
22 conclusions." Twombly, 550 U.S. at 555. *A fortiori*, the above  
23 sweeping, unsubstantiated allegations fail to satisfy Rule 9(b)'s  
24 heightened "particularity" standard, and CMC's Motion to Dismiss  
25 Plaintiffs' Sixth Cause of Action is granted with leave to amend.

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1           **7. Seventh Cause of Action: California Business and**  
2           **Professions Code § 17200 et seq.**

3           California's Unfair Competition Law ("UCL"), Business and  
4 Professions Code section 17200, defines "unfair competition" as  
5 "any unlawful, unfair or fraudulent business act or practice."  
6 Plaintiffs allege two separate liability theories against Trustee  
7 Corps, both of which are unavailing.

8           First, Plaintiffs point to the broad scope of the UCL:  
9 "California's UCL ... allows for 'violations of other laws to be  
10 treated as unfair competition that is independently actionable'  
11 while also 'sweep[ing] within its scope acts and practices not  
12 specifically proscribed by any other law.'" Hauk v. JP Morgan  
13 Chase Bank USA, 552 F. 3d 1114, 1122 (9th Cir. 2009) (quoting  
14 Kasky v. Nike, Inc., 27 Cal. 4th 939, 949 (2002)). On the basis  
15 of this authority, Plaintiffs assert that they have stated a  
16 claim under the UCL "[b]ecause Plaintiffs' FAC currently alleges  
17 viable claims for breach of contract and breach of the implied  
18 covenant of good faith and fair dealing as well as violations of  
19 RESPA, TILA and Fraud." Pls.' Opp. at 22:2-5. Because those  
20 claims on which Plaintiffs rely here fail independently,  
21 Plaintiffs' instant cause of action fails as well. Consequently,  
22 for the foregoing reasons, Defendant's Motion to Dismiss  
23 Plaintiffs' Seventh Cause of Action is granted with leave to  
24 amend.

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1           **8. Eighth Cause of Action: Breach of Contract**

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3           Plaintiffs have not adequately alleged that CMC was bound by  
4 any contract with Plaintiffs. Plaintiffs contend only as  
5 follows: "On or about December 9, 2005, Plaintiffs completed the  
6 loan on the property. The terms of the loan were memorialized in  
7 a promissory note which in turn was secured by a Deed of Trust on  
8 the property. The Deed of Trust identified DSL Service Company,  
9 as trustee and Central Mortgage Company as Lender." FAC, ¶ 27.  
10 Accordingly, Plaintiffs appear to aver that CMC was their  
11 original lender. Nevertheless, their allegations are flatly  
12 refuted by the Deed of Trust itself, which lists the original  
13 lender as Downey Savings and Loan Association, F.A. The Deed of  
14 Trust was not transferred to CMC until well after Plaintiffs'  
15 original loan had closed. Thus, Plaintiffs have failed to allege  
16 the existence of any contract.

17           Moreover, assuming *arguendo*, the existence of a contract,  
18 Plaintiffs failed to sufficiently allege a breach. According to  
19 Plaintiffs, "Defendants failed to refinance the mortgage as  
20 promised." FAC, ¶ 100. However, that promise, as pled, simply  
21 does not rise to the level of a contract. See Bustamante v.  
22 Intuit, Inc., 141 Cal. App. 4th 199, 209 (6th Dist. 2006); see  
23 also Dillingham v. Dahlgren, 52 Cal. App. 322, 330 (1st Dist.  
24 1921) ("An agreement that parties will, in the future, make such  
25 contract as they may then agree upon amounts to nothing."). As  
26 such, Defendant's Motion to Dismiss Plaintiffs' Eighth Cause of  
27 Action is granted with leave to amend.

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1           **9. Ninth Cause of Action: Breach of Implied Covenant of**  
2           **Good Faith and Fair Dealing**

3           “The prerequisite for any action for breach of the implied  
4 covenant of good faith and fair dealing is the existence of a  
5 contractual relationship between the parties, since the covenant  
6 is an implied term in the contract.” Smith v. City and County of  
7 San Francisco, 225 Cal. App. 3d 38, 49 (1990). Because  
8 Plaintiffs have not properly alleged a contractual relationship  
9 with Trustee Corps, Defendant’s Motion to Dismiss Plaintiffs’  
10 Ninth Cause of Action is dismissed.

11  
12           **10. Eleventh, Twelfth, and Thirteenth Causes of Action:**  
13           **Quiet Title; Set Aside Trustee’s Sale; Cancellation of**  
14           **Trustee’s Deed**

15           Plaintiffs’ instant claims are defective because, by their  
16 own admission, they have not alleged that they are able to tender  
17 their owing obligation under the note. See Pls.’ Opp. 18:1-7.  
18 It is well-settled that “[a] valid and viable tender of payment  
19 of the indebtedness owing is essential to an action to cancel a  
20 voidable sale under a deed of trust.” Karlsen v. American Sav. &  
21 Loan Assn., 15 Cal. App. 3d 112, 117 (2d Dist. 1971); See also  
22 Ebbert v. Mercantile Trust Co. of Cal., 213 Cal. 496, 501 (1931);  
23 Mangindin v. Washington Mut. Bank, --- F. Supp. 2d ----, 2009 WL  
24 1766601, \*9-10 (N.D. Cal.). Accordingly, since Plaintiffs failed  
25 to allege any willingness or ability (in any form whatsoever) to  
26 tender funds due, CMC’s Motion to Dismiss Plaintiffs’ Eleventh,  
27 Twelfth, and Thirteenth Causes of Action is granted with leave to  
28 amend.

1 **CONCLUSION**

2

3 For the foregoing reasons, CMC's Motion to Dismiss (Docket

4 No. 18) is GRANTED with leave to amend. Plaintiffs may (but is

5 not required to) file an amended complaint, not later than twenty

6 (20) days following the date this Memorandum and Order is filed

7 electronically. Nevertheless, if no amended complaint is filed

8 within said twenty (20)-day period, without further notice, those

9 causes of action dismissed by virtue of this Order will be deemed

10 to have been dismissed with prejudice.

11 IT IS SO ORDERED.

12 Dated: September 8, 2009

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15 MORRISON C. ENGLAND, JR.  
16 UNITED STATES DISTRICT JUDGE  
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