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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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MICHAEL C. CARTER,  
Plaintiff,  
v.

NO. CIV. 2:10-639 WBS DAD  
MEMORANDUM AND ORDER RE:  
MOTIONS TO DISMISS

GMAC MORTGAGE, LCC; FIRST  
CALIFORNIA MORTGAGE, a  
California corporation; and  
DOES 1 through 100, inclusive,  
Defendants.

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Plaintiff Michael C. Carter brought this action against  
defendants GMAC Mortgage, LLC ("GMAC") and First California  
Mortgage ("First California") alleging various federal and state  
claims arising out of plaintiff's mortgage transaction.  
Presently before the court are defendants' motions to dismiss the  
Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. Factual and Procedural Background

1           On December 7, 2005, plaintiff obtained a loan from  
2 First California to purchase his home, located at 1664 Baroness  
3 Way in Roseville, California. (Compl. ¶¶ 6, 14; GMAC Req.  
4 Judicial Notice Ex. 1.) Plaintiff claims that he was channeled  
5 into this allegedly unaffordable loan through the conduct of  
6 First California, who allegedly exaggerated plaintiff's earnings  
7 and the value of the property to secure the loan. (Id. ¶ 14.)  
8 Plaintiff further alleges that he did not receive disclosures  
9 required to be provided to him by the Truth in Lending Act  
10 ("TILA"), 15 U.S.C. §§ 1601-1667f, at the time of loan  
11 origination. (Compl. ¶ 42.) The FAC alleges that GMAC "either  
12 assumed or was assigned said loan" and is therefore liable for  
13 these violations under "successor's liability law." (Id. ¶ ¶ 9,  
14 13.)

15           Plaintiff filed the Complaint in California Superior  
16 Court in Placer County on February 18, 2010. (Docket No.1.)  
17 First California then removed the case to this court on March 18,  
18 2010 with the consent of GMAC. (Id.) In his Complaint,  
19 plaintiff asserts ten causes of action against GMAC and First  
20 California. GMAC and First California now move to dismiss the  
21 Complaint for failure to state a claim upon which relief can be  
22 granted.

## 23 II. Discussion

24           On a motion to dismiss, the court must accept the  
25 allegations in the complaint as true and draw all reasonable  
26 inferences in favor of the plaintiff. Scheuer v. Rhodes, 416  
27 U.S. 232, 236 (1974), overruled on other grounds by Davis v.  
28 Scherer, 468 U.S. 183 (1984); Cruz v. Beto, 405 U.S. 319, 322

1 (1972). To survive a motion to dismiss, a plaintiff needs to  
2 plead "only enough facts to state a claim to relief that is  
3 plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.  
4 544, 570 (2007). This "plausibility standard," however, "asks  
5 for more than a sheer possibility that a defendant has acted  
6 unlawfully," and where a complaint pleads facts that are "merely  
7 consistent with" a defendant's liability, it "stops short of the  
8 line between possibility and plausibility." Ashcroft v. Iqbal,  
9 129 S. Ct. 1937, 1949 (2009) (quoting Twombly, 550 U.S. at 556-  
10 57).

11 In general a court may not consider items outside the  
12 pleadings upon deciding a motion to dismiss, but may consider  
13 items of which it can take judicial notice. Barron v. Reich, 13  
14 F.3d 1370, 1377 (9th Cir. 1994). A court may take judicial  
15 notice of facts "not subject to reasonable dispute" because they  
16 are either "(1) generally known within the territorial  
17 jurisdiction of the trial court or (2) capable of accurate and  
18 ready determination by resort to sources whose accuracy cannot  
19 reasonably be questioned." Fed. R. Evid. 201.

20 GMAC and First California each submitted a request for  
21 judicial notice. GMAC requests the court take notice of  
22 plaintiff's First Deed of Trust, publically recorded in the  
23 Placer County Recorder's Office. (Docket No. 7.) The court will  
24 take judicial notice of this document, since it is a matter of  
25 public record whose accuracy cannot be questioned. See Lee v.  
26 City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001). First  
27 California requests the court take notice of several documents  
28 related to plaintiff's mortgage transaction found in its records

1 and files. (Docket No. 9.) The court declines to take notice of  
2 these documents, since First California's files are not a source  
3 whose accuracy cannot be reasonably questioned under Federal Rule  
4 of Evidence 201(b).

5 A. TILA Claim

6 Plaintiff's first cause of action prays for damages and  
7 rescission of his loan under the Truth in Lending Act ("TILA"),  
8 15 U.S.C. §§ 1601-1667f.

9 1. Rescission

10 In a consumer credit transaction where the creditor  
11 acquires a security interest in the borrower's principal  
12 dwelling, TILA provides the borrower with "a three-day  
13 cooling-off period within which [he or she] may, for any reason  
14 or for no reason, rescind" the transaction. McKenna v. First  
15 Horizon Home Loan Corp., 475 F.3d 418, 421 (1st Cir. 2007)  
16 (citing 15 U.S.C. § 1635). A creditor must "clearly and  
17 conspicuously disclose" this right to the borrower along with  
18 "appropriate forms for the [borrower] to exercise his right to  
19 rescind." 15 U.S.C. § 1635(a).

20 If a creditor fails to provide the borrower with the  
21 required notice of the right to rescind, the borrower has three  
22 years from the date of consummation to rescind the transaction.  
23 Id. § 1635(f); see 12 C.F.R. § 226.23(a)(3) ("If the required  
24 notice or material disclosures are not delivered, the right to  
25 rescind shall expire 3 years after consummation."). "[Section]  
26 1635(f) completely extinguishes the right of rescission at the  
27 end of the 3-year period." Beach v. Ocwen Fed. Bank, 523 U.S.  
28 410, 412, (1998); see also Miquel v. Country Funding Corp., 309

1 F.3d 1161, 1164 (9th Cir. 2002) (“[S]ection 1635(f) represents an  
2 ‘absolute limitation on rescission actions’ which bars any claims  
3 filed more than three years after the consummation of the  
4 transaction. (quoting King v. California, 784 F.2d 910, 913 (9th  
5 Cir. 1986)); Cazares v. Household Fin. Corp., 2005 U.S. Dist.  
6 LEXIS 39222, at \*24-25 (C.D. Cal. 2005) (concluding that, “[i]f  
7 certain Plaintiffs did exercise their rights to rescind[ ] prior  
8 to the expiration of the three-year limitation period,” such  
9 facts “would only entitle Plaintiffs to damages, not rescission”  
10 (citing Belini v. Wash. Mut. Bank, FA, 412 F.3d 17 (1st Cir.  
11 2005))). The Complaint alleges that “[a] Qualified Written  
12 Request . . . will be mailed to [d]efendants . . . [which]  
13 includes a demand to rescind the loan . . . .” (Compl. ¶ 23.)  
14 However, plaintiff’s loan closed on December 7, 2005, putting his  
15 future notice of rescission, even if sent on the date of filing  
16 of the Complaint, well outside of the three-year limitations  
17 period. (GMAC Req. Judicial Notice Ex. 1.)

18           Moreover, plaintiff’s rescission claim fails because he  
19 has not demonstrated an ability to tender payment of the net  
20 proceeds he received from the loan. The Ninth Circuit has held  
21 that rescission under TILA “should be conditioned on repayment of  
22 the amounts advanced by the lender.” Yamamoto v. Bank of N.Y.,  
23 329 F. 3d 1167, 1170 (9th Cir. 2003) (emphasis in original).  
24 District courts in this circuit have dismissed rescission claims  
25 under TILA at the pleading stage based upon the plaintiff’s  
26 failure to allege an ability to tender loan proceeds. See, e.g.,  
27 Garza v. Am. Home Mortgage, 2009 U.S. Dist. LEXIS 7448, at \*15  
28 (E.D. Cal. Jan. 27, 2009) (stating that “rescission is an empty

1 remedy without [the borrower's] ability to pay back what she has  
2 received"); Ibarra v. Plaza Home Mortgage, 2009 U.S. Dist. LEXIS  
3 80581, at \*22 (S.D. Cal. Sept. 4, 1009); Carnero v. Weaver, 2009  
4 U.S. Dist. LEXIS 62665, at \*8 (N.D. Cal. July 20, 2009); Pesayco  
5 v. World Sav., Inc., 2009 U.S. Dist. LEXIS 73299, at \*4 (C.D.  
6 Cal. July 29, 2009); Ing Bank v. Korn, 2009 U.S. Dist. LEXIS  
7 73329, at \*7 (W.D. Wash. May 22, 2009). Plaintiff has not  
8 alleged any facts indicating that he is able to tender sufficient  
9 funds to repay the loan principal. Without such facts, plaintiff  
10 cannot receive the equitable remedy of rescission.

11           2.    Damages

12           The statute of limitations for a TILA damages claim is  
13 one year from the date of the alleged TILA violation. 15 U.S.C.  
14 § 1640(e). Plaintiff argues that the statute of limitations  
15 should be tolled because the circumstances of the loan were  
16 hidden from him at the outset. Even if plaintiff is legally  
17 entitled to equitable tolling of his claim, plaintiff has not  
18 alleged any facts in the Complaint that would warrant tolling the  
19 statute of limitations. Plaintiff simply asserts that he was  
20 unable to discover defendants' TILA violations until within the  
21 last year because "[t]he facts surrounding this loan transaction  
22 were purposefully hidden . . . ." (Compl. ¶¶ 21, 26.) This  
23 conclusory allegation is insufficient to establish the necessity  
24 for equitable tolling under even the pleading standards of  
25 Federal Rule of Civil Procedure 8(a). See Iqbal, 129 S. Ct. at  
26 1949; Cervantes v. Countrywide Home Loans, Inc., 2009 U.S. Dist.  
27 LEXIS 87997, at \* 13-14 (D. Ariz. 2009) (holding that equitable  
28 tolling was not appropriate when plaintiffs simply alleged that

1 defendants "fraudulently misrepresented and concealed the true  
2 facts related to the items subject to disclosure").

3 Even if plaintiff's TILA claim were timely, it is  
4 currently insufficiently plead. The claim does not so much as  
5 indicate what sections of TILA defendants violated, simply  
6 stating that "[d]efendants committed one ore more of the  
7 following violations" and listing sections of the statute.  
8 (Compl. ¶ 42.) Such vague and conclusory pleadings to not come  
9 close to surviving a motion to dismiss. See Iqbal, 129 S. Ct. at  
10 1949. Accordingly, the court will grant defendants' motions to  
11 dismiss plaintiff's TILA claim.

12 B. California Rosenthal Fair Debt Collection Practices Act  
13 Claim

14 Plaintiff's second cause of action alleges that  
15 defendant violated the California Rosenthal Fair Debt Collection  
16 Practices Act ("RFDCPA"), Cal. Civ. Code § 1788.2. The RFDCPA  
17 prohibits a host of unfair and oppressive methods of collecting  
18 debt, but to be liable under the RFDCPA a defendant must fall  
19 under its definition of "debt collector." Izenberg v. ETS Svcs.,  
20 LLC, 589 F. Supp. 2d 1193, 1199 (C.D. Cal. 2008). A "debt  
21 collector" under the RFDCPA is "any person who, in the ordinary  
22 course of business, regularly, on behalf of himself or herself or  
23 others, engages in debt collection." Cal. Civ. Code § 1788.2(c)  
24 (2008).

25 The Complaint does not identify the sections of the  
26 RFDCPA that defendant allegedly violated, and fails to allege  
27 facts that would support the inference that defendant is a "debt  
28 collector" under the RFDCPA. Instead, the FAC contains only a

1 conclusory restatement of the definition of "debt collectors"  
2 under the RFDCPA without further explanation as to how  
3 defendants' actions meet these definitions. (Compl. ¶¶ 48-52.)  
4 Plaintiff fails to so much as plead what practices defendants  
5 engaged in that violated the RFDCPA, outside of the conclusory  
6 allegation that defendants "repeatedly threatened to take actions  
7 not permitted by law . . . ." (Id. ¶ 50.) Such broad  
8 allegations, without even identifying what part of the RFDCPA  
9 each defendant violated, are insufficient to survive a motion to  
10 dismiss. See Rosal v. First Fed. Bank of Cal., No. 09-1276, 2009  
11 WL 2136777, at \* 18 (N.D. Cal. July 15, 2009).

12           Additionally, foreclosure pursuant to a deed of trust  
13 does not constitute debt collection under the RFDCPA. See  
14 Izenberg, 589 F. Supp. 2d at 1199; see also Rosal, 2009 WL  
15 2136777, at \*18 (dismissing RFDCPA claim as to all defendants in  
16 foreclosure case); Ricon v. Recontrust Co., No. 09-937, 2009 WL  
17 2407396, at \*4 (S.D. Cal. Aug. 4, 2009) (dismissing with  
18 prejudice plaintiff's unfair debt collection claims in  
19 foreclosure case); Pittman v. Barclays Capital Real Estate, Inc.,  
20 No. 09-0241, 2009 WL 1108889, at \*3 (S.D. Cal. Apr. 24, 2009)  
21 (dismissing with prejudice plaintiff's Rosenthal Act claim in  
22 foreclosure case because a "residential mortgage loan does not  
23 qualify as a 'debt' under the statute"); Gallegos v. Recontrust  
24 Co., No. 08-2245, 2009 WL 215406, at \*3 (S.D. Cal. Jan. 28, 2009)  
25 (dismissing RFDCPA claim in foreclosure case). Since residential  
26 mortgage loans do not fall within the RFDCPA, the court must  
27 grant defendants' motions to dismiss plaintiff's cause of action  
28 for violations of the RFDCPA.



1 C. Negligence

2 To prove a cause of action for negligence, a plaintiff  
3 must show "(1) a legal duty to use reasonable care; (2) breach of  
4 that duty, and (3) proximate [or legal] cause between the breach  
5 and (4) the plaintiff's injury." Mendoza v. City of Los Angeles,  
6 66 Cal. App. 4th 1333, 1339 (1998) (citation omitted). "The  
7 existence of a legal duty to use reasonable care in a particular  
8 factual situation is a question of law for the court to decide."  
9 Vasquez v. Residential Invs., Inc., 118 Cal. App. 4th 269, 278  
10 (2004). Plaintiff alleges that defendants owed him a duty to  
11 "perform acts . . . in such a manner as to not cause [p]laintiff  
12 harm." (Compl. ¶ 54.) Plaintiff further contends that  
13 defendants breached this duty when "they used their knowledge and  
14 skill to direct [him] into a lone for which [he] was not  
15 qualified . . . ." (Id. ¶ 55.)

16 Plaintiff cites no authority for the proposition that  
17 defendants owed a duty to not cause plaintiff harm. Absent  
18 contrary authority, a pleading of an assumption of duty by  
19 defendants, or a special relationship, plaintiff cannot establish  
20 defendants owed him a duty of care. See Hardy v. Indymac Fed.  
21 Bank, --- F.R.D. ---, No. CV F 09-935 LJO SMS, 2009 WL 2985446,  
22 at \*7 (E.D. Cal. Sept. 15, 2009); Bentham v. Aurora Loan Servs.,  
23 No. C-09-2059 SC, 2009 WL 2880232, at \*2-3 (N.D. Cal. Sept. 1,  
24 2009).

25 Additionally, the Complaint lumps defendants together  
26 and does not distinguish between their alleged actions.  
27 Defendants should not be forced to guess how their conduct was  
28 allegedly negligent. See Associated Gen. Contractors of Cal.,

1 Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526  
2 (1983); Gauvin v. Trombatore, 682 F. Supp. 1067, 1071 (N.D. Cal.  
3 1988). The Complaint fails to state that GMAC and First  
4 California have breached a cognizable legal duty, and accordingly  
5 the court will grant defendants' motions to dismiss plaintiff's  
6 cause of action for negligence.

7 D. Real Estate Settlement Procedures Act Claim

8 Plaintiff's fourth claim alleges violations of the Real  
9 Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§  
10 2601-2617. Plaintiff alleges that defendants violated RESPA by  
11 "failing to correctly and accurately comply with one or more of  
12 the disclosure requirements provided therein." (Compl. ¶ 63.)  
13 The Complaint's RESPA claim is nothing more than a conclusory  
14 allegation and recitation of the elements of a RESPA cause of  
15 action with absolutely no factual enhancement. Plaintiff's  
16 allegations cannot possibly put defendants on notice of the claim  
17 against them without so much as describing what sections of RESPA  
18 they violated. This falls well short of the demands of Rule 8,  
19 and accordingly plaintiff's RESPA claim must be dismissed.  
20 Iqbal, 129 S. Ct. at 1949.

21 E. Breach of Fiduciary Duty Claim

22 The elements of a breach of fiduciary duty claim are  
23 (1) existence of a fiduciary relationship; (2) breach of the  
24 fiduciary duty; and (3) damage proximately caused by that breach.  
25 Roberts v. Lomanto, 112 Cal. App. 4th 1553, 1562 (2003). "The  
26 absence of any one of these elements is fatal to the cause of  
27 action." Pierce v. Lyman, 1 Cal. App. 4th 1093, 1101 (1991).  
28 Plaintiff alleges that defendants breached their fiduciary duties

1 when they steered plaintiff into a loan he could not afford.

2 (Compl. ¶ 73.)

3 "Absent special circumstances, a loan transaction is at  
4 arms-length and there is no fiduciary relationship between the  
5 borrower and lender." Rangel v. DHI Mortgage Co., Ltd., No. CV F  
6 09-1035 LJO GSA, 2009 WL 2190210, at \*3 (E.D. Cal. July 21, 2009)  
7 (quoting Oaks Management Corp. v. Superior Court, 145 Cal. App.  
8 4th 453, 466 (2006)). Plaintiff has not plead any special  
9 circumstances that indicate the closing of his mortgage was  
10 anything but an arms-length loan transaction. California First  
11 was plaintiff's lender and accordingly owed no fiduciary duty to  
12 plaintiff during their loan transaction. GMAC cannot be held  
13 secondarily liable for California First's alleged breach because  
14 California First owes plaintiff no fiduciary duty. Accordingly,  
15 the court must dismiss plaintiff's breach of fiduciary duty  
16 claim.

17 F. Fraud Claim

18 Plaintiff's sixth claim alleges that defendants  
19 committed fraud. In California, the essential elements of a  
20 claim for fraud are "(a) a misrepresentation (false  
21 representation, concealment, or nondisclosure); (b) knowledge of  
22 falsity (or 'scienter'); (c) intent to defraud, i.e., to induce  
23 reliance; (d) justifiable reliance; and (e) resulting damage."  
24 In re Estate of Young, 160 Cal. App. 4th 62, 79 (2008). Under  
25 the heightened pleading requirements for claims of fraud under  
26 Federal Rule of Civil Procedure 9(b), "a party must state with  
27 particularity the circumstances constituting the fraud." Fed. R.  
28 Civ. P. 9(b). A plaintiff must include the "who, what, when,

1 where, and how" of the fraud. Vess v. Ciba-Geigy Corp. USA, 317  
2 F.3d 1097, 1106 (9th Cir. 2003) (citation omitted); Decker v.  
3 Glenfed, Inc., 42 F.3d 1541, 1548 (9th Cir. 1994). Additionally,  
4 "[w]here multiple defendants are asked to respond to allegations  
5 of fraud, the complaint must inform each defendant of his alleged  
6 participation in the fraud." Ricon v. Reconstrust Co., No. 09-  
7 937, 2009 WL 2407396, at \*3 (S.D. Cal. Aug. 4, 2009) (quoting  
8 DiVittorio v. Equidyne Extractive Indus., 822 F.2d 1242, 1247 (2d  
9 Cir. 1987)).

10 Plaintiff's fraud claim does not even come close to  
11 surviving a motion to dismiss. First, the claim does not  
12 differentiate between defendants. Defendants should not be  
13 forced to guess as to how their conduct was allegedly fraudulent.  
14 See Associated Gen. Contractors of Cal., Inc. v. Cal. State  
15 Council of Carpenters, 459 U.S. 519, 526 (1983); Gauvin, 682 F.  
16 Supp. at 1071. Second, plaintiff's fraud allegations also fail  
17 to specify so much as when the fraudulent statements alleged were  
18 made, who specifically made them, and why they were false.  
19 Plaintiff simply states that "[t]he above-state false  
20 representations and one or more violations of state and federal  
21 laws made by [d]efendants to [p]laintiff were designed to  
22 fraudulently induce [p]laintiff to enter into said transaction."  
23 (Compl. ¶ 78.) The claim then goes on to state the remaning  
24 elements of a cause of action for fraud. (See id. ¶¶ 80-86.)  
25 Plaintiff's conclusory statements come nowhere close to meeting  
26 the pleading standard generally required under Rule 8, let alone  
27 the heightened pleading standard of Rule 9(b). See Iqbal, 129 S.  
28 Ct. at 1949; Vess, 317 F.3d at 1006.

1           G.    Breach of Contract Claim

2           To state a claim for breach of contract under  
3 California law, plaintiff must allege (1) the existence of a  
4 contract; (2) plaintiff's performance or excuse for  
5 nonperformance of the contract; (3) defendants' breach of the  
6 contract; and (4) resulting damages. Armstrong Petroleum Corp.  
7 v. Tri-Valley Oil & Gas Co., 116 Cal. App. 4th 1375, 1390 (2004).  
8 Plaintiff alleges that he entered into an agreement with  
9 defendants for a loan and that they breached their agreement "by  
10 failing to exercise reasonable efforts and due diligence as  
11 promised . . . [and] committing the acts stated herein." (Compl.  
12 ¶ 95.)

13           Plaintiff fails to state any facts that indicate the  
14 existence of a contract obligating defendants to "exercise  
15 reasonable efforts" or engage in "due diligence." Such a vague  
16 promises are not sufficient to show the existence of a contract.  
17 See Beverage Distributors, Inc. v. Olympia Brewing Co., 440 F.2d  
18 21, 30 (9th Cir. 1971). Plaintiff states no facts that indicate  
19 the existence of terms in the loan contract that obligated  
20 defendants to perform the actions mentioned in the Compliant.  
21 Iqbal, 129 S. Ct. at 1949. Without alleging facts that make the  
22 existence of a contract to provide an affordable loan plausible,  
23 plaintiff cannot state a claim for breach of contract. See  
24 Hardy, 2009 WL 2985446, at \*5. Accordingly, the court will grant  
25 defendants' motions to dismiss plaintiff's claim for breach of  
26 contract.

27           H.    Breach of the Implied Covenant of Good Faith and Fair  
28                Dealing Claim

1           "Every contract imposes upon each party a duty of good  
2 faith and fair dealing in its performance and its enforcement."  
3 Marsu, B.V. v. Walt Disney Co., 185 F.3d 932, 937 (9th Cir. 1999)  
4 (quoting Carma Developers, Inc. v. Marathon Dev. Cal., Inc., 2  
5 Cal. 4th 342, 371 (1992)). "A typical formulation of the burden  
6 imposed by the implied covenant of good faith and fair dealing is  
7 'that neither party will do anything which will injure the right  
8 of the other to receive the benefits of the agreement.'" Andrews  
9 v. Mobile Aire Estates, 125 Cal. App. 4th 578, 589 (2005)  
10 (quoting Gruenberg v. Aetna Ins. Co., 9 Cal. 3d 566, 573 (1973)).  
11 Plaintiff alleges that defendants violated the implied covenant  
12 of good faith and fair dealing by failing to comply with  
13 "applicable laws" and failing to pay as much in regard to  
14 [p]laintiffs [sic] financial interests as to [d]efendants'  
15 financial interests." (Compl. ¶¶ 99-100.)

16           "Generally, no cause of action for the tortious breach  
17 of the implied covenant of good faith and fair dealing can arise  
18 unless the parties are in a 'special relationship' with  
19 'fiduciary characteristics.'" Pension Trust Fund for Operating  
20 Eng'rs v. Fed. Ins. Co., 307 F.3d 944, 955 (9th Cir. 2002)  
21 (citing Mitsui Mfrs. Bank v. Superior Court, 212 Cal. App. 3d  
22 726, 730 (1989)). "Thus, the implied covenant tort is not  
23 available to parties of an ordinary commercial transaction where  
24 the parties deal at arms' length." Id. (internal citations  
25 omitted). Whether a lender is subject to this tort depends on  
26 whether there is "a fiduciary relationship in which the financial  
27 dependence or personal security by the damaged party has been  
28 entrusted to the other." Mitsui, 212 Cal. App. 3d at 731;

1 Pension Trust Fund, 306 F.3d at 955. As previously noted,  
2 plaintiff has not alleged any facts that distinguish this case  
3 from an ordinary arms length loan transaction and accordingly has  
4 not pled a breach of the covenant of good faith and fair dealing.  
5 The claim is also inadequate because it lumps all defendants  
6 together and fails to explain what actions each individual  
7 defendant took to violate the covenant of good faith and fair  
8 dealing. See Gauvin, 682 F. Supp. at 1071. Accordingly, the  
9 court must grant defendants' motions to dismiss this claim.

10 I. California's Unfair Competition Law Claim

11 California's Unfair Competition Law ("UCL"), Cal. Bus.  
12 & Prof. Code §§ 17200-17210, prohibits "any unlawful, unfair, or  
13 fraudulent business act or practice." Cal-Tech Commc'ns, Inc. v.  
14 L.A. Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999). This cause  
15 of action is generally derivative of some other illegal conduct  
16 or fraud committed by a defendant, and "[a] plaintiff must state  
17 with reasonable particularity the facts supporting the statutory  
18 elements of the violation." Khoury v. Maly's of Cal., Inc., 14  
19 Cal. App. 4th 612, 619 (1993).

20 Plaintiff's claim under the UCL is vague and  
21 conclusory, simply alleging that "[d]efendants' acts, as alleged  
22 herein, constitute unlawful, unfair, and/or fraudulent busines  
23 practices . . . ." (Compl. ¶ 88.) Plaintiff's claim lumps all  
24 defendants together and fails to identify any specific act taken  
25 by either of the named defendants. (See id. ¶¶ 88-91.) Such  
26 vague and conclusory allegations are insufficient to inform  
27 defendants as to their liability. See Associated Gen. Contractors  
28 of Cal., 459 U.S. at 526; Gauvin, 682 F. Supp. at 1071; see also

1 Lingad v. Indymac Fed. Bank, No Civ. 2:09-02347 GEB JFM, --- F.  
2 Supp. 2d ----, 2010 WL 347994, at \*11 (E.D. Cal. Jan. 29, 2010).  
3 The court has already indicated it will dismiss plaintiff's other  
4 causes of action against defendants for failure to state a claim.  
5 Since plaintiff has failed to state a claim on any of these  
6 grounds, and because these grounds appear to be the sole basis  
7 for plaintiff's UCL claim, plaintiff has necessarily failed to  
8 state a claim against defendants under the UCL. Accordingly, the  
9 court will grant defendants' motions to dismiss plaintiff's UCL  
10 cause of action.

11 J. Injunctive Relief

12 Plaintiff's final claim purports to state a cause of  
13 action for injunctive relief. Injunctive relief is not an  
14 independent claim, rather it is only a form of relief. See  
15 McDowell v. Watson, 59 Cal. App. 4th 1155, 1159 (1997)  
16 ("Injunctive relief is a remedy and not, in itself a cause of  
17 action . . . ." (internal quotation marks omitted)). Because  
18 plaintiff's other claims have been dismissed and injunctive  
19 relief is not a cause of action in and of itself, the court must  
20 grant defendants' motions to dismiss plaintiff's final cause of  
21 action as well.

22 IT IS THEREFORE ORDERED that GMAC and First  
23 California's motions to dismiss be, and the same hereby are,  
24 GRANTED.

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1           Plaintiff has twenty days from the date of this Order  
2 to file an amended complaint, if he can do so consistent with  
3 this Order.

4 DATED: May 11, 2010

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7 WILLIAM B. SHUBB  
8 UNITED STATES DISTRICT JUDGE  
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