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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

TAZIM KHAN and JAIBUL NISHA,	)	
	)	2:10-cv-00900-GEB-JFM
Plaintiff,	)	
	)	
v.	)	<u>ORDER GRANTING IN PART AND</u>
	)	<u>DENYING IN PART DEFENDANTS'</u>
GMAC MORTGAGE, LLC; MORTGAGE	)	<u>MOTION TO DISMISS AND DENYING</u>
ELECTRONIC REGISTRATION SYSTEMS,	)	<u>DEFENDANTS' MOTION TO STRIKE</u>
INC., AS NOMINEE FOR GMAC	)	
MORTGAGE, LLC F/K/A GMAC	)	
MORTGAGE CORP., A LIMITED	)	
LIABILITY COMPANY; EXECUTIVE	)	
TRUSTEE SERVICES, LLC dba ETS	)	
SERVICES, LLC AND; DOES 1	)	
through 10, inclusive,	)	
	)	
Defendants.	)	
_____	)	

Defendants GMAC Mortgage, LLC; Mortgage Electronic Registration Systems, Inc.; and Executive Trustee Services, LLC dba ETS Services, LLC ("Defendants") move for dismissal of Plaintiffs' complaint under Federal Rule of Civil Procedure 12(b)(6), arguing Plaintiffs failed to allege sufficient facts to state viable claims. Defendants also move to strike Plaintiffs' punitive damages claim and request for attorneys' fees under Federal Rule of Civil Procedure 12(f). For the reasons stated below, Defendants' motion to dismiss is GRANTED AND DENIED IN PART and their motion to strike is DENIED.

Plaintiffs did not file an Opposition or Notice of Opposition in response to either motion as required by Local Rule 230(c).

1 Plaintiffs are cautioned that failing to comply with the Local Rules can  
2 subject them to sanctions. L.R. 110.

3 **I. LEGAL STANDARD**

4 A Rule 12(b)(6) dismissal motion tests the legal sufficiency  
5 of the claims alleged in the complaint. Novarro v. Black, 250 F.3d 729,  
6 732 (9<sup>th</sup> Cir. 2001). A pleading must contain "a short and plain  
7 statement of the claim showing that the pleader is entitled to relief  
8 . . . ." Fed. R. Civ. P. 8(a)(2). The complaint must "give the  
9 defendant fair notice of what the [plaintiff's] claim is and the grounds  
10 upon which relief rests . . . ." Bell Atlantic Corp. v. Twombly, 550  
11 U.S. 544, 555 (2007).

12 Dismissal of a claim under Rule 12(b)(6) is appropriate only  
13 where the complaint either 1) lacks a cognizable legal theory, or 2)  
14 lacks factual allegations sufficient to support a cognizable legal  
15 theory. Balistreri v. Pacific Police Dept., 901 F.2d 696, 699 (9<sup>th</sup> Cir.  
16 1988). To avoid dismissal, the plaintiff must allege "only enough facts  
17 to state a claim to relief that is plausible on its face." Twombly, 550  
18 U.S. at 547.

19 In deciding a Rule 12(b)(6) motion, the material allegations  
20 of the complaint are accepted as true and all reasonable inferences are  
21 drawn in favor of the plaintiff. See al-Kidd v. Ashcroft, 580 F.3d 949,  
22 956 (9<sup>th</sup> Cir. 2009). However, neither conclusory statements nor legal  
23 conclusions are entitled to a presumption of truth. See Ashcroft v.  
24 Iqbal, 129 S. Ct. 1937, 1949-50 (2009); Twombly, 550 U.S. at 555.

25 If a Rule 12(b)(6) motion is granted, the "district court  
26 should grant leave to amend even if no request to amend the pleadings is  
27 made, unless it determines that the pleading could not possibly be cured  
28

1 by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127  
2 (9<sup>th</sup> Cir. 2000) (quoting Doe v. U.S., 58 F.3d 484, 497 (9<sup>th</sup> Cir. 1995)).

3 Defendants' motions include a request that the Court take  
4 judicial notice of three documents recorded with the Sacramento County  
5 Recorder: a Grant Deed recorded on March 14, 2008; a Deed of Trust  
6 recorded on March 14, 2008; and a Notice of Default and Election to Sell  
7 recorded on November 24, 2009. (Defs.' Req. for Judicial Notice ("RJN")  
8 Exs. 1-3.)

9 "As a general rule, a district court may not consider any  
10 material beyond the pleadings in ruling on a Rule 12(b)(6) motion." Lee  
11 v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001) (quotations  
12 and citation omitted). However, a court may consider matters properly  
13 subject to judicial notice. Swartz v. KPMG LLP, 476 F.3d 756, 763 (9th  
14 Cir. 2007). A matter may be judicially noticed if it is either  
15 "generally known within the territorial jurisdiction of the trial court"  
16 or "capable of accurate and ready determination by resort to sources  
17 whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).

18 Since the three identified documents are publically recorded,  
19 they are capable of accurate determination and may be judicially  
20 noticed. See W. Fed. Sav. & Loan Ass'n v. Heflin Corp., 797 F. Supp.  
21 790, 792 (1992) (taking judicial notice of documents in a county's public  
22 record, including deeds of trust). Therefore, Defendants' request that  
23 these documents be judicially noticed is granted.

### 24 **III. BACKGROUND**

25 On or about March 7, 2008, Plaintiffs obtained a purchase  
26 money loan from Defendant GMAC Mortgage, LLC ("GMAC"), which was secured  
27 by their home, located at 9820 Spring View Way, Elk Grove, California.  
28 (Compl. ¶¶ 1, 7, RJN, Ex. 1.)



1 transaction." King v. California, 784 F.2d 910, 915 (9th Cir. 1986).  
2 "Consummation" is defined under the statute as "the time that a consumer  
3 becomes contractually obligated on a credit transaction." Grimes v. New  
4 Century Mortgage Corp., 340 F.3d 1007, 1009 (9th Cir. 2003) (quoting 12  
5 C.F.R. § 226.2(a)(13)).

6 Plaintiffs became "contractually obligated on a credit  
7 transaction" in March of 2008, when they executed the "Fixed Note."  
8 (Compl. ¶ 7.) Therefore, the statute of limitations for bringing their  
9 TILA damages claim expired in March of 2009. Since Plaintiffs have not  
10 provided a basis for concluding that equitable tolling applies to this  
11 claim, Plaintiffs' TILA damages claim is dismissed with prejudice.

12 **(ii) TILA Rescission Claim**

13 "Residential mortgage transactions" are exempt from the right  
14 to rescission under TILA, and are defined as "a transaction in which a  
15 mortgage... is created or retained against the consumer's dwelling to  
16 finance the acquisition or initial construction of the dwelling." 15  
17 U.S.C. §§ 1635(e)(1), 1602(w).

18 Based upon Plaintiffs' allegations and the applicable Grant  
19 Deed, it is evident the loan at issue was a purchase money loan for  
20 their residence. (Compl. 1, 7; RJN, Ex. 1.) See Garavito v. GE Money  
21 Bank, No. 08-cv-2215-H, 2010 WL 744284 (S.D. Cal. March 2, 2010) (holding  
22 relevant grant deed, rate note and deed of trust demonstrated  
23 plaintiff's loan was a purchase money loan, which is exempt from TILA's  
24 rescission provision). Therefore, Plaintiff's TILA rescission claim is  
25 dismissed with prejudice.

26 **B. Real Estate Settlement Procedures Act**

27 Defendants seek dismissal of Plaintiffs' second claim in which  
28 Plaintiffs allege "violation of 26 U.S.C. § 2605," arguing this

1 statutory section does not exist, therefore, "it is unclear the statute  
2 to which [Plaintiffs'] refer in their second cause of action." (Mot.  
3 5:3-5.) Defendants also argue to the extent Plaintiffs intended to  
4 state a Real Estate Settlement Procedures Act ("RESPA") claim,  
5 Plaintiffs' allegations are ambiguous, a section 2607 claim is time-  
6 barred, and section 2605(b) does not apply because Plaintiffs do not  
7 allege any Defendant is a loan "servicer." (Mot. 5:18-19, 5:20-21, 6:5-  
8 10.)

9 Section 2605(b) of RESPA requires "servicers" of certain loans  
10 to "notify the borrower in writing of any assignment, sale or transfer  
11 of the servicing of the loan to any other person." 12 U.S.C. §  
12 2605(b)(1). Excluding certain specific entities, "servicer" is defined  
13 as "the person responsible for servicing a loan (including the person  
14 who makes or holds a loan if such person also services the loan.)" 12  
15 U.S.C. § 2605(i)(2).

16 Plaintiffs allege in support of their second claim for a  
17 "Violation of 26 U.S.C. § 2605":

18 Defendants... are such that they fall within the  
19 requirements of the Real Estate Settlement  
20 Procedures Act (RESPA). [¶] Defendants... placed  
21 loans for the purpose of unlawfully increasing or  
22 otherwise obtaining yield spread fees and sums in  
23 excess of what would have been lawfully earned. [¶]  
24 Defendants "MERS" and DOE 1... as "Servicers" as  
25 that term is used with the RESPA Act... violated  
26 the requirements of 26 U.S.C. § 2605(B) in that the  
27 servicing contract or duties have under [sic] were  
28 transferred or hypothecated without the required  
notice.

(Compl. ¶¶ 27-29.)

26 Although 26 U.S.C. § 2605 is a nonexistent statute, 12 U.S.C.  
27 § 2605 is a section of RESPA, and Plaintiffs allege in this claim that  
28 Defendants are covered by RESPA. Plaintiffs further allege Defendant

1 MERS and DOE 1, are "servicers" as defined under RESPA, and transferred  
2 the loan without providing the required disclosures to Plaintiffs.  
3 (Compl. ¶ 29.) Therefore, Defendants' motion to dismiss this section  
4 2605 RESPA claim against Defendant MERS is denied. However, since  
5 Plaintiffs do not allege any other named Defendant is a loan "servicer,"  
6 Defendants' motion is granted as to Defendants GMAC and ETS.

7 **C. Home Ownership & Equity Protection Act**

8 Defendants seek dismissal of Plaintiffs' Home Ownership and  
9 Equity Protection Act ("HOEPA") claim arguing the subject loan is a  
10 purchase money loan which is excluded from HOEPA's coverage, and the  
11 claim is barred by the applicable statute of limitations. (Mot. 7:11-  
12 12, 7:15-16.)

13 "Residential mortgage transactions," as defined under the  
14 Truth in Lending Act, are expressly exempted from HOEPA. 15 U.S.C.  
15 1602(aa)(1); see Gomez v. Wachovia Mortgage Corp., No. CV-09-02111 SBA,  
16 2010 WL 291817, \*4 (N.D. Cal. Jan. 19, 2010) (citing Llaban v. Carrington  
17 Mortgage Services, LLC, No. 3:09-cv-01667-H-POR, 2009 WL 2870154 (S.D.  
18 Cal. Sept. 3, 2009)). The subject loan is a "residential mortgage  
19 transaction." Therefore, Defendants' motion to dismiss Plaintiffs'  
20 HOEPA claim is granted, and this claim is dismissed with prejudice.

21 **D. Fair Debt Collection Practices Act**

22 Defendants seek dismissal of Plaintiffs' Fair Debt Collection  
23 Practices Act ("FDCPA") claim, arguing in relevant part, Plaintiffs'  
24 allegations are vague and conclusory, and Defendants are not "debt  
25 collectors" as defined by the act. (Mot. 8:18-19, 9:4-5.)

26 "To be liable for a violation of the FDCPA... the defendant  
27 must-as a threshold requirement-be a 'debt collector' within the meaning  
28 of the [Act]." Angulo v. Countrywide Home Loans, Inc., No. 1:09-cv-877-

1 AWI-SMS, 2009 WL 3427179, at \*5 (E.D. Cal. Oct. 26, 2009) (quoting  
2 Putkkuri v. Reconstruct Co., 2009 WL 32567, at \*7 (S.D. Cal. Jan.5,  
3 2009)). The FDCPA defines "debt collector" as a person "who regularly  
4 collects or attempts to collect, directly or indirectly, debts owed [to]  
5 ... another." 15 U.S.C. § 1692a(6). "Debt collector" does not include  
6 persons who collect debt "to the extent such activity... (ii) concerns  
7 a debt which was originated by such person; or (iii) concerns a debt  
8 which was not in default at the time it was obtained by such person..."  
9 15 U.S.C. § 1692a(6) (F). "FDCPA's definition of debt collector 'does not  
10 include the consumer's creditors, a mortgage servicing company, or any  
11 assignee of the debt, so long as the debt was not in default at the time  
12 it was assigned.'" Larkin v. Select Portfolio Servicing, Inc., No. 1:09-  
13 cv-01280-OWW-DLB, 2009 WL 3416137, at \*3 (E.D. Cal. Oct. 21, 2009)  
14 (quoting Perry v. Stewart Title Co., 756 F.2d 1197, 1208 (5<sup>th</sup> Cir.  
15 1985)).

16 Plaintiffs allege in support of their FDCPA claim that  
17 "Defendants... [MERS and ETS]... are 'debt collectors'... as that term  
18 is used in the United States Code." (Compl. ¶ 39.) However, this  
19 allegation is conclusory. See Angulo, 2009 WL 3427179, at \*5. Moreover,  
20 the applicable Deed of Trust and other allegations in the Complaint  
21 indicate otherwise. For example, the Deed of Trust identifies Defendant  
22 GMAC as the original lender, Defendant ETS as the trustee, and Defendant  
23 MERS as the lender's nominee. (RJN, Ex. 1; see also Compl. ¶¶ 3, 13.)  
24 Plaintiffs also allege Defendant GMAC transferred the loan to Defendant  
25 MERS. (Compl. ¶ 12.) Therefore, Plaintiffs allegations are insufficient  
26 to support their claim that Defendants are "debt collectors," and this  
27 claim is dismissed.



1           **E. Breach of Fiduciary Duty**

2           Defendants seek dismissal of Plaintiffs' breach of fiduciary  
3 duty claim, arguing Plaintiffs do not allege the necessary existence of  
4 a fiduciary relationship with Defendants. (Mot. 10:11-13.)

5           In California, to state a claim for breach of fiduciary duty,  
6 a plaintiff must allege: (1) the existence of a fiduciary relationship;  
7 (2) the breach of that relationship; and (3) damage proximately caused  
8 thereby. Roberts v. Lomanto, 112 Cal. App. 4th 1553, 1562 (2003).

9           As a general rule, "a loan transaction is [an] at arms-length  
10 [transaction] and there is no fiduciary relationship between the  
11 borrower and lender." Oaks Mgmt. Corp. v. Superior Court, 145 Cal. App.  
12 4th 453, 466 (2006). Courts have similarly held that loan servicers  
13 typically do not have a fiduciary relationship with borrowers. See  
14 Linder v. Aurora Loan Servicing, LLC, No. 2:09-cv-03490-JAM-KJM, 2010 WL  
15 1525399, at \*5 (E.D. Cal. April 15, 2010); and Moreno v. Citibank, N.A.,  
16 No. C-09-5339 CW, 2010 WL 103822, at \*3 (N.D. Cal. March 19, 2010).

17           Plaintiffs allege the following conclusory allegations in  
18 support of their fiduciary duty claim,

19                   Defendants... created, accepted and acted in a  
20 fiduciary relationship of great trust and acted for  
21 and were the processors of property for the benefit  
22 of Plaintiff.[¶] Defendants... further placed  
themselves in a position of great trust by virtue  
of the expertise represented by and through their  
employees.

23 (Compl. ¶¶ 44-45.) These allegations are insufficient to show the  
24 existence of a fiduciary relationship between Plaintiffs and Defendants.  
25 Therefore, Plaintiffs' breach of fiduciary duty claim is dismissed.

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1 **F. Breach of Covenant of Good Faith & Fair Dealing**

2 Defendants seek dismissal of Plaintiffs' breach of the  
3 covenant of good faith and fair dealing claim, arguing Plaintiffs have  
4 not alleged the existence of a contract with any Defendant, and tort  
5 damages are not available outside of an insurance context. (Mot. 10:21-  
6 22, 11:19-22.)

7 "There is an implied covenant of good faith and fair dealing  
8 in every contract that neither party will do anything which will injure  
9 the right of the other to receive the benefits of the agreement."  
10 Comunale v. Traders & General Ins. Co., 50 Cal.2d 654, 658 (1958). The  
11 implied covenant "rests upon the existence of some specific contractual  
12 obligation. [It] is read into contracts in order to protect the express  
13 covenants or promises of the contract, not to protect some general  
14 public policy interest not directly tied to the contract's purpose."  
15 Racine Laramie, Ltd. v. Dept. of Parks & Recreation, 11 Cal.App.4th  
16 1026, 1031 (1992).

17 Since the implied covenant is based in contract, compensation  
18 for its breach is almost always limited to contractual remedies. Foley  
19 v. Interactive Data Corp., 47 Cal.3d 654, 684 (1988). Tort remedies are  
20 only available when "the parties are in a 'special relationship' with  
21 'fiduciary characteristics.'" Pension Trust Fund v. Federal Ins. Co.,  
22 307 F.3d 944, 955 (9th Cir. 2002) (applying California law) (citing Mitsui  
23 Mfrs. Bank v. Superior Court, 212 Cal. App. 3d 726, 730 (1989)).

24 Here, Plaintiffs do not allege the existence of a contract or  
25 a special relationship between the parties. Therefore, Plaintiffs'  
26 breach of the implied covenant of good faith and fair dealing claim is  
27 dismissed.

28 ///

1           **G. Injunctive Relief**

2           Defendants also seek dismissal of Plaintiffs' seventh and  
3 eight causes of action for injunctive relief, arguing injunctive relief  
4 is a remedy, not a substantive claim. (Mot. 12:9-14.) Plaintiffs seek in  
5 their seventh claim an order "that Plaintiffs are not required to make  
6 any further payments on the Fixed Rate Note," and that enjoins "any  
7 further collection activity on the Note...." (Compl. ¶ 66.) Plaintiffs'  
8 seek in their eighth claim an order enjoining the impending foreclosure  
9 and sale of Plaintiffs' home. (Compl. ¶¶ 73-75.)

10           Under both federal and state law, an injunction is a remedy,  
11 not a claim in and of itself. See Curtis v. Option One Mortg. Corp., No.  
12 109-cv-1608 AWI SMS, 2010 WL 599816, at \*13 (E.D. Cal. Feb. 18,  
13 2010) (citing Washington Toxics Coalition v. Environmental Protection  
14 Agency, 413 F.3d 1024, 1034 (9th Cir. 2005) and Shamsian v. Atlantic  
15 Richfield Co., 107 Cal.App.4th 967, 985 (2003)). Therefore, Plaintiffs'  
16 purported "causes of action" for injunctive relief are dismissed.

17           **H. Declaratory Relief**

18           Defendants seek dismissal of Plaintiffs' declaratory relief  
19 claim, arguing no actual case or controversy exists that entitles  
20 Plaintiffs to declaratory relief, and the claim is "derivative of their  
21 other causes of action," which do not state valid claims. (Mot. 13:14-  
22 18.)

23           "Declaratory relief is appropriate (1) when the judgment will  
24 serve a useful purpose in clarifying and settling the legal relations in  
25 issue, and (2) when it will terminate and afford relief from the  
26 uncertainty, insecurity, and controversy giving rise to the proceeding."  
27 Guerra v. Sutton, 783 F.2d 1371, 1376 (9<sup>th</sup> Cir. 1986). "[T]he existence  
28 of another adequate remedy does not preclude a declaratory judgment that

1 is otherwise appropriate," however, "the availability of other adequate  
2 remedies may make declaratory relief inappropriate." Further, "a  
3 federal court may decline to address a claim for declaratory relief"  
4 where the substantive claims "would resolve the issues raised by the  
5 declaratory judgment action...." Fimbres v. Chapel Mortg. Corp., No. 09-  
6 cv-0886-IEG, 2009 WL 416332, at \*5 (S.D. Cal. Nov. 20, 2009) (internal  
7 quotations and citations omitted); see also StreamCast Networks, Inc.  
8 v. IBIS LLC, No. CV 05-04239 MMM, 2006 WL 5720345, at \*3-4 (C.D. Cal.  
9 May 2, 2006).

10 Here, Plaintiffs seek a declaratory judgment concerning "the  
11 [parties'] ownership rights and the validity of the commencement of the  
12 foreclosure process," and "the rights and duties of the parties herein."  
13 (Compl. ¶¶ 79, 81.) Since Plaintiffs' allegations do not suggest a  
14 declaratory judgment will entitle them to any relief beyond that  
15 requested in their other claims, Defendants' motion to dismiss  
16 Plaintiffs' declaratory relief claim is granted.

### 17 **I. Fraud**

18 Defendants seek dismissal of Plaintiffs' tenth and eleventh  
19 "causes of action," which both allege a fraud claim, arguing Plaintiffs'  
20 allegations do not satisfy the heightened pleading standard set forth in  
21 Federal Rule of Civil Procedure 9(b) ("Rule 9(b)"). (Mot. 15:3-4, 15:14-  
22 15.)

23 Under California law, the elements of a fraud claim are: (1)  
24 misrepresentation (including, false representation, concealment, or  
25 nondisclosure); (2) knowledge of falsity; (3) intent to induce reliance;  
26 (4) justifiable reliance; and (5) resulting damage. Engalla v.  
27 Permanente Medical Group, Inc., 15 Cal.4th 951, 974 (1997).

1 A claim for fraud in federal court must satisfy Rule 9(b)'s  
2 heightened pleading requirements. See Vess v. Ciba-Geigy Corp., 317  
3 F.3d 1097, 1103 (9th Cir. 2003). This rule provides that "[i]n alleging  
4 fraud or mistake, a party must state with particularity the  
5 circumstances constituting fraud or mistake." The required specificity  
6 includes the "time, place, and specific content of the false  
7 representations as well as the identities of the parties to the  
8 misrepresentations." Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir.  
9 2007) (quoting Edwards v. Marin Park, Inc., 356 F.3d 1058, 1066 (9th Cir.  
10 2004)). Further, "[w]here multiple defendants are asked to respond to  
11 allegations of fraud, the complaint must inform each defendant of his  
12 alleged participation in the fraud." Lane v. Vitek Real Estate  
13 Industries Group, No. 2:10-335-WBS GGH, 2010 WL 1956707, at \*8 (E.D.  
14 Cal. May 13, 2010) (internal quotations and citations omitted).

15 Plaintiffs' tenth fraud claim includes the following  
16 allegations:

17 Defendants [GMAC and ETS]... made a representation  
18 to Plaintiffs that [MERS] had the rights and  
19 standing of a beneficiary or [sic] Mortgage under  
20 California law. [¶] This statement was made on the  
21 Mortgage and presented to Plaintiffs at the office  
of the Title Company in [Sacramento County]. [¶]  
When [Defendants]... made the representation that  
[MERS] was the Mortgagee under the Mortgage, they  
both knew that the statement was false when made.

22 (Compl. ¶¶ 89-91.) Plaintiffs further allege the representation was made  
23 "to have Plaintiffs rely on [it]," and Plaintiffs "did actually rely on  
24 [it]." (Id., ¶ 92.)

25 Plaintiff's eleventh fraud claim includes the following  
26 allegations:

27 Defendant [MERS] caused to be executed a 'Notice of  
28 Mortgagee's Intent to Foreclose' which stated that  
the payments were due to [MERS] as lender. [¶] This

1 representation was implied by these defendants in  
2 order to induce reliance by Plaintiffs. [¶]  
3 Plaintiffs did rely on these representations....[¶]  
4 [and] the implied representation... was a false  
5 representation....

6 (Compl. ¶¶ 97-99.)

7 Plaintiffs' fraud allegations are conclusory and do not  
8 provide the specificity required by Rule 9(b). Many of Plaintiffs'  
9 allegations do not differentiate between Defendants. Further, the  
10 allegations do not provide sufficient detail concerning the time, date,  
11 and place of the alleged misrepresentations or the identity of who made  
12 them. Therefore, Plaintiffs' tenth and eleventh fraud claims are  
13 dismissed.

## 14 **2. Motion to Strike**

15 Defendants seek an order under Federal Rule of Civil Procedure  
16 12(f) striking Plaintiffs' punitive damages claim and request for  
17 attorneys' fees, arguing this relief "is not recoverable as a matter of  
18 law." (Def.s' Mot. to Strike, 4:2-6, 5:10.) Defendants rely solely upon  
19 California cases, which discuss the state pleading standards, as support  
20 for their motion.

21 The Federal Rules of Civil Procedure govern the sufficiency of  
22 a pleading in federal actions, even as to state law claims. See Clark v.  
23 Allstate Ins. Co., 106 F.Supp.2d 1016, 1018 (S.D. Cal. 2000) (citing  
24 Hanna v. Plumer, 380 U.S. 460, 471 (1965)).

25 Since the Supreme Court's decision in Hanna v.  
26 Plumer, it no longer can be doubted that the rules  
27 regarding the standard of specificity to be applied  
28 to federal pleadings... [and] the special  
requirements for pleading certain matters... are  
all governed by the federal rules and not by the  
practice of the courts in the state in which the  
federal court happens to be sitting.

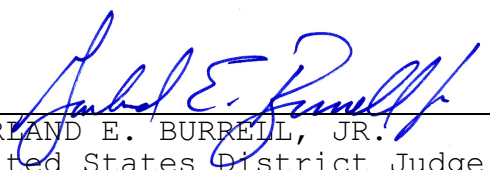
1 5 Wright & Miller, Federal Practice and Procedure, § 1204 (3<sup>rd</sup> ed. 2004).

2 Since Defendants have not shown their Motion to Strike should  
3 be granted, it is denied.

4 **IV. CONCLUSION**

5 For the stated reasons, Defendants' motion to dismiss is  
6 granted in part and denied in part. Defendants' motion to strike is  
7 denied. Plaintiffs are granted leave to amend any claim that has not  
8 been dismissed with prejudice. Any amended pleading shall be filed  
9 within ten (10) days of the date on which this order is filed.

10 Dated: June 29, 2010

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13 \_\_\_\_\_  
GARLAND E. BURRELL, JR.  
United States District Judge