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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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KIRA B. CHRISTENSEN,  
Plaintiff,

NO. CIV. S-10-1024 FCD/KJN

v.

MEMORANDUM AND ORDER

AMERICAN HOME MORTGAGE  
ACCEPTANCE, INC, AMERICAN HOME  
MORTGAGE SERVICING, INC,  
DEUTSCHE BANK NATIONAL TRUST  
COMPANY AS TRUSTEE FOR  
AMERICAN HOME MORTGAGE ASSETS  
TRUST 2006-1 MORTGAGE-BACKED  
PASS THROUGH CERTIFICATES,  
SERIES 2006-1, AND DOES 2  
THROUGH 100, INCLUSIVE.

Defendants.

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This matter is before the court on the motions of American Home Mortgage Acceptance, Inc. ("AHMA"), American Home Mortgage Servicing Inc. ("AHMSI"), and Deutsche Bank National Trust Company ("Deutsche Bank") (collectively, "defendants") to dismiss Kira B. Christensen's ("plaintiff") complaint ("Compl.") pursuant

1 to Federal Rule of Civil Procedure ("FRCP") 12(b)(6). Defendants  
2 also move to strike plaintiff's request for punitive damages and  
3 attorneys' fees.<sup>1</sup> Plaintiff opposes the motions. For the  
4 reasons set forth below, defendants' motions to dismiss are  
5 GRANTED.<sup>2</sup> (Docket #s 6, 10.)

#### 6 BACKGROUND

7 Plaintiff executed an Adjustable Rate Note in November 2005  
8 with lender AHMA, through broker James Becker, in the amount of  
9 \$1,620,000. (Pl.'s Compl. ("Compl."), filed April 27, 2010  
10 (Docket #1), ¶ 11.); (Def.'s Mot Dismiss ("MTD"), filed May 4,  
11 2010 (Docket #6), 9.) This note was executed to refinance the  
12 existing mortgage on plaintiff's property, located in Sacramento,  
13 CA, at 511 Knightsbridge Lane ("the Property"). Plaintiff  
14 alleges Becker, at the consummation of the loan, knowingly  
15 entered false information relating to plaintiff's monthly income,  
16 misstated the value of the property, and misrepresented, *inter*  
17 *alia*, the desirability of the loan, the loan's premium, and  
18 plaintiff's ability to modify the loan in the future. (Compl.  
19 ¶¶ 13, 1-6; 24, A-L.) Plaintiff further characterizes these  
20 practices as "predatory lending." (*Id.* at ¶ 22); (Pl.'s Opp.'n to  
21 Def.'s Mot Dismiss ("Opp.'n"), filed June 4, 2010 (Docket #9),  
22 2.)

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25 <sup>1</sup> Because the court dismisses all claims against  
26 defendants, the court does not address the merits of their  
motions to strike.

27 <sup>2</sup> Because oral argument will not be of material  
28 assistance, the court orders these matters submitted on the  
briefs. E.D. Cal. L.R. 230(g).

1 Plaintiff believes AHMA and AHMSI should be liable for  
2 Becker's actions based on an agency relationship between  
3 defendants and Becker, and by virtue of the fact that defendants  
4 "participated in," "were aware of," and "should have been aware  
5 of" Becker's "acts or omissions," and because "[defendants] did  
6 not verify the plaintiff['s] correct income" prior to the  
7 consummation of the loan. (Id. at ¶ 14, a-d.)

8 Plaintiff contends, on information and belief, that AHMSI  
9 was created, subsequent to her refinance through AHMA, as a  
10 result of AHMA's Chapter 11 Bankruptcy restructuring (Opp.'n at  
11 2), and that AHMSI is the "assignee, successor and servicer of to  
12 the said loan [sic] and current beneficiary under the deed of  
13 trust." (Compl. ¶ 7). Further, plaintiff alleges that AHMA and  
14 AHMSI are "the same entity . . . for legal purposes." (Opp.'n at  
15 2.) In August 2009, AHMA assigned the Deed of Trust relating to  
16 the Property to Deutsche Bank National Trust Company.

#### 17 STANDARD

18 Under FRCP 8(a), a pleading must contain "a short and plain  
19 statement of the claim showing that the pleader is entitled to  
20 relief." See Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).  
21 Under notice pleading in federal court, the complaint must "give  
22 the defendant fair notice of what the claim is and the grounds  
23 upon which it rests." Bell Atlantic v. Twombly, 550 U.S. 544,  
24 555 (2007) (internal quotations omitted). "This simplified  
25 notice pleading standard relies on liberal discovery rules and  
26 summary judgment motions to define disputed facts and issues and  
27 to dispose of unmeritorious claims." Swierkiewicz v. Sorema  
28 N.A., 534 U.S. 506, 512 (2002).

1 On a motion to dismiss, the factual allegations of the  
2 complaint must be accepted as true. Cruz v. Beto, 405 U.S. 319,  
3 322 (1972). The court is bound to give plaintiff the benefit of  
4 every reasonable inference to be drawn from the "well-pleaded"  
5 allegations of the complaint. Retail Clerks Int'l Ass'n v.  
6 Schermerhorn, 373 U.S. 746, 753 n.6 (1963). A plaintiff need not  
7 allege "'specific facts' beyond those necessary to state his  
8 claim and the grounds showing entitlement to relief. Twombly,  
9 550 U.S. at 570. "A claim has facial plausibility when the  
10 plaintiff pleads factual content that allows the court to draw  
11 the reasonable inference that the defendant is liable for the  
12 misconduct alleged." Iqbal, 129 S. Ct. at 1949.

13 Nevertheless, the court "need not assume the truth of legal  
14 conclusions cast in the form of factual allegations." United  
15 States ex rel. Chunie v. Ringrose, 788 F.2d 638, 643 n.2 (9th  
16 Cir. 1986). While Rule 8(a) does not require detailed factual  
17 allegations, "it demands more than an unadorned, the defendant-  
18 unlawfully-harmed-me accusation." Iqbal, 129 S. Ct. at 1949. A  
19 pleading is insufficient if it offers mere "labels and  
20 conclusions" or "a formulaic recitation of the elements of a  
21 cause of action." Twombly, 550 U.S. at 555; Iqbal, 129 S. Ct. at  
22 1950 ("Threadbare recitals of the elements of a cause of action,  
23 supported by mere conclusory statements, do not suffice.").  
24 Moreover, it is inappropriate to assume that the plaintiff "can  
25 prove facts which it has not alleged or that the defendants have  
26 violated the . . . laws in ways that have not been alleged."  
27 Associated Gen. Contractors of Cal., Inc. v. Cal. State Council  
28 of Carpenters, 459 U.S. 519, 526 (1983).

1           Ultimately, the court may not dismiss a complaint in which  
2 the plaintiff has alleged "enough facts to state a claim to  
3 relief that is plausible on its face." Iqbal, 129 S. Ct. at 1949  
4 (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 570  
5 (2007)). Only where a plaintiff has failed to "nudge [his or  
6 her] claims across the line from conceivable to plausible," is  
7 the complaint properly dismissed. Id. at 1952. While the  
8 plausibility requirement is not akin to a probability  
9 requirement, it demands more than "a sheer possibility that a  
10 defendant has acted unlawfully." Id. at 1949. This plausibility  
11 inquiry is "a context-specific task that requires the reviewing  
12 court to draw on its judicial experience and common sense." Id.  
13 at 1950.

14                               **ANALYSIS**

15           As a threshold matter, the court must determine whether  
16 plaintiff's claims for relief are timely filed. If they are not,  
17 and plaintiff cannot allege facts sufficient to invoke the  
18 doctrine of equitable tolling, plaintiff's claims must be  
19 dismissed.<sup>3</sup>

20           "Equitable tolling may be applied if, despite all due  
21 diligence, a plaintiff is unable to obtain vital information  
22 bearing on the existence of his claim." Santa Maria v. Pacific  
23 Bell, 202 F.3d 1170, 1178 (9th Cir. 2000). "If a reasonable  
24 plaintiff would not have known of the existence of a possible  
25 \_\_\_\_\_

26           <sup>3</sup> While the parties' papers focus primarily on the  
27 substantive merits of plaintiff's claims for relief, the statute  
28 of limitations question is, nonetheless, the threshold issue that  
must be resolved. If plaintiff's claims are time barred, the  
court need not reach the other bases for defendants' motions to  
dismiss.

1 claim within the limitations period, then equitable tolling will  
2 serve to extend the statute of limitations for filing suit until  
3 the plaintiff can gather what information he needs." Id.

4 Here, plaintiff's claims for relief are facially time  
5 barred. The loan in question was consummated in November 2005,  
6 and this action was brought in March 2010, well over four years  
7 later. All of plaintiff's claims have a statute of limitations  
8 of four years or less. Cal. Code Civ. Proc. § 343 ("An action  
9 for relief not hereinbefore provided for must be commenced within  
10 four years after the cause of action shall have accrued.") The  
11 statute of limitations for breach of contract and breach of  
12 implied covenant of good faith and fair dealing is four years.  
13 Id. at § 337(1). Claims for fraud have a three year statute of  
14 limitations. Id. at § 338(d). Claims for breach of fiduciary  
15 duty, when based on fraud, have a three-year statute of  
16 limitations. Brown v. Option One Mortg. Corp., 2010 WL 1267774,  
17 at \*2 (N.D. Cal. Apr. 1, 2010)(citing City of Vista v. Robert  
18 Thomas Securities, Inc., 84 Cal. App. 4th 882, 889 (2000)).  
19 Claims for negligence have a two-year statute of limitations.  
20 Cal. Code Civ. Proc. § 335.1. As such, each of plaintiff's  
21 claims is barred by the statute of limitations.

22 Plaintiff attempts to bypass the statutory limitations,  
23 alleging the "misrepresentations and allegations" that form the  
24 basis of her claims for relief "were all discovered within the  
25 past year." (Comp. ¶ 27.) In other words, plaintiff asserts  
26 that she was unaware of the facts giving rise to her claims until  
27 the past year. Thus, plaintiff alleges, "any applicable statute  
28 of limitations are extended or should be extended pursuant to the

1 equitable tolling doctrine, or other equitable principles or by  
2 law." (Id.) However, this bare contention, without more, is  
3 insufficient to toll the statute of limitations. See Rosales v.  
4 Downey S&L Ass'n, F.A., 2009 U.S. Dist. LEXIS 15923 (S.D. Cal  
5 Mar. 2, 2009) (declining to allow equitable tolling due to the  
6 plaintiff's conclusory allegations and failure to explain, with  
7 adequate specificity, why the statute should be tolled).

8 Here, plaintiff fails to demonstrate that she was unable to  
9 obtain the information needed to file her claim until after the  
10 statutory period. Plaintiff's claims are premised on the alleged  
11 wrongful conduct that took place at the *origination* of her loan,  
12 including, *inter alia*, misstating her monthly income, excessive  
13 fees, abusive prepayment penalties, kickbacks to brokers, and  
14 over valuation of the property. Plaintiff fails to demonstrate  
15 why she was unable to discover these alleged inaccuracies and  
16 omissions at that time or within the applicable statutory  
17 periods. Further, the facts before the court indicate that  
18 plaintiff was aware of some, if not all, of the alleged wrongful  
19 conduct at the time of origination. By her own declaration,  
20 plaintiff concedes she was aware, at the consummation of the  
21 loan, that the documents incorrectly listed her income as  
22 \$60,000, yet she failed to file her complaint until over four  
23 years later. (Dec. Of Kira B. Christensen, filed April 27, 2010  
24 (Docket #1), ¶¶ 16-20.) Further, plaintiff's conclusory and  
25 factually void statement that defendants' misrepresentations,  
26 omissions and acts were "purposefully hidden from [her] to  
27 prevent discovering the true nature of the transaction" (Compl. ¶  
28 25) is insufficient to invoke equitable tolling, as is

1 plaintiff's appeal to her reliance on an alleged fiduciary  
2 relationship with her broker and defendants. See Rosales, 2009  
3 U.S. Dist. LEXIS 15923; See generally Pace v. DiGuqlielmo, 544  
4 U.S. 408, 418 (2005)(holding, "a litigant seeking equitable  
5 tolling bears the burden of establishing two elements: (1) that  
6 he has been pursuing his rights diligently, and (2) that some  
7 extraordinary circumstance stood in his way").

8 Because plaintiff presents no facts to demonstrate the  
9 applicability of equitable tolling to her facially time barred  
10 claims for relief, defendants' motions to dismiss plaintiff's  
11 complaint are GRANTED.<sup>4</sup>

12 **CONCLUSION**

13 For the foregoing reasons, defendants' motions to dismiss  
14 plaintiff's complaint are GRANTED. Plaintiff is granted twenty  
15 (20) days from the date of this order to file an amended  
16 complaint in accordance with this order. Defendants are granted  
17 thirty (30) days from the date of service of plaintiff's amended  
18 complaint to file a response thereto.

19 IT IS SO ORDERED.

20 DATED: August 3, 2010

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22 \_\_\_\_\_  
23 FRANK C. DAMRELL, JR.  
24 UNITED STATES DISTRICT JUDGE

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26 \_\_\_\_\_  
27 <sup>4</sup> Because plaintiff's claim for relief based on  
28 violations of California Business & Professions Code § 17200 is  
predicated on the success of her other claims (Compl. ¶¶ 57-59),  
it is also dismissed with leave to amend.