

1 Presently before the Court are Defendants JP Morgan Chase N.A.
2 ("Chase") and Wachovia Mortgage Corporation's ("Wachovia")
3 Motions to Dismiss Plaintiffs' Complaint for failure to state a
4 claim upon which relief may be granted, pursuant to Federal Rule
5 of Civil Procedure 12(b)(6).¹ For the reasons set forth below,
6 Defendants' Motions to Dismiss are both granted.²

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8 **BACKGROUND**³
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10 This action stems from a set of two residential mortgage
11 loans on a single residential property. Plaintiffs had two loans
12 on their property, at least one of which was issued through
13 Chase. On October 1, 2007, a deed of trust was recorded against
14 the property through Defendant Ndex West LLC ("Ndex"). Plaintiff
15 contends that Ndex refused any tender of arrearage on at least
16 one of their mortgages. Plaintiffs' home was foreclosed upon.

17 Plaintiffs allege the foreclosure was invalid because they
18 had notified the lender of their right to rescind the mortgage,
19 pursuant to TILA, prior to the foreclosure sale, however do not
20 specify which lender they contacted, or which mortgage is even at
21 issue.

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24 ¹ All further references to "Rule" or "Rules" are to the
25 Federal Rules of Civil Procedure unless otherwise noted.

26 ² Because oral argument will not be of material assistance,
27 the Court deemed this matter suitable for decision without oral
28 argument. E.D. Cal. Local Rule 230 (g).

³ The factual assertions in this section are based on the
allegations in Plaintiffs' Complaint unless otherwise specified.

1 It is also unclear which mortgage and lender Plaintiffs claim is
2 in violation of TILA.⁴ Because the property has been sold,
3 leaving Wachovia with no interest, Plaintiffs request that
4 Defendant Wachovia be dismissed without prejudice. However,
5 Plaintiffs re-assert that Chase indicated its interest and intent
6 to foreclose on the property in a notice mailed to Plaintiffs in
7 December 2009.

8 Wachovia and Chase have each filed a timely Motion to
9 Dismiss. Chase contends it has no involvement in either loan,
10 never had a recorded interest in the property. (Mot. To
11 Dismiss 1.) Both Motions to Dismiss contend that Plaintiffs'
12 claims against each fail to state facts sufficient to show any
13 alleged misconduct.

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15 **STANDARD**
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17 On a motion to dismiss for failure to state a claim under
18 Rule 12(b)(6), all allegations of material fact must be accepted
19 as true and construed in the light most favorable to the
20 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
21 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only "a short and
22 plain statement of the claim showing that the pleader is entitled
23 to relief," to "give the defendant fair notice of what
24 the...claim is and the grounds upon which it rests."

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27 ⁴ Wachovia, in their Motion to Dismiss, asserts that
28 Plaintiffs' TILA claim is most likely against the first mortgage
on the home that was originally assigned to Chase. According to
Wachovia, this first mortgage was the one foreclosed upon, and
therefore they have no involvement in the matter.

1 Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal
2 citations and quotations omitted). Though “a complaint attacked
3 by a Rule 12(b)(6) motion” need not contain “detailed factual
4 allegations, a plaintiff’s obligation to provide the ‘grounds’ of
5 his ‘entitlement to relief’ requires more than labels and
6 conclusions, and a formulaic recitation of the elements of a
7 cause of action will not do.” Id. at 555 (quoting Papasan v.
8 Allain, 478 U.S. 265, 2869 (1986)). A plaintiff’s “factual
9 allegations must be enough to raise a right to relief above the
10 speculative level.” Id. (citing 5 C. Wright & A. Miller, Federal
11 Practice and Procedure § 1216 (3d ed. 2004) (“[T]he pleading must
12 contain something more...than...a statement of facts that merely
13 creates a suspicion [of] a legally cognizable right of
14 action.”)).

15 Further, “Rule 8(a)(2)...requires a ‘showing,’ rather than a
16 blanket assertion, of entitlement to relief. Without some
17 factual allegation in the complaint, it is hard to see how a
18 claimant could satisfy the requirements of providing...grounds on
19 which the claim rests.” Twombly, 550 U.S. at 555 n.3 (internal
20 citations omitted). A pleading must then contain “only enough
21 facts to state a claim to relief that is plausible on its face.”
22 Id. at 570. If the “plaintiffs...have not nudged their claims
23 across the line from conceivable to plausible, their complaint
24 must be dismissed.” Id.

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1 **A. TILA Claim**

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3 Plaintiffs appear to assert violations of TILA, though the
4 Complaint does not clearly assert against which Defendant the
5 claim is asserted. Further, Plaintiffs do not specifically
6 assert whether they are seeking civil damages or rescission under
7 TILA. Plaintiffs also do not assert the grounds upon which they
8 are owed relief under TILA, other than regarding the nature of
9 the original loan documents.

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11 **1. Wachovia's Motion to Dismiss**

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13 Wachovia asserts it is not clear what declaratory relief
14 Plaintiffs are seeking from it as a Defendant, or if the TILA
15 violation is even targeted toward Wachovia at all. Wachovia
16 alleges the TILA violation is only related to the first mortgage
17 in the Complaint since this was the mortgage that Plaintiffs
18 defaulted on, which commenced foreclosure proceedings. Since
19 Wachovia has no interest in the first mortgage, Wachovia's Motion
20 asserts the TILA violation does not appear to be directed toward
21 it as a Defendant. Nowhere in the complaint do Plaintiffs assert
22 facts showing any violation by Wachovia, or assert that the
23 second loan is in violation of TILA.

24 Plaintiffs have not asserted enough facts or asserted a
25 claim with enough specificity to put Defendant Wachovia on notice
26 of a cognizable issue. First, it is unclear if the claimed TILA
27 violations are directed toward defendant Wachovia. Second, what
28 relief Plaintiffs seek under TILA is not stated with specificity.

1 Under the Twombly standard, while a complaint need not contain
2 detailed factual allegations, it must contain enough facts to
3 state a claim and raise a right to relief above a speculative
4 level. See supra. Plaintiffs have not pled enough facts to nudge
5 the claim over the line to sustainable. Accordingly, Wachovia's
6 Motion to Dismiss is granted.

7 In addition, in Plaintiffs' Response in Opposition to the
8 Motion to Dismiss, Plaintiffs request dismissal without prejudice
9 of Defendant Wachovia, as the sale of the property left Wachovia
10 with no interest. See ECF No. 12. An action may be dismissed at
11 the plaintiff's request by court order, on terms that the court
12 considers proper according to Rule 41(a)(2). A plaintiff is
13 generally permitted to dismiss an action without prejudice, so
14 long as any defendant will not be prejudiced by such action. See
15 Stevedoring Services of America v. Armilla Intern. B.V., 889 F.2d
16 919, 921 (9th Cir. 1989). No Defendant has filed any opposition
17 to the Plaintiffs' request to release Wachovia as a Defendant
18 without prejudice, and no Defendant will be prejudiced by such
19 action. Accordingly Plaintiffs' request to release Wachovia as a
20 Defendant is granted.

22 **2. Chase's Motion to Dismiss**

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24 Chase believes it was erroneously sued, stating that it does
25 not currently have, and never has had, a recorded interest in the
26 property. Chase Home Finance was assigned all beneficial
27 interest in the first loan on October 1, 2007. (See Mot. Diss.
28 ECF No. 8, Ex. 4.)

1 Chase Home Finance also sent a notice of intent to foreclose to
2 the Plaintiffs. However, it is unclear from the record the
3 relationship between JP Morgan Chase and Chase Home Finance.

4 Further, Plaintiffs have not asserted enough facts or
5 asserted a claim with enough specificity to put Defendant Chase
6 on notice of a cognizable issue. Again it is unclear if the
7 claimed TILA violations are directed toward Defendant Chase. The
8 Complaint merely asserts that Defendant improperly conducted the
9 sale due to violations of TILA regarding the nature of the
10 original loan documents. While Chase apparently was the assigned
11 beneficiary of the deed of trust related to the foreclosure, it
12 is unclear here exactly who Plaintiffs are alleging violated
13 TILA. Further no facts supporting the allegation that a
14 Defendant violated TILA are given, except the vague statement
15 that the lender was notified regarding the right of rescission by
16 the Plaintiffs. Again no specific lender is named, and no
17 reference or facts are given surrounding this apparent
18 communication. Under the Twombly standard, while a complaint
19 need not contain detailed factual allegations, it must contain
20 enough facts to state a claim and raise a right to relief above a
21 speculative level. See supra. Plaintiffs have not pled enough
22 facts to nudge the claim over the line to sustainable.
23 Accordingly, Chase's Motion to Dismiss is granted.

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